
(2010) 06 P&H CK 0045
In the Punjab And Haryana At Chandigarh

Niranjan Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17, 4, 5A, 6, 9

Citation : (2010) 4 RCR(Civil) 651

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution challenges notification dated 29.1.2009 (P-3), issued u/s 4 read with Section 17(2)(c) (Punjab Amendment) of the Land Acquisition Act, 1894 (for brevity, "the Act"). As the record shows it was followed by notification u/s 6 of the Act which was issued on 25.5.2005 (published in the official gazette on 12.6.2009). A draft award for the purpose of Section 17(3A)(a) of the Act was prepared on 10.3.2009 and even compensation to the extent of 80% of the estimated amount was to be offered. Eventually notices u/s 9 of the Act were issued on 29.5.2009. However, the amount was not offered to the land owners and consequently possession could not be taken. The landowners filed representations and award was announced on 24.2.2010. The instant petition has already been filed on 1.7.2009. The award accordingly states that possession of the petitioner could not be taken. There is interim order staying dispossession of the petitioner from the land in question.

2. The respondent State has sought to acquire land for a public purpose, namely, for the construction of ponds in Village Budho Barkat (land of Village Bala/HB No. 122); Village Himmatpur H.B. No. 205; Satabkot (land of Village Himmatpur H.B. No. 205); Badhaiya H.B. No. 447 (land of Village Terkiana H.B. No. 204); Pul Pukhta HB No. 534, Feroze Rolian HB No. 543, Prempur HB No. 546 and Thakri

HB No. 547, Tehsil Dasuya, District Hoshiarpur. It is pertinent to mention here that the aforementioned notification has been issued in supersession of earlier notification dated 16.11.2007 (published in gazette on 25.1.2008), issued u/s 4 of the Act. The noting dated 16.12.2008 (in Gurmukhi script) shows inter-alia the whole land might not be required for the Holy Bein Project and some land in addition may also be needed. It has been stated in the latest notification that since the specified land was urgently needed for the construction of ponds in the aforesaid villages under the Holy Bein Project of Punjab Government, which was to be completed within stipulated time of six months, to provide cleanliness to the surroundings and environment of Hoshiarpur District, therefore, the provisions of Section 5A of the Act have been dispensed with by invoking the provisions of Section 17(2)(c) of the Act.

3. The petitioner is owner in possession of land comprised in Khasra No. 1259/2 (1-0), 1275/1 (0-16), 1275/2 (5-16), 1275/3 (1-8), Village Himmatpur, Hadbast No. 205, Tehsil Dasuya, District Hoshiarpur, as is evident from the jamabandi for the year 2002-03 (P-1). The total land measures 1 acre 1 kanal. It is claimed that the land owned by the petitioner is very valuable agricultural chahi land, which is being irrigated by tubewell. There is a Gurudwara Sahib in village Himmatpur and there exists a 20" wide drain which is being used for the purpose of draining out the rainy and used water of the village. In that regard, the petitioner has placed on record a site plan (P-2).

4. The grievance of the petitioner is that the village is already having a pond, thus, there is no requirement of another pond for which the land is sought to be acquired. It is alleged that there is no "Holy Bein" flowing even near to the village. Besides the pond, the drainage is provided in the village from which the water is being drained out regularly. The existing pond covers an area measuring 17 Kanals 12 Marlas comprised in Khasra No. 968, which is evident from the jamabandi for the year 2002-03 (P-4). It has further been submitted that no public purpose for acquiring the land is involved and that no survey has been conducted prior to issuance of the impugned notification. The provision of Section 17(2)(c) (Punjab Amendment) of the Act has been invoked without application of independent mind and there is no urgency involved to acquire the land in question by dispensing with requirement of filing of objections u/s 5A of the Act. It has also been alleged that the impugned notification has not been published in the two daily newspapers of wide circulation in the area, as is mandated by Section 4 of the Act. Moreover, upto 22.5.2009 neither the possession of the land was taken nor the estimated amount of compensation to the extent of 80% was deposited by the respondents in the office of the Block Development and Panchayat Officer, Dasuya. In that regard, the petitioner has placed on record the information dated 22.5.2009 received by him under the Right to Information Act, 2005 (P-6).

5. The petitioner has also placed on record a copy of the written statement dated 12.9.2008, filed by the Principal Secretary to the Government of Punjab,

Department of Labour-cum-Project Coordinator of the Project Restoration of Ecology of Holi Bein, Punjab, filed in CWP No. 13449 of 2007 (Nirmal Singh v. State of Punjab and Ors.), to aver that earlier also the respondent State had made an attempt to acquire the land for the purported "Holy Bein". Accordingly, the petitioner filed a public interest litigation seeking a writ of prohibition from changing the nature of "Gair Mumkin Nala" into the "Gair Mumkin Kali Bein". In the said petition, the aforementioned written statement has been filed by the respondent State giving an undertaking that in the project in question neither any land owned by any body would be taken forcibly nor there is any scheme to acquire any land. The relevant extract of para 1 of the preliminary submissions of the written statement, dated 12.9.2008, reads thus:

1. ...The answering respondent is implementing a prestigious project of Government of Punjab, wherein all out efforts are being made for ecological restoration of Holi Bein which include its cleaning and thereafter releasing clean fresh water into the same after stopping the flow of sewerage which is now being added to it from all around. In this project neither any land owned by anybody is being taken forcibly nor is there any scheme to acquire any land. Unless or until the petitioners have encroached upon some public land near Holi Bein embankments, which does not appeared (?) to be the case here, they have nothing to fear and their apprehensions in this regard are totally misconceived and baseless.

6. After filing of the said written statement, CWP No. 13449 of 2007 was dismissed as withdrawn vide order dated 17.9.2008. However, the said petition pertained to village Dhanoa, in which also the petitioner feared that the temple and other areas would be demolished for the purposes of "Holy Bein".

7. On 2.6.2009, the petitioner also sent a legal notice stating all his grievances but the same has not been replied by the respondents.

8. The instant petition was filed on 1.7.2009 On 2.7.2009, the Division Bench issued notice of motion for 7.7.2009 and vide order dated 7.7.2009 the dispossession of the petitioner was stayed.

9. In response to the notice of motion, a joint reply by way of affidavit of Shri Iqbaljit Singh, Block Development and Panchayat Officer, Dasuya, District Hoshiarpur, dated 9.7.2009 was filed on behalf of respondent Nos. 1 and 3 to 5. In the preliminary submissions it has been asserted that the land owned by the petitioner to the extent of 162 Kanals 10 Marlas in village Himmatpur is not valuable agricultural land. The dirty water of the village abadi passes in front of Gurdwara Sahib and falls in the Holy Bein. Keeping in view the difficulty of the villagers and in order to keep sanctity of the Holy Bein, it was proposed to acquire the land for proper drainage of dirty water of the village. Accordingly, a plan was prepared and a detailed survey was done. It was found that the land in dispute is the proper place for the pond, which will be divided into three parts. It is proposed to have earth bed of height around the pond where a proper

plantation of trees and shrubs has been planted. It has further been proposed to set up a treatment plant for the purification of the dirty water, which would thereafter be supplied to the farmers for irrigation of their fields free of costs through underground pipes. According to the respondents, this scheme would serve two purposes viz. the dirty water would be stored at one place in a proper way, which would not fall in the Holy Being and that after treatment of the same it would be used for irrigating the fields. Thus, the purpose of acquisition of land for a public purpose has been sought to be justified.

10. In so far as the delay in the accomplishment of the project is concerned, it has been submitted that on account of imposition of Code of Conduct due to elections, the project was delayed and after 20.5.2009 the matter is being expedited. It has been admitted that a pond on the eastern side of the village is in existence but the water coming from 5-6 houses of the village alone falls into it and the water of the remaining abadi of the village is collected near the Gurdwara Sahib and falls in the Holy Bein. The allegation of the petitioner that there exists no Holy Bein has been denied. It has been pointed out that there are about 258 houses in the village having population of 1303 persons. A technical report from the Executive Engineer, Panchayati Raj Public Works Department Division, Hoshiarpur, was called whether the sullage of the village can fall in the already existing village pond left during consolidation or not. The Executive Engineer submitted a report dated 28.8.2007 concluding that it is not possible that the water can fall in the existing pond. The report along with photocopy of the site plan has been placed on record as Annexure R-1. It has further been stated that urgency is involved in the matter and that 80% of the estimated acquisition amount of compensation has been deposited with the Sub Divisional Magistrate, Dasuya-respondent No. 4, which is to be disbursed to the petitioner and other land owners. In that regard, notices u/s 9 of the Act, dated 29.5.2009, were issued asking the petitioner and others to appear before the Collector on 17.6.2009 to put their claims of compensation (R-2).

11. It has also been asserted that the notification u/s 4 read with Section 17(2) (c) of the Act was published in the two newspapers, namely, "Jag Bani" and "The Tribune", dated 29.1.2009 (R-3 & R-4). It is claimed that proper procedure as contemplated by various provisions of the Act has been duly complied with.

12. The petitioner filed the replication dated 20.7.2009, controverting the averments made in the reply filed by respondent Nos. 1 and 3 to 5 reiterating the stand taken in the writ petition. The petitioner vehemently denied that Gurudwara Sahib is not adjoining his land. In order to substantiate his stand and ownership over the land in dispute, the petitioner again placed on record a detailed site plan along with revenue record as Annexures P-8 and P-9.

13. The respondents also filed a rejoinder to the replication by way of affidavit dated 27.7.2009, disputing the claim of the petitioner that the land proposed to be acquired is adjoining the Gurudwara Sahib. They have also placed on record a site plan prepared by the Junior Engineer, which is counter signed by the B.D.P.O.

Dasuya, showing the actual position of the village pond, drainage of water and proposed land to be acquired (R-5). It has been submitted that the whole water of the village is collected at point "A" as shown in the said site plan from where it goes to the Holy Bein while passing in front of the Gurudwara Sahib. It has also been denied that the land in dispute is 31/2 feet higher than the water level of the village. The existing pond shown in the site plan is having ground level 100.820 meter (marked as Point "B" in the site plan), which is higher than the level point at point "A", which is 99.485 meter. Accordingly, it has been asserted that it is not possible even to make any underground arrangement from Point "A" to Point "B". It has also been categorically stated that there is a Holy Bein in the village and there is no other arrangement for the drainage of the dirty water of the village, therefore, the land in dispute is being acquired.

14. Adopting the reply of respondent Nos. 1 and 3 to 5, a short reply by way of affidavit of Shri P. Ram, IAS, Principal Secretary to Government of Punjab, Department of Labour-cum-Project Coordinator, "Restoration of Ecology of Holy Being, dated 11.8.2009, on behalf of respondent No. 2 has been filed.

15. On 12.8.2009, when the matter came up for consideration, learned Counsel for the parties sought and were granted time to enable them to probe alternative possibilities to harness sullage water of the village. Thereafter on 16.9.2009, a report of the Executive Engineer, Panchayati Raj P.W (C&M) Division, Hoshiarpur, dated 15.9.2009, along with a site plan was placed before the Court, which is marked as Annexure "A". The said report reads thus:

On the directions of the Hon"ble Punjab and Haryana High Court, a joint inspection was done with Er. Satwant Singh Sandhu, Technical Consultant of the plaintiff in presence of Sh. Naranjan Singh, Gram Panchayat and other elders of village Himmatpur, Block Dasuya on 14.09.2009. After inspecting the site in presence of all concerned, the detailed report is submitted as under:

1) As per the plan attached the natural surface level of point B adjoining existing pond on the eastern side of the village is 4'3"" higher than the invert level of the disposal drain at Point A on the western side of the village.

2) There are about 280 houses in the village out of which disposal of only 20 Nos. houses is taking place in the existing pond at point B and the disposal of remaining 260 Nos. houses is going with natural gravity towards point A on the western side and the disposal of this sullage water is still taking place in the disposal drain constructed upto Point C.

3) On 14.09.2009 levels were taken in presence of plaintiff and Ors. at the points marked 1, 2, 3, 4, 5. The level at point 5, land acquired measuring 9 kanals of Naranjan Singh is 3.77 feet higher than the existing invert level of existing drain at Point 1. So therefore, in no case the disposal of sulage water at Point 1 can be diverted to point 5 which is at a higher level.

4) Hence therefore, if the Govt. is to acquire land for the disposal of sulage water

of this village, the land on the left side of the Road (lower side) should be acquired. After the acquire of land, the sullage water after its screening and silting should be disposed off into flouquation and maturation ponds and thereafter the BOD of sullage water will be reduced to less than thirty which can be used for irrigation purposes and even may be disposed off into the Holy Bein.

Alternatively after disposal through maturation pond the filtered water may even be crossed over Holy Being and disposed off in the kacha drain across Holy Bein.

Sd/- 15/9/09 Executive Engineer, Panchayati Raj P.W (C&M) Div. Hoshiarpur.

16. On 17.11.2009, when the matter again came up for consideration, learned State counsel apprised this Court that the aforementioned report of the Executive Engineer was examined at the highest level and the recommendations made by him have not been found to be feasible. It has been submitted that the pond can be located only at the place originally determined by the respondents. In that regard a communication addressed by the Secretary, Rural Development and Panchayats, Punjab, dated 23.10.2009, along with the report of Shri Prakash Singh, Superintending Engineer, Panchayati Raj, has been placed on record. A perusal of communication dated 23.10.2009 reveals that in the report of the Executive Engineer certain technical shortcoming were found, therefore, Shri Prakash Singh, Superintending Engineer, Panchayati Raj was directed to visit the sport and to submit his report after examining all pros and con from technical angle whether the pond should be dug at a place in the land of Shri Niranjn Singh-petitioner or to suggest some alternative site in the vicinity. Shri Prakash Singh visited the site on 14.10.2009 and submitted his report dated 16.10.2009, which when translated into English reads as under:

1. Point A is at higher elevation of 4 feet 3 inches than point B. So it is impossible to disposed of sullage water from point B to point A. As natural gradient is from C to A hence, disposal from C side to A point is possible.

2. Disposal of sullage water of 260 number of houses is towards point A. The level at point depicted on the map as electrical transformer site is at elevation of 101.705 while the elevation at point B is 101.235 thus the disposal from the site depicted by electrical transformer site can be disposed of towards point B being at lower elevation hence disposal of all houses marked on the map from electrical transformer site to point B will go to point B.

3. Near point C point No. 1, 2, 3, 4, 5 are marked and disposal from point 5 to the site being acquired measuring 9 kanal is possible from point C by laying underground pipes to the proposed pond. As the disposal from point C to its right side is not possible because on its way the passes of Holly Bain is situated. Across the Holly Bain fields effected by water logging are not suitable for disposal of sullage water because the sullage water is to be carried by laying underground pipes in the bed of Holly Bain which is not feasible.

4. Sant Sichewal is undertaking cleanliness of Holly Bains at war footing level, so

disposal of sullage water in Holly Bain should not be made. Hence, the site proposed for acquisition, which belongs to Sh. Niranjan Singh petitioner, is quite suitable for disposal of sullage water.

As per opinion made by visiting the village Himmatpura the disposal of sullage water can be made at two points one of them is point B and the other point is the site being acquired for pond. Therefore the 9 kanal site being acquired is quite suitable for the sullage water.

Sd/- Prakash Singh Supdt. Engineer Panchayati Raj

17. We have heard learned Counsel for the parties at a considerable length and have also perused the paper book with their able assistance. The voluminous record of the case was also summoned which have been gone into minutely.

18. Having learned the counsel for the parties it would first be necessary to notice some trite principles of law connecting compulsory acquisition of land . It is now well settled that compulsory acquisition of land is an expropriatory legislation. In that regard reliance in the cases of Devinder Singh v. State of Punjab (2008) 1 SCC 728 and Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, .

19. It would also be necessary to notice that respondent State has been making effort to acquire the land for the public purpose of a construction of pond. Earlier notification u/s 4 read with Section 17 of the Act was issued on 16.11.2007 which was published in the official gazette on 25.1.2008. On account of lapse of not publishing the notification in the newspaper as per requirement of Section of the Act, the notification was withdrawn. Therefore, the invocation of power u/s 17(2)(c) of the Act (as incorporated by Punjab Act No. 11 of 1954) while issuing impugned notification u/s 4 of the Act is required to be examined in the backdrop of the aforesaid facts. Firstly, it would be pertinent to notice the provisions of Section 17(2)(c) of the Act which reads thus;

17. Special powers in case of urgency.- (1) In case of urgency, whenever the (appropriate Government), so directs, the Collector though no such award has been made may, on the expiration of fifteen days from the publication of the notifies mentioned in Section 9, Sub-section (1) (take possession of any land needed for a public purpose). Such land thereupon {vest absolutely in the (Government)} free from all encumbrances....

(2) In the following cases, that is to say,-

(a) xx xx xx xx xx

(b) xx xx xx xx xx

(c) Whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance, the Collector may, immediately after the publication of the notice mentioned in Sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession

of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this Sub-section without giving to the occupier thereof at least forty eight hours" notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such bu9ilding without unnecessary inconvenience.

It would also be profitable to notice Section 17(4) of the Act which reads thus:

17(4). In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate government may direct that the provisions of Section 5A shall not apply, and if it does do direct, a declaration may be made u/s 6 in respect of the land at any time after the date of the publication of the notification u/s 4 Sub-section (1).

A perusal of the aforesaid provisions show that whenever land is required for a public purpose which in the opinion of the appropriate government is of urgent importance then after publication of notice in accordance with the provisions of Section 17(1) of the Act and with the previous sanction of the State Government the Collector may enter upon and take possession of the said land although after 48 hours mandatory notice is required in specified cases as per the proviso.

20. It is also appropriate to mention that u/s 5A of the Act every person interested in any land notified u/s 4(1) of the Act is entitled to acquisition of land. However, u/s 17(4) of the Act an enquiry contemplated by Section 5A of the Act could be dispensed with.

21. The scope of Section 17 of the Act and the power of the Government to dispense with the enquiry u/s 5A of the Act has been subject matter of analysis by Hon"ble the Supreme Court in the cases of Union of India (UOI) and Others Vs. Mukesh Hans etc., and Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, . The primary question considered by Hon"ble the Supreme Court in Mukesh Hans" case (supra) is whether the invocation of Section 17 of the Act automatically results in dispensing with enquiry contemplated by Section 5A of the Act. In other words, whether there is obligation on the part of the Government to apply its mind independently for the purpose of conclusion that holding of enquiry u/s 5A of the Act would result into delay which cannot be incurred keeping in view the urgency of the project. The following para of the Judgment in Mukesh Hans case (supra) projects the aforesaid view:

32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4) that by itself is not sufficient to direct the dispensation of 5A inquiry. It requires an opinion to be formed by the concerned government that along with

the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5A inquiry which indicates that the Legislature intended that the appropriate government to apply its mind before dispensing with 5A inquiry. It also indicates the mere existence of urgency u/s 17(1) or unforeseen emergency u/s 17(2) would not by themselves be sufficient for dispensing with 5A inquiry. If that was not the intention of the Legislature then the latter part of Sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically 5A inquiry will be dispensed with. But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with 5A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with 5A inquiry does not mean that in and every case when there is an urgency contemplated u/s 17(1) and unforeseen emergency contemplated u/s 17(2) exists that by itself would not contain the need for dispensing with 5A inquiry. It is possible in a given case the urgency noticed by the appropriate Government u/s 17(1) or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the 5A inquiry is inherent in the two types of urgencies contemplated u/s 17(1) and (2) of the Act.(emphasis added)

22. Similar view has been taken by their Lordships in *Essco Fabs case* (supra). Furthermore, this Court while deciding the cases of *Punita Chaudhary and Ors. v. State of Haryana* CWP No. 3129 of 2008 decided on 8.12.2008 and *Bhopu and Ors. v. State of Haryana* and Ors. CWP No. 16832 of 2003 decided on 18.1.2010 has also followed the aforesaid decisions.

23. When we examine the facts of the present case in the context of the aforesaid principles of law laid down by their Lordships of the Supreme Court it becomes evident that there is no independent application of mind by the respondent-State whether urgency is of such a nature that it would not bear even the delay which might be required for filing and hearing of objections u/s 5A of the Act. We have scanned the whole record and it does not reveal that at any level such an exercise has been undertaken. It is thus clear that issuance of notification u/s 4 read with Section 17(2) and Section 6 of the Act are liable to be quashed being without jurisdiction.

24. The question concerning hearing of objections assumes a particular significance in the instant case because of conflicting stand of the petitioner and that of the respondents on various issues. The first issue pertains to utility of existing village pond. The other issue is whether the land is required for the purpose of constructing another pond and whether the same is suitable for the aforesaid public purpose. All these questions could have been addressed by filing

objections u/s 5A of the Act and after hearing of those objections a report could have been sent to the Government by the Collector. Thereafter the Government could have considered the report of the Collector and a final decision could have been taken. This position emerges from the withdrawal of the earlier notification issued on 16.11.2007. The delay in finalizing the present acquisition proceedings is attributable to the State Government. The record shows that on account of additions and deletion of certain land some amendment in the earlier notification dated 18.11.2007 was required to be published which could be done by initiating acquisition process afresh. In that regard letters dated 2.12.2008 and 10.12.2008 sent by the Deputy Commissioner to the Secretary, Rural Development and Panchayat Department in gurmukhi script are worthy of notice. It has been stated in the aforesaid letters that notification dated 16.11.2007 be revoked and fresh notification u/s 4 read with Section 17 of the Act be issued as certain land is required to be added which may oblige the Government to issue fresh notification along with publication in the newspaper. Therefore, it was suggested that the process of land acquisition be undertaken afresh. Apart from the additions and deletion the land in village Prempur and Himatpur for the purpose of pond was identified and the same has not been notified till date. Accordingly, the notifications dated 16.11.2007 and 25.1.2008 earlier issued for the same purpose were withdrawn as is evident from the perusal of the impugned notification dated 29.1.2009 (P.3). The whole delay is imputable to the respondent-State which impinges upon on the invocation of urgency clause. In any case dispensing with Section 5A of the Act was not automatic and opportunity of filing objections and granting hearing to the land owners should have been afforded. Had it been done then the persons interested in the land could have filed their objections which could eventually be decided by the Government. Therefore, the notification initiating the process of acquisition of land u/s 4 read with Section 17(2)(c) (P. 3) and the subsequent notification dated 12.6.2009 (as available on record) are not sustainable.

25. As a sequel to the aforesaid discussion, the writ petition is allowed. Notification dated 29.1.2009 (.3) and 12.6.2009 and subsequent proceedings concerning land of the petitioner are hereby quashed. We would have confined quashing of impugned notification u/s 6 of the Act dated 12.6.2009 leaving the petitioner to file objections u/s 5A of the Act. However, such a course may not be possible because the period of one year after publication of notification u/s 4 of the Act has already expired on 28.1.2009.