
(2008) 01 P&H CK 0155

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16840 of 2007

Sadhu Singh and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Citation : (2008) 3 ICC 441 : (2008) 2 LLR 275 : (2008) 2 RCR(Civil) 613

Hon'ble Judges : M.M.Kumar, J and T.P.S.Mann, J

Advocate : For the Petitioners : Mr. Arun Jain, Advocate. Mr. Ashish Kapoor, Addl. A.G., Haryana, Mr. R.S. Rana, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.—This petition filed by Sadhu Singh and 18 other petitioners is directed against notifications dated 14.9.2007 (P11) issued under Section 4 read with Section 17(2)(c) of the Land Acquisition Act, 1894 (as per amendment vide Punjab Act 11 of 1954 Act 17 of 1956 Act 31 of 1966 Act (for brevity "the Act") and further declaration dated 15.10.2007 (P12) issued under Section 6 of the Act. The land has been acquired for a public purpose for constructing Shahbad Feeder Canal by changing the alignment.

2. The petitioners have claimed that to start with notification under Section 4 read with Section 17(2)(c) of the Act was issued on 20.3.2007 which was followed by declaration under Section 6 of the Act on 20.4.2007. According to the aforementioned notification and declaration the Shahbad Feeder Canal was to be constructed on the alignment shown in red colour in the site plan (P2) which was far away from the abadi of the villages Rajokheri, Subhri, Tandwali and Tandwal. According to the petitioners, the alignment as per the impugned notification issued on 14.9.2007 and declaration dated 15.10.2007 (P11 and 12 respectively) has been changed in such a manner that it create danger to the residential area belonging to the petitioners. It is alleged that even the roads maintained by Gram Panchayat facilitating the residential area have been included in the acquisition. There are allegations of mala fide against Sh. Phool Chand Mullana, ExEducation Minister, Haryana, now President Haryana Pradesh Congress

Committee in changing the earlier acquisition made under notification dated 23.3.2007 (P8) and 20.4.2007(P9). It has been alleged that the notification dated 14.9.2007 (P10) excluding certain area of the land, has been issued under Section 48(1) of the Act at the instance of Sh. Phool Chand Mullana and the land belonging to Sarvshri Kesar Singh, Raunki Ram, Swaran Singh Nagra, Baldev Singh and Ram Chander, who are close supporters of the aforesaid minister, has been released and the alignment of the canal has been changed to the detriment of the petitioners. The notification has been attacked on the ground that urgency provision of Section 17 (2)(c) has been invoked without any legal justification and merely to defeat the rights of the petitioners to file objections under Section 5A of the Act. It is pleaded case of the petitioner that once there was sufficient time extending to many months invoking Section 5A of the Act would have caused a delay of only 30 days which could easily be granted to the petitioners. The petitioners have also tried to substantiate the impending danger to their residential houses by placing on record annexures P3 to P7 and rough side plan (P2).

3. In the written statement filed on behalf respondents No. 1 to 3, the stand taken is that Dadupur Nalvi Irrigation Scheme has been designed for the purpose of providing irrigation facilities in the area because there is no natural resource or canal in existence in the area and that continuous pumping of water has considerably lower the water table in the area. The scheme has been sanctioned and the contracts for up stream and down stream reaches of the said canal have already been awarded. It has been stated that joining of this gap, which is covered by the notification dated 14.9.2007 (P11) and 15.10.2007 (P12) with the down stream irrigation system is of utmost necessity of making irrigation system functional. On that account invoking Section 17(2)(c) of the Act has been justified. It is further pleaded that respondentState has already invested more than Rs. 80 crores in the scheme and the urgency of acquiring the land through which the alignment of the canal flows is self explanatory. Flaying the fears of the petitioners that on account of acquisition, the residential deras of population would be endangered by floods, respondent State has asserted that such fears are baseless because sufficient provision for cross drainage works have already been made in the approved Lsection of the canal which has been marked in Pink colour on the approved alignment plan (R1). Site plan R1 shows that there is one drainage crossing provided at Km. 44.200 and an inlet has also been provided at Km. 48.000 to take the flood water into the canal and ultimately discharging the same in the river Markanda. It has further been promised that if at later stage, it becomes necessary, then the drainage plan can be supplemented. The allegation of political interference by the then Education Minister has been totally denied being unfounded. RespondentState has pointed that the total length of the canal along with this alignment was 7.863 Km. under the old notifications issued on 20.3.2007 and 20.4.2007 (P8 and 9) and there were four bridges on metelled road which required to be constructed. However, on the change of alignment being along with the boundary line of the villages Subhri, Rajokheri, Tandwali and

Tandwal, the lands of the owners has not been bifurcated and the length of the canal has been substantially reduced by 681 meters which has also reduced the construction of one bridge. The State exchequer has been able to save more than Rs. 70 lacs by way of acquiring 2.339 acres less area of land and in addition it has saved the cost of one bridge and construction cost of 681 meters canal length. Therefore, it has been pointed out that Sh. Phool Chand Mullanarespondent No. 4 has no role in the change of alignment which has been done totally on technical and economical considerations. The second alignment as shown in yellow line route (R1) was also much higher than the presently adopted alignment. In second para of the preliminary objections, the details of the scheme has been given which is known as Dadupur Nalvi Irrigation Scheme prepared in 1986. The Scheme envisages utilisation of surplus waters of Ravi Beas to run the canal system through out the year which was awaiting the approval of the Central Water Commission. The aforementioned scheme had to be deferred by the respondent State in the year 1990 till the availability of water of Ravi Beas and clearance of the same has been obtained from the Centre Water Commission /Planning commission of India (R2 and 3 respectively). Since the issue concerning Satluj Yamuna Link Canal in Punjab area could not be decided and water table in the vicinity was going down steeply, it was considered appropriate by the respondentState to immediately construct unlined channel (Kachha) for recharging of the area. The Shahbad Feeder Canal has been revived to utilise the monsoon water in river Yamuna for running the canal system under the scheme which was acquired in principle by Central Water Commission, New Delhi vide letter dated 6.7.2004 (R4). The scheme will fulfill the requirements of North Eastern region of Haryana located at the right side of Western Yamuna Canal and left side of SYL Canal. This area is devoid of any surface irrigation though it comprised of fertile soil with intensive cultivation. The area is being irrigated by tube wells due to which the pressure on ground water is very high resulting into lowering of the water table. This scheme would also improve the water table by recharging the area and reducing the load on tube wells and utilising the available surplus Yamuna water during monsoon season which otherwise goes waste down stream of Hathnikund Barrage and also caused floods in the down stream area. The canal is proposed to be kept unlined to encourage recharging of underground water through canal network provided in the project and it will serve the dual purpose of recharging of ground water and to check the steady fall in the ground water by using the surplus Yamuna water in rainy season. Therefore, it has been emphasized that the scheme is of utmost importance and needs to be implemented at the earliest in the larger interest of the public for which contracts have already been awarded and execution of the work has been taken in the reaches of upstream and downstream of the canal portion. Referring to the utility of the canal, it is stated that it cannot be achieved till the gap in reach under notification is joined for which the respondents have justified the invocation of Section 17 of the Act which sub serves a great public purpose and the Government has recorded its satisfaction with regard to the urgency under Section 17(2)(c) of the Act and dispensing with Section 5A of the

Act as per provisions of Section 17 (4) of the Act. It has also been asserted that this Court in a number of civil writ petitions including C.W.P.No. 5078 of 2005 decided on 26.9.2005 has rejected the claim made by certain other petitioners regarding acquisition of their land for construction of Shahbad Feeder Distributory (R5).

4. In his separate written statement filed by Sh. Phool Chand Mullana respondent No. 4, the allegation of mala fide has been specifically and categorically denied. It has been specifically pleaded that the allegation have been levelled without any substantial material and that he has not been interfering with the acquisition proceedings. It has been specifically denied that it was at his instance that the alignment of the canal has been changed as the whole matter has been decided by the Government itself. It has further been pointed out that the fact of economic statistics speaks in volumes and justifies the change in the alignment.

5. Mr. Arun Jain, learned counsel for the petitioners has argued that in cases where there is sufficient time to hear all objection under Section 5A of the Act, invocation of Section 17(2)(c) of the Act is wholly unwarranted and must be construed to mean that the power of urgency has been invoked to defeat the principles of natural justice. According to the learned counsel when the notifications have been issued on 14.9.2007 and 15.10.2007 (P11 and 12) after release of the land of some persons vide notification dated 14.9.2007 (P10) then it must be inferred that the urgency clause has been invoked for extraneous consideration. In support of his submission, learned counsel has placed reliance on two judgments of Hon"ble the Supreme Court in the cases of Union of India v. Krishan Lal Arneja and others, 2004(3) RCR(Civil) 178 : (2004)8 SCC 453 and Union of India and others v. Mukesh Hans etc., 2004(4) RCR(Civil) 315 : AIR 2004 SC 4307. On the basis of the aforesaid judgments he has further argued that the right of filing representation under Section 5A of the Act is a substantive right which can be taken away only for good and valid reasons and within the limits prescribed under Section 17(4) of the Act. Learned counsel has maintained that despite the opinion of the Government regarding urgency of dispensing with Section 5A of the Act is not automatic which has to be justified. According to the learned counsel there has to be sufficient relevant material showing valid reasons recorded in that regard reflecting proper application of mind because a valuable right of the petitioners and land owners is to be taken away. Mr. Jain has placed reliance on another judgment of Hon"ble the Supreme Court in the case of Hindustan Petroleum Corporation Limited v. Darius Shahpur Chennai, 2005(4) RCR(Civil) 289 : JT 2005(8) SC 470 and has argued that the right conferred by Section 5A has now been construed as a right akin to the fundamental rights as the right to property at one stage formed part of Article 31 of the Constitution which has now been recognised by Article 300 A. Learned counsel has maintained that once the rights of the petitioners have been held to be akin to the fundamental rights, then dispensing with such right has to be much more difficult by the respondents. Reiterating the allegations, learned counsel for the petitioners has submitted that there is mala fide emanating from the interference

of Sh. Phool Chand Mullanarespondent No. 4 which has resulted into the change of alignment of the scheme known as a Shahbad Feeder Canal. He has pointed out that the alignment now proposed, go through the paths and passages maintained by Gram Panchayat and is likely to endanger the residential area of the petitioners by flooding it especially during monsoon season. In that regard, he has drawn our attention to representation dated Nil (P14) and the photograph (P16).

6. Mr. Ashish Kapoor, learned State counsel and Mr. R.S. Rana, leaned counsel for respondent No. 4 have submitted that the acquisition made under the impugned notification came up for consideration of this Court in CWP No. 5078 of 2005 titled as Mani Ram and others v. State of Haryana and others and the writ petition after detailed considerations was dismissed (Annexure R5). According to the learned State counsel the necessity of the Government to dig the canal at the earliest to avoid any wastage of monsoon water and replenish the water table in the area are sufficient facts to invoke the urgency clause and dispense with the provision of Section 5 A of the Act. Mr. Ashish Kapoor, learned State counsel has maintained that the urgency cannot be decided merely on the ground that on account of other factors which are beyond the control of the respondentState delay has been caused. In case of such a delay, the urgency is not adversely affected and the acquisition would not be vitiated. Mr. Kapoor has referred to various paras of the written statement to highlight the scheme. He has also submitted that there is specific denial of allegations of mala fide levelled against respondent No. 4.

7. We have thoughtfully considered the submissions made by the learned counsel and are of the view that this petition lacks merit. There is no rule of law that once notification by invoking urgency provision has been issued specifically dispensing with enquiry envisaged under Section 5A of the Act then hearing is to be granted to the land owner whose land has been acquired. In the present case, the public purpose of acquiring the land as disclosed in the notification issued under Section 4 of the Act (Annexure P.11) is the construction of Shahbad Feeder by acquiring the land of left out killas which include the land belonging to the petitioner. The urgency on the face of it is made out. The notification of the nature which is subject matter of challenge in the instant petition disclosing the same public purpose was also challenged in CWP No. 5078 of 2005 and a Division Bench of this Court dismissed the writ petition along with other petitions vide order dated 26.9.2005 (Annexure R.5). Moreover, we have perused the record and found that the notification has not been issued in a mechanical manner and there is proper application of mind by concluding that hearing of objections under Section 5A of the Act is to be dispensed with which amply satisfies the requirement of Section 17(2)(c) of the Act. Therefore, reliance of the petitioner on a judgment of Hon'ble the Supreme Court in the case of Krishan Lal Aneja (Supra) is wholly misplaced because in that case on fact it was found that there was no material on record to conclude that urgency provisions were to be invoked. The aforementioned provision has been incorporated by a

local amendment by substituting sub section 2 of Section 17 of the Act by Punjab Act No. 11 of 1954 w.e.f. 9.1.1953 and the same reads as under :

"17. Special powers in case of urgency. (1) In cases 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 notice mentioned in Section 9, subsection (1), [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the (Government)] free from all encumbrances.

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

(a) whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat station, or of providing convenient connection with or access to any such station;

(b) whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land for the purpose of any library or educational institution or for the construction, extension or improvement of any building or other structure in any village for the common use of the inhabitants of such village, or any godown for any society registered under the Cooperative Societies Act, 1912, or any dwelling house for the poor, or the construction of labour colonies or houses for any other class of people under a Government sponsored housing scheme, or any irrigation tank, irrigation or drainage channel, or any well, or any public road;

(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 subsection (1) and with the previous sanction of the appropriate Government enter upon and take possession of such 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 subsection without giving to the occupier thereof at least fortyeight hours notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience".

(emphasis added)

8. A perusal of the aforementioned provision shows that urgency provision can be invoked in specific cases as enumerated in sub section 2 (a) and 2(b). Clause (b) of sub section of Section 17 of the Act shows that whenever in the opinion of the Collector it becomes necessary to acquire immediate possession of any land for the purpose of, inter alia, irrigation or drainage channel then the collector

may enter upon and take possession of such land and with the previous sanction of Government and immediately after publication of notice under Section 17(1) of the Act. The record of the proceedings further shows that the Government has granted approval to the notification by dispensing with the requirement of hearing under Section 5A of the Act. The same cannot be gone into as it is based on subjective satisfaction of the State Government. In that regard reliance be placed upon *First Land Acquisition Collector v. Nirodhi Prakash Gangoli*, 2003(1) RCR(Civil) 37 : (2002)4 SCC 160. The provision of Section 17(2) as amended by the Punjab Act came up for consideration of Hon"ble the Supreme Court in the case of *Balmokand Khatri Edn. and Industrial Trust v. State of Punjab*, 1996(2) RRR 699 : (1996)4 SCC 212. There the public purpose was to provide house sites to the poor. After quoting section 17 (2) of the Act, their Lordships in para 3 observed as under :

"Thus the Government, by virtue of State Amendment is empowered to exercise the urgency clause under subsection (4) of Section 17 and to dispense with the enquiry under Section 5A of the Act. Shri Parekh has contended that mere existence of the power is not sufficient. The urgency should be such as would not brook delay of 30 days in conducting the enquiry contemplated under Section 5A. In this case, allotment of the house sites to the poor is not such an urgency which cannot wait for conducting the enquiry. Therefore, exercising the power under Section 17(4) is bad in law. He seeks to place reliance on the decision of this Court in *Narayan Govind Gavate v. State of Maharashtra*, (1977)1 SCC 133. In a recent decision in *Chameli Singh v. State of U.P.*, (1996)2 SCC 549 this Court considered the entire case law and held that providing house sites to the poor is an urgent necessity and exercise of the power under Section 17(4) to dispense with the enquiry under Section 5A would be justified. The reasoning of this Court, in *Gavate* case also was considered and it was held that exercising the power under Section 17(4) cannot be struck down when the Government was of the opinion that it urgently required the possession of the land for providing house sites to the poor".

9. We are further of the view that judgment of Hon"ble the Supreme Court in *Mukesh Hans's* case (supra) would not apply to the facts of the present case. In that case the public purpose for invoking urgency under Section 17(1) and (2) of the Act and dispensing with the provision of 5A of the Act was "Public Fair" "Phool Walon Ki Sair". The case was required to be considered under Section 17(4) by the Government by application of my mind to the urgency as well as to dispense with enquiry envisaged by Section 5A of the Act. It was in those facts and circumstances that Hon"ble the Supreme Court held that invoking urgency as contemplated by Section 17(1) of the Act or emergency as postulated by Section 17(2) of the Act would not by itself be sufficient to direct dispensation of 5A enquiry. A perusal of the record in the instant case shows that the Government has approved the draft notification on 11.9.2007 which shows not only urgency as per the provisions of Section 17(2)(c) of the Act as also the necessity of dispensing with enquiry under Section 5A of the Act. Thus, there is

proper application of mind while invoking urgency clause and dispensing with the filing and hearing of objections under Section 5A of the Act.

10. We are also not impressed with the allegation of mala fide levelled against respondent No. 4. He has specifically denied those allegations by filing an affidavit. The affidavit controverting the allegations would satisfy the requirement of law laid down by a Constitution Bench of the Hon'ble Supreme Court in the case of Partap Singh v. State of Punjab, AIR 1964 SC 72. In that case the allegation of mala fide against the former Chief Minister of Punjab was levelled and despite the fact that the Chief Minister was joined as party respondent, no affidavit by him was filed. It was in these circumstances, the Constitution Bench held as under :

"We shall first take up for consideration the several allegations that have been made and see whether they had been satisfactorily made out. Before proceeding further it is necessary to state that allegations of a personal character having been made against the Chief Minister; there could only be two ways in which they could be repelled. First, if the allegations were wholly irrelevant, and even if true, would not afford a basis upon which the appellant would be entitled to any relief, they need not have been answered and the appellant would derive no benefit from the respondents not answering them. We have already dealt with this matter and have made it clear that if they were true and made out by acceptable evidence, they could not be ignored as irrelevant, (2) If they were relevant, in the absence of their intrinsic improbability, the allegations could be countered by documentary or affidavit evidence which would show their falsity. In the absence of such evidence they could be disproved only by the party against whom the allegations were made denying the same on oath. In the present case there were serious allegations made against the Chief Minister and there were several matters of which he alone could have personal knowledge and therefore which he alone could deny, but what was, however, placed before the Court in answer to the charges made against the Chief Minister was an affidavit by the Secretary to Government in the Medical Department who could only speak from official records and obviously not from personal knowledge about the several matters which were alleged against the Chief Minister. In these circumstances we do not think it would be proper to brush aside the allegations made by the appellant, particularly in respect of those matters where they are supported by some evidence of a documentary nature seeing that there is no contradiction by those persons who alone could have contradicted them. In making this observation we have in mind the Chief Minister as well as Mrs. Kairon against whom allegations have been made but who have not chosen to state on oath the true facts according to them". (emphasis supplied)

11. The aforementioned view has been followed by Hon'ble the Supreme Court in the case of Indian Railways Construction Company Ltd. v. Ajay Kumar, 2003(2) SCT 291 : (2003)4 SCC 579. Therefore, we do not find that the acquisition suffers from mala fide interference of respondent No. 4.

12. No other argument has been raised.

In view of the above writ petition fails and the same is dismissed.