

(1986) 05 P&H CK 0052
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5922 of 1985

Rajinderjit and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 08-05-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 17(2), 4, 6, 9(1), 9(3)

Citation : AIR 1987 P&H 181 : (1987) 1 ILR (P&H) 283 : (1987) 91 PLR 658

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Judgement

1. A strip of land adjoining bus stand of Punjab Roadways, Ludhiana is the bone of contention between the parties for nearly a decade. This writ petition has been filed to challenge the acquisition thereof under the provisions of Land Acquisition Act (for short "the Act"). By award dt. Mar. 27, 1984, the land is said to have vested in the State of Punjab, respondent 1 for the benefit of the Punjab Roadways, respondent 2. The same has been done on the premises that the land belonged to Keshab Chander, respondent No. 4.

2. The case precisely of the petitioner is that the land in dispute bearing Khasra No. 132/2 was initially an evacuee property but was in their possession for nearly three decades. The said land was transferred by the Rehabilitation Department in favour of Keshab Chander, respondent 4. Apprehensive that they would be dispossessed from the land in dispute, they took recourse to law and thus on Mar. 19, 1977 instituted a civil suit in the Court of Shri S. K. Chopra, Sub Judge 1st Class, Ludhiana against the Punjab Roadways, respondent 2 and Keshab Chander, respondent No. 4. That suit was decided on Sept. 27, 1977 on the statements of the parties. The defendants therein conceded that the then plaintiffs (the present petitioners) were in possession of the land in dispute and they would not be dispossessed otherwise than in due course of law. The Court then dismissed the suit as having become infructuous refusing the discretionary relief of injunction.

3. It appears that at that time the petitioners had temporary structures in the form of khokhas etc. at the site. These were, on or about Sept. 26, 1980 demolished by the Punjab Roadways with the aid and help of Senior Officers of the District by means of I buses crushing them down under their wheels. The petitioners filed in this Court Civil Original Contempt petition No. 186 of 1980 against the General Manager, Punjab Roadways, Ludhiana the Deputy Commissioner, Ludhiana, the Senior Superintendent of Police, Ludhiana and against a Commissioner of Municipal Corporation, Ludhiana. Rule was issued, against the respondents. The file was flooded with averments and counter-averments supported by judgment of Civil Court referred to above and other documents. At one stage, j the Hon"ble single Judge dealing with the matter on Aug. 27, 1981 ordered presence of the contemnors so that the case could be decided in their presence. Then on Sept. 4, 1981 on the application of the Govt. Pleader, the order was recalled with regard to the Deputy Commissioner, Ludhiana; and the Senior Superintendent of Police, Ludhiana but it remained intact regarding the other, two contemnors. Finally, on Oct. 14, 1981, the following order was passed by the Hon"ble, single Judge seemingly in the presence of two contemnors:

"Since the petitioners have been restored the possession and the order dt. 27-8-1981 of this Court also stands obeyed, this petition is, therefore, not pressed and the same stands dismissed accordingly. The rule issued against the respondents is discharged.

October 14, 1981Sd/- D. S. Tewatia, Judge"

4. It is thus explicit from the above that some official agency put the petitioners back in possession. That order was passed specifically in the presence of the Additional Advocate General, Punjab. Thus, any doubt over petitioners" possession over the land was cleared and that state of affairs must be presumed to have continued thenceforth.

5. Later the Punjab Government vide two notifications published in the Govt. gazette (Extraordinary) under Ss. 4, 6 and 17(2) of the Act on Feb. 22, 1983 and Feb. 24, 1983, Annexures P. 2 and P. 3 respectively decided to acquire some land inclusive of the land in dispute. In pursuance thereof, nearly a year later an award was passed on March 27, 1984, Annexure P. 4 acquiring the land in dispute besides other land. In pursuance thereof, the petitioners on Aug. 31, 1985 were sought to be dispossessed and this gave occasion to the petitioners to approach this Court by means of this writ petition.

6. Though a number of grounds have been taken by Mr. Setia, learned counsel for the petitioners yet he has confined himself mainly to one. That is on the strength of the conceded position that the petitioners were recognised to be in possession of the land in dispute on Oct. 14, 1981 when orders were passed in C. O. C. P. No. 186 of 1980, which states of affairs must be presumed to continue, and on the admitted position of the State that no notice was issued to

the petitioners under S. 9(3) of the Act which provision makes it incumbent on the Collector, besides taking other steps, to serve notice for filing claims to compensation on the occupier. The claim as made by the petitioners is irrefutable. Shelter has been taken by the State to the suggested compliance of S. 9(1) of the Act, but that by itself is nothing when it comes to the statute demanding specific observance of the mandatory provisions of S. 9(3) of the additional service of notice on the occupier. This is a very valuable right conferred by law. The petitioners' stand is indisputably firm. This by itself is enough to quash the award dt. Mar. 27, 1984, Annexure P. 4 so far as it relates to the petitioners.

7. In passing it was sought to be raised that there was non-compliance of S. 4 of the Act inasmuch as no publication was made in terms thereof, but this part has been disputed by the respondents in their return. Still another ground feebly urged was that S. 17(2) of the Act had mechanically been employed but that too pales into insignificance when notice under S. 9(1) was publicised as averred by the respondents and the petitioners did not at that stage approach the Court making grievance thereof. Since they have approached this Court delayingly vis-a-vis that aspect of the case, learned counsel for the petitioners when confronted with this position abandoned the ground.

8. The end result is that this petition succeeds quashing award Annexure P. 4 so far as it relates to the petitioners. If the Land Acquisition Collector chooses to proceed with the acquisition, he may now issue a notice in terms of S. 9(3) of the Land Acquisition Act to the petitioners, enabling them to file claims for compensation and then decide in accordance with law. In the circumstances, there shall be no order as to costs.

9. Petition allowed.