
(1988) 05 P&H CK 0129

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 1740 of 1986

Rakha Singh and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 10-05-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 16

Citation : (1988) 05 P&H CK 0129

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : M.S. Sullar, for the Appellant; Mani Ram for State, for the Respondent

Judgement

J.V. Gupta, J.—The petitioner initially filed the writ petition for quashing the notification u/s 4 of the Land Acquisition Act dated July 31, 1984 and the subsequent notification u/s 6 dated August 20, 1985. During the pendency of this writ petition certain Khasra Nos. which were not acquired earlier were acquired by the State Government. Notification u/s 4 with respect to said Khasra Nos. was issued on August 14, 1986 and u/s 6 the notification was issued on January 6, 1987. Consequently, the writ petition was amended and the amended writ petition dated November 28, 1986 was filed in this Court in which all these four notifications were challenged. According to the allegations made in the writ petition, the petitioners are the supporters of Shri Lachhman Singh, M.L.A. from Kalka constituency. Since there was political rivalry in the village and said Lachhman Singh was not in power, Shri Ram Gopal, Sarpanch of village Rampur Jangi, having affiliation with the ruling party was bent upon to disturb the peaceful possession of the petitioners. It has been averred in para 7 of the writ petition that already there are two passages of V. Rampur Jangi which connects the abadi with Pinjore Nalagarh road. The passage which is in blue colour in the plan Annexure P.4 is provided by the Consolidation authorities connecting Khasra Nos. 336 to 379 which is a abadi shown in Annexure P.4. This passage also

passes through the land of the petitioners. It has been further stated in para 8 that in 1972 the respondents have acquired the land of the petitioners for a public purpose namely for construction of the road and consequently this road was constructed which is shown in red colour in the plan Annexure P.3. This road also passes through the fields of the petitioners and is being used as such since it was constructed. Thus, according to the petitioners, there are already two passages/constructed road which is being used as a thoroughfare since 1972, the present acquisition will further divide the land of the petitioners into fragments and small pieces. In the return filed on behalf of the Executive Engineer, P.W.D. B & R Branch, Haryana, Chandigarh, these allegations as such have been denied.

2. However, without going into these allegations, the main challenge of the petitioners is that though earlier award was given on February 20, 1986 but the possession of the land acquired was never taken from them and they are still in possession thereof. This position as such could not be successfully controverted. Earlier notification u/s 4 was issued on July (sic), 1984 whereas the notification u/s 6 was issued on August 20, 1985. Meanwhile the Land Acquisition Act was amended and the amending Act came into force w.e.f. September 24, 1984. According to the amended section 6, every declaration which was to be published in the official gazette was also to be published in the two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language. The declaration u/s 6 was published in the official gazette dated August 20, 1985 whereas in the two daily newspapers the same notification was published much earlier i.e. about three months prior to this notification in the gazette i.e. on May 23, 1985 in "Indian Express" (Copy Annexure K-8) and in "Dainik Tribune" dated May 23, 1985 (copy Annexure R.9). Similarly, as regards the subsequent acquisition, the notification u/s 6 was published in the official gazette dated January 6, 1987, whereas in the two daily newspapers it was published on December 31, 1986 in "Indian Express" and on December 30, 1986 in "Dainik Tribune" i.e. prior to the notification in the official gazette. However, it was pointed out that the notification is dated December (sic), 1986 though it was published in the official gazette dated January 6, 1987 whereas the earlier notification u/s 6 is dated August 8, 1985 though published in the official gazette dated August 20, 1985.

3. The learned counsel for the petitioners pointed out that unless the possession was taken as provided u/s 16 of the Land Acquisition Act, the land does not vest in the State Government and, therefore, the writ petition was filed before the possession was taken from them. Thus the land has not vested in the State Government as yet. In support of this contention, he cited Supreme Court judgment reported as *The Special Land Acquisition Officer, Bombay and others v. M/s Godrej & Boyce* 1988 (I) L.L.R. 1. It was further argued that publication in the two daily newspapers as provided in sub-section 2 of section 6 of the amended Act could not be prior to the notification in the official gazette. According to the learned counsel, the publication of the declaration in the official gazette and in the two daily newspapers should be simultaneous and not in any

case prior to the notification in the official gazette. In support of this contention, he referred to a Supreme Court judgment reported as *The Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, . Thus argued the learned counsel that since there was violation of the mandatory provisions of the statute under which the land was acquired, the whole acquisition proceedings are illegal and are liable to be quashed by this Court under Article 226 of the Constitution of India. In this behalf, he referred to *Sukhdev Singh and others v. State of Punjab and others* 1984 P.L.J. 192.

4. On the other hand, the learned counsel for the State Government submitted that the writ petition has been filed after a great delay. The notification u/s 4 was issued on July 31, 1984 and u/s 6 on August 20, 1985 Even the award was given on February (sic), 1986. But the writ petition was filed in May, 1986 and, therefore, on account of this delay the petitioners were not (sic) to any relief under Article 226 of the Constitution In support of this contention, he referred to *Zile Singh and others v. State of Haryana and others* 1984 P.L.J. 314. It was next contended that all the acquisition proceedings have been completed and on that account also the writ petition was liable to be dismissed. As regards the publication of the declaration u/s 6 in the two daily newspapers, the learned counsel submitted that it was not the gazette notification to be published in the newspapers but the declaration made by the State Government. According to the learned counsel, since the declaration was made on December 22, 1986 which is the date of the notification though it was published in the official gazette of January 6, 1987, it was published in the daily newspapers of December 31, 1986 and December 30, 1986 and, therefore, there was due compliance of sub-section 2 of the section 6 of the Act. As regards the publication of the earlier notification published on the official gazette of August 20, 1985, the learned counsel submitted that no prejudice was caused to the petitioners because of the publication in the daily newspapers earlier and, there, fore, this by itself was not sufficient to quash the acquisition proceedings.

5. Sub-section 2 of section 6 of the amended Act reads as under:-

6(2) Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice being hereinafter referred as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

In order to interpret the said sub-section 2 of section 6, the language used in section 4 of the Act is also relevant. Sub-section 1 of section 4 reads as below:-

4. Publication of preliminary notification and powers of officers there upon:-

(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect. shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).

6 The matter is not *res Integra*. It came up for consideration before the Supreme Court in case reported as *The Collector (Distt. Mangistrate) Allahabad v. Raja Ram Jaiswal (supra)* wherein it was contended as contained in para 15 thereof that conceding that there cannot be a valid acquisition unless a notification is published in the official gazette and a substance of the notification is published in the locality, urged that publication in locality need not necessarily follow the publication of the notification in the official gazette but it may even precede the same because what is of importance is the decision to acquire, the notification and publication of the notice are mere formal expressions of the decision of the Government to start acquisition proceedings. This argument was repelled by the Supreme Court as contained in para 16 which read as under:-

Assuming that a notification in the Official Gazette is a formal expression of the decision of the Government, the decision of the Government is hardly relevant, unless it takes the concrete shape and form by publication in the Official Gazette. Where a decision of the Government to be effective and valid has to be notified in the Government Gazette, the decision itself does not become effective unless a notification in the Official Gazette follows. In *Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others*, it was held that a notification under S. 4A of the Indian Forest Act, 1927 is required to be published in the Gazette and unless it is so published, it is of no effect. Logically, the same view must be adopted for a notification under S. 4. Therefore assuming that a notification is a formal expression of a decision of the Government to acquired land, unless the decision is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision Sec 4(1) further requires that the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality". The expression "such notification" in the latter part of S 4(1) and sequence of events therein enumerated would clearly spell out that first the Government should reach a decision to acquire land, then publish a notification under S. 4(1) and simultaneously or without a reasonable time from the date of the publication of the notification cause a notice to be published containing substance of such notification meaning thereby that notification which is published. Obviously, therefore, there cannot be a publication in the locality prior to the issuance of the notification. The submission

of Mr. Kacker does not commend to us.

It is, therefore, clear that the declaration u/s (sic) the State Government will be relevant only when it takes concrete shapes and form by publication in the Official Gazette and not prior thereto. That being so, the earlier notification was published in the official gazette dated August 2, 1985 whereas it was published in the daily newspapers on May 23, 1985 (Indian Express) and on May 23, 1985 (Dainik Tribune), Annexures R-8 and R-9 respectively. It means this publication was made about three months prior to the notification in the official gazette. In these circumstances, it could not be successfully argued that the mandatory provisions of sub-section 2 of section 6 were complied with by the State Government in acquiring the petitioners' land. Similar is the situation with respect to the subsequent notification u/s 6 which was published in the official gazette dated January 6, 1987. The said notification was published in the two daily newspapers of December 31, (sic) (Indian Express) and December 30, 1986 (Dainik Tribune, Hindi) which was again prior to the publication of the notification in the official gazette dated January 6, 1987. Thus there was again violation of the mandatory provisions of sub-section 2 of section 6 with respect to the acquisition proceedings of the petitioners' land.

7. It could not be successfully argued on behalf of the State Government that these were only formalities and need not be complied with strictly. Prior to the amendment of the Act, there was not requirement for publishing the notification u/s 4 or the declaration u/s 6 in two daily newspapers. This was introduced for the first time by way of amendment in the Act. So in S. 6 the language used is declaration which is to be published in the official gazette and the two daily newspapers but declaration will be known only when it is made in the official gazette because it will be at that time that it takes concrete shape and form by publication in the official gazette as observed by the Supreme Court in the para referred to above. It is also clear from sub-section 3 of section 6 of which provides that the said declaration shall be the conclusive evidence that the land is needed for a public purpose and after making said declaration the Government may acquire the land in the manner hereinafter provided. Thus, the said declaration could only be known when it is published in the official gazette and not prior thereto That being so, it is a clear Case where on both the occasions there was violation of the madatory provisions of sub-section 2 of section 6 of the Act.

8. The question of any delay on the part of the petitioners or their conduct do not arise in the present case, as according to them, they never received any notice u/s 9 of the Act and they were in possession of the land acquired through out. When they were threatened to be dispossessed, they immediately filed the writ petition. Consequently, this petition succeeds. The notifications u/s 4 and 6 of the Land Acquisition Act (Annexure P. 1) and other subsequent notification dated August 14, 1986 (Annexure P. 6) and the notification issued subsequently u/s 6 in the official gazette dated January 6, 1987, are hereby quashed. The

petitioners will be entitled to the costs which are assessed at Rs. 500/-.