
(1998) 08 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5157 of 1997

Nirmal Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 05-08-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 4(1), 5A, 6

Citation : (1999) 1 CivCC 485 : (1998) 120 PLR 30 : (1998) 4 RCR(Civil) 190

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : M.L. Sharma, for the Appellant; G.S. Grewal, A.G. and S.K. Bhanot, D.A.G. for Respondents Nos. 1, 2 and 5 and Sumeet Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—Petitioners are residents of village Bhattian, Tehsil and District Ludhiana. By way of this writ petition, they are challenging the Notification u/s 4 read with Section 17 of the Land Acquisition Act (hereinafter referred to as "-the Act") published in the Official Gazette on 10.2.1997 and the declaration u/s 6 read with Section 17 of the Act published in the Official Gazette on 21.5.1997.

2. The main challenge is on the ground that the proposal to set up Sewerage Treatment Plant was mooted some where in 1993 whereas the land has been sought to be acquired in February, 1997, by invoking the urgency provisions. Petitioners have contended that in these circumstances, Government is not justified in dispensing with the enquiry u/s 5-A of the Act. It is contended that the urgency provisions dispensing with the enquiry u/s 5-A of the Act can be applied where the emergency is of such a nature that it cannot brook a delay of 30 days, the time requisite for filing objections. It is contended that if the State wants to take away valuable right given to the land-owners u/s 5-A of the Act to make representation, it has to justify its action by showing the existence of emergent situation.

3. Mr. M.L. Sharma, Advocate, counsel appearing on behalf of the petitioners has contended that the very fact that notification u/s 4 of the Act was issued on 10.2.1997, but the same was published in the Newspaper on 9th and 11th of March, 1997 and similarly declaration u/s 6 of the Act was issued on 21.5.1997 and published in the Newspaper on 28.5.1997 i.e. more than three months of the issuance and publication of notification u/s 4 shows non-existence of emergent situation. In support of his submission, he cited :-

- 1) Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, ,
- 2) 1978 P.L.J. 319 State of Punjab v. Sudhir Kumar Dhingra,
- 3) 1978 P.L.J. 385 Inder Singh v. State of Punjab,
- 4) 1979 P.L.J. 478, Dera Phalauli v. State of Punjab,
- 5) 1991 P.L.J. 558, Biru v. Secy, to Govt. Haryana,
- 6) 1992 P.L.J. 129, Mangat Singh v. State of Punjab,
- 7) 1992 P.L.J. 201, Harpal Singh v. State of Haryana,
- 8) 1993 P.L.J. 362, Baldev Singh v. State of Haryana,
- 9) 1994 P.L.J. 332, Gurnam Singh v. State of Haryana,
- 10) 1995 P.L.J. 432, Gurdev Singh v. State of Punjab,

4. The judgments cited by the learned counsel lay down that existence of emergency alone is not enough to dispense with the enquiry u/s 5-A of the Act. It requires consideration whether urgency is of the type as to justify dispensing with the enquiry. The urgency must be real and bona fide and not mere an excuse to deny the owners of land of their right to participate in the enquiry.

5. In State of U.P. Vs. Smt. Pista Devi and Others, , and Chameli Singh and others etc. Vs. State of U.P. and another, , their Lordships of the Supreme Court have held that it is within the competence of the Court to take judicial notice to determine as to whether the purpose for which the land is acquired is so emergent that it requires dispensing with the notice u/s 5-A of the Act. In the context of pre-notification and post-notification delay, their Lordships said that invocation of emergency provisions of Land Acquisition Act, cannot be said to be bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties, unless of course, it can be established that the acquisition itself is made within the oblique motive. In Chameli Singh's case (supra), their Lordships reiterated the principle by saying that when the Government, on the basis of material, constitutional and international obligation, forms opinion of urgency, the Court not being an appellate forum, would not disturb the finding unless the Court conclusively finds exercise of power mala fide. The lethargy on the part of the Officers for pre and post-notification delay has been held not to render the exercise of power to invoke emergency clause invalid on that account.

6. In the present case, land has been acquired for the construction of setting up Sewerage Treatment Plant under the Satluj Action Plan at Ludhiana. The execution of the work has been entrusted to the Punjab Water Supply and Sewerage Board. The action plan came to be finalised on the basis of recommendation made by the Ministry of Environment and Forests, Government of India. Punjab State Council for Science and Technology carried out study in collaboration with Punjab Water Supply and Sewerage Board and Punjab Pollution Control Board. Punjab Water Supply and Sewerage Board prepared a project for prevention of pollution of river Satluj costing Rs. 274 Cores in accordance with the guide-lines issued by the Ministry of Environment and Forests, Government of India. The rough cost of estimates for the proposed effluent treatment plant, carrying and conveyance system etc. was worked out. Record produced by the Government shows that in 1993, study was undertaken by Punjab Water Supply and Sewerage Board in collaboration with Punjab State Council for Science and Technology and Punjab Pollution Control Board for preparing a detailed report for generating sufficient and accurate data for detailed designing of Sewerage Treatment Plant etc. before execution. As a result of study undertaken by Punjab Water Supply and Sewerage Board, a detailed report was prepared. As per report, status of water quality of rivers of Punjab, all the rivers of Punjab are badly polluted and fall into category "C or lower, only a small stretch of river Satluj from Nangal to Ropar, fall under category "B". The water quality of river Satluj is not good due to very high concentration of coliform and high values of BOD. The discharge of untreated waste-water from Ludhiana City into river Satluj through Budha Nullah is creating pollution of the highest magnitude, qualitatively as well as quantitatively. The report shows that at the confluence of Budha Nullah with river Satluj, there is a sudden increase in coliform and BOD. Another factor which is aggravating the quality of water is the low flow in river Satluj. The report shows that only during Monsoon season, there is appreciable flow in the river. The polluted Satluj Water is being ultimately distributed over the entire State through irrigation canals which are a source of water-supply for many towns and villages.

7. As the river Satluj is grossly polluted especially near the towns, Government decided to take urgent steps to prevent pollution and to restore the quality of water. Keeping in view the necessity, Satluj Action Plan was prepared. Because of financial constraint, Government decided to execute the project in phases. In the first phase, it proposed to cover Ludhiana as it is causing maximum pollution through Budha Nallah.

8. Vide order dated 27.2.1996, Government accorded sanction for release of 586.4 Lacs i.e. 100 Lacs on account of State share and 486.4 as Government of India share under the Plan Scheme for prevention of pollution of river Satluj subject to the condition that the Scheme is for prevention of pollution of river Satluj and is timebound Scheme. The conditions given in the order read as under:-

1) Since the scheme is for prevention of pollution of river Satluj and is a time bound scheme, the Government of India will finance the scheme for a limited period. Therefore, Administrative Department is advised that no additional staff is to be created under this scheme. The work may be carried out with the existing sanctioned strength of the staff of the Punjab Water Supply and Sewerage Board.

2) The sanction issued by the Government of India in favour of Secretary, Science and Technology, Punjab Government may be got amended from the Government of India and report thereof be sent to Planning Department/B.P.E/ Department of Finance as well as to this Department.

3) The financial and physical achievements under this scheme may be reviewed during March 1996 and report thereof may be sent to this Department/B.P.E/ Planning Department/Department of Finance.

4) Only that amount be drawn from the treasury which could be utilised upto 31.3.1996 after observing rules/instructions issued by Government."

9. The contention of learned counsel appearing on behalf of the petitioners that the proposal for setting up of Sewerage Treatment Plant was finalised in 1993 is factually incorrect. Record produced shows that only a proposal was made in 1993 which came to be finalised in 1996. Record has further shown that the proposal to acquire land in question was put up before the Secretary, Local Self Government on 2.12.1996. It was pointed out that in case the land is acquired through ordinary means, then it would take a lot of time which would cause delay. It was proposed that keeping in view the importance of work, it was emergent to acquire land by invoking urgency provisions. When the matter was put up before the concerned Secretary, certain clarifications were sought and clarifications were made available on 22.1.1997 and thereafter a decision was taken on 29/30.1.1997 for acquiring land measuring 89 Acres 1 Kanal and 3 Marias. Notification u/s 4(1) of the Act was issued on 10.2.1997. It is true that there is some delay in publishing the notification u/s 4(1) of the Act and issuance of declaration u/s 6 of the Act but having regard to the fact that land has been acquired for setting up Sewerage Treatment Plant on war footing under a time-bound scheme to control pollution, is suggestive that the situation was emergent to acquire the land.

10. In *Jai Narain and Others Vs. Union of India and Others*, , their Lordships while dealing with a case with regard to acquisition of land for setting up of Sewerage Treatment Plant on river Yamuna, said that the existence of urgency is a matter which is entirely based on the subjective satisfaction of the Government and the Court does not normally interfere unless the reasons given are irrelevant and there is no application of mind.

11. In *C.W.P. No. 11544 of 1997, Manmohan Singh and Ors. v. State of Punjab and Ors.*, a Division Bench of this Court while dealing with a challenge to another notification issued u/s 4(1) on 23.4.1997 and declaration u/s 6 read with Section

17 for acquiring more land for setting up of Sewerage Plant under Satluj Action Plan, Ludhiana has held the acquisition to be valid. The Hon''ble Judges comprising the Division Bench found no illegality in invoking urgency provisions in acquiring land for setting up of Sewerage Treatment Plants under Satluj Action Plan, Ludhiana.

12. The urgency is to be seen on the date when the notification was made u/s 4(1) of the Act and not in the light of later events viewed in retrospect. The Government, on the basis of material if considered it to be a case of urgency so as to dispense with enquiry u/s 5-A of the Act, the Court would not substitute its opinion with that of the Government. It is true that three months time elapsed after publication of notification u/s 4(1) read with Section 17 of the Act to publish declaration u/s 6 of the Act but that cannot be a ground to say that urgency had ceased to exist. Urgency for acquisition continues so long as the Scheme is not initiated, action taken and process completed.

13. Mr. M.L. Sharma, Advocate, counsel appearing on behalf of the petitioners next contended that in notifications u/s 4(1) and 6 read with Section 17 of the Act, Khasra numbers relating to land falling in rectangles No. 3, 4, 5, 7, 8, 10, 14, 15, 16 and 24 have been mentioned but land measuring 195 Kanals 14 Marias though has been described by Khasra numbers but no rectangle number has been given. It is contended that in the declaration u/s 6, omission has been rectified and rectangle No. 9 has been mentioned against khasra numbers of land falling in the said rectangle. Learned counsel contended that the mistake crept in notification u/s 4(1) read with Section 17 of the Act cannot be corrected while issuing declaration u/s 6 read with Section 17 of the Act. It is contended that the land which has not been correctly mentioned in the notification u/s 4(1) read with Section 17 of the Act, would not be deemed to have been acquired.

14. On going through the notification u/s 4(1) read with Section 17 of the Act and the declaration u/s 6 of the Act, I am of the view that firstly there is no omission rendering the notification invalid and, secondly, even if there is an omission of not mentioning rectangle number 9 in reference to khasra numbers of the said rectangle, it would not make any difference. While specifying land in notification u/s 4(1) read with Section 17 of the Act, details of khasra numbers have been given but rectangle No. 9 has not been mentioned against khasra numbers. However, while summarising the land sought to be acquired, rectangle No. 9 has been clearly mentioned and the same gives an indication of khasra numbers and rectangle number which are sought to be acquired u/s 4(1) read with Section 17 of the Act. A Full Bench of Madhya Pradesh High Court in *Hajari Vs. The State of M.P., Bhopal and Others*, , in this very context, said that omission to give particulars of land with reference to khasra numbers in notification u/s 4 of the Act, does not render the notification invalid. Specifying the locality in which the land is situate is sufficient compliance of provisions of Section 4(1) of the Act. Their Lordships of Full Bench in *Hazari's case* (supra) held as under :-

"On a comparison with the words used in Section 6 of the Act, there can be no doubt that the particulars of the land needed are required to be specified only in the declaration made under S.6 of the Act. If the requirement of a valid notification under S.4(1) was the same as of that u/s 6, then there was no reason to use different words in these two provisions, xxx xxx xxx xx

One object of the notification under S.4(1) is to notify the inhabitants of the locality that land from that locality is to be acquired for the specified public purpose and their interests are likely to be affected. Another object of this notification is to permit the officer of the Government under sub-section (2) of S.4 to enter upon and survey any land in the locality and to do the other acts necessary. This survey is to decide which particular land in locality is more suited for the purpose of acquisition. The Collector has then to submit his report as required by S.5-A. Viewed from this angle as well, the object of Section 4(1) requires only the locality to be specified in the notification thereunder. Thus, the plain construction of the language in sub-section (1) of S.4, the setting in which the provision occurs, the subject-matter of the statute and the object of the provision all lead only to this conclusion."

15. It is lastly contended that the land sought to be acquired is not fit for the purpose for which it is being acquired. Learned counsel contended that if the treatment plant and the pipes leading to it are allowed to be Laid from the lands sought to be acquired, it would prove to be health hazard being near the Abadi of the village. In answer to this submission, learned counsel appearing on behalf of the Board has contended that the land sought to be acquired has been selected only after the matter was discussed in detail by the Experts. Learned counsel has made a reference in this regard to Memo. No. 1816/8-R dated 28.3.1996 from Executive Engineer, Ludhiana Water Discharge Division, Ludhiana addressed to the Executive Engineer, Punjab Water Supply and Sewerage Divn. No. 1, Ludhiana and Memo No. 1058/DTP(L)/S-72 dated 19.7.1996 from the District Town Planner, Ludhiana addressed to the Deputy Commissioner, Ludhiana, wherein reasons have been given why the land in village Bhattian was found to be within the safe zone. In my view question whether the site is fit for the purpose for which it is being acquired, is for the Government to decide and it is not for this Court to substitute its view with that of the Government. Since the Government, on the basis of experts opinion, has taken a decision that the site in question is convenient and best suited, it cannot be said that the decision to choose the site in question is arbitrary.

16. For the reasons recorded above, the writ petition deserves to be dismissed and it is so ordered. No costs.