
(1999) 04 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7264 of 1998

Randhir Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-04-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 6

Citation : (1999) 122 PLR 442 : (1999) 3 RCR(Civil) 246

Hon'ble Judges : N.K. Agrawal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : R.A. Sheoran, for the Appellant; Parmod Goyal, D.A.G. for Respondent Nos. 1 and 2 and B.S. Walia, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The petitioner complains that the notifications issued by the State Government for acquisition of land measuring 3 marlas on September 16, 1997 do not conform to the requirements of law and should, thus, be quashed. Is it so? A few facts may be noticed.

2. On September 16, 1997 the State Government issued a notification u/s 4 read with Section 17 of the Land Acquisition Act, 1894, indicating that the land measuring 3 marlas was needed for the public purposes of constructing a drain for the disposal of sewerage water. This notification was published in the Haryana Gazette on September 16, 1997. A copy is at Annexure P-2 with the writ petition. On the same day another notification in respect of the same land was published u/s 17(4) of the Land Acquisition Act. The petitioner claims that he has a house on this land. The urgency provisions have been wrongly invoked. Despite the fact that the notification was published in the Gazette on September 16, 1997 no action had been taken by the respondents and, thus, the urgency provisions had been wrongly invoked. He prays that both the notification be quashed.

3. A written statement has been filed on behalf of the State Government. It has

been inter alia averred that the land was being acquired to construct a drain. It has been further stated that "though both the notifications were published on the same day, notification Annexure P-2 was despatched on 22.8.1997 and Annexure P-3 was despatched on 26.8.1997 for notification." It has been further averred that "there is no construction on the said land."

4. A separate written statement has been filed on behalf of respondent No. 3. In this reply it has been averred that the land in dispute is a vacant plot. Reliance in support of this averment has been placed on a copy of the Assessment Register. It has been averred that it is being attached as Annexure R3/1. However, the document has not been placed on the file. In fact, reference to various documents have been made but none of them has been placed on the record. In order to overcome this difficulty a miscellaneous application has been presented in Court. The document has been attached as Annexure R-1. A perusal of this document indicates that there are five rooms at site.

5. Learned counsel for the parties have been heard.

6. The State, undoubtedly, has the jurisdiction to compulsorily acquire private property. However, it can do so only for a public purpose and that too in accordance with the provisions of law. Still further, whenever the Government wants to acquire some property it is obliged to issue a notification u/s 4. The purpose of this notification is to make the owners aware of the intention to acquire the property. u/s 5A a person interested in the land notified u/s 4 has the right to file objections. It is after consideration of those objections and on satisfaction that the property is needed for a public purpose that the notification u/s 6 can be issued. u/s 17 of the Act the competent authority has been given special powers to be invoked in case of urgency. Normally this power can be invoked only when it is not possible to brook even a short delay of say two months or so. However, even while invoking the urgency provision, clause 4 requires that the declaration u/s 6 can be made "after the date of the publication of the notification u/s 4 Sub Section 1." Thus, a simultaneous publication of the notifications u/s 4 and Section 6 is not permissible. It also deserves mention that the words "after the date of the publication of the notification" were specifically added by Act 68 of 1984. Thus, the intention of the Parliament is clear. The Government cannot issue the two notifications together. They cannot be published simultaneously.

7. Mr. Goyal submits that the notifications had been issued separately. According to the learned counsel the notification u/s 4 had been despatched on August 22, 1997 while the notification u/s 6 had been despatched on August 26, 1997. He submits that the provisions of Section 17(4) were, thus, complied with. We are unable to accept this contention. The citizen is not concerned with what happens inside the close chambers of the Secretariat. The citizen is only made aware of the Government's decision by the publication of the notification in the official Gazette. It is for this reason that the statute specifically requires that the notification u/s 6 shall be published after the date of publication of the

notification u/s 4. This requirement of law has not been followed in the present case.

8. Even, otherwise, we find that even though the urgency provisions had been invoked and the notification had been published as far back as on September 16, 1997, it is the admitted position that the petitioner continues in possession of the land and nothing has been done at site. Still further, it may also be mentioned that the petitioner had approached this Court in May, 1998. It is only then that this possession was threatened. Even that step has been taken after eight months of the issue of the notification. In this situation, it is clear that the plea of urgency was only to rule out the submission of objections u/s 5A. Had there been any real urgency, the competent authority would not have remained silent for such a long period.

9. Viewed from any angle, we find that there was no case for urgency and in any event the notifications do not conform to the requirements of Section 17(4). Still further, a period of more than one year having already been elapsed the publication of the notification u/s 4, it cannot survived.

10. Thus, the writ petition is allowed. Both the notifications are quashed. The petitioner shall be entitled to his costs which are assessed at Rs. 2,000/-.