
(1968) 09 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 221 of 1968

Satnam Singh

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 06-09-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) 09 P&H CK 0009

Hon'ble Judges : Ranjit Singh Sarkaria, J

Bench : Single Bench

Advocate : N.L. Dhingra, for the Appellant; H.S. Giani, for Advocate-General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

R.S. Sarkaria, J.—This is a petition under Articles 226 and 227 of the Constitution for the issuance of an appropriate writ, direction or order to the respondents, quashing the alleged notifications issued by them to acquire the petitioner's land.

2. The Petitioner is a displaced person from Pakistan. After the partition of the Indian sub-continent, he was allotted land in village Balluana, Tehsil Fazilka, District Ferozepur. Thereafter, he planted a garden of fed-blood Maltas, etc, in about 12 acres of this land. Part of that garden is situated in rectangle no. 65, field no 26, measuring 65 Kanals. The petitioner has also built his dwelling house in this Gold and has made an enclosure around the garden, which is yielding full fruit and thus good income.

3. In 1965, consolidation operations took place in the village, and on the demand of the residents of the neighboring village. Chanan Khera a path was provided connecting that village with the metalled road running from Abohar to Malout. The width of that path was 5 Karams equal to 27 1/2 feet. This path ran along the boundary of the garden of the petitioner on its eastern side. Village Chanan Khera is already connected with the said metalled road with two other paths of

the same width. The path running along the garden of the petitioner is shown as ABCDEFG in the Plan (Annexure A.) The villagers have raised the level of this path, and, with the aid of the Government, propose to metal it. Suddenly, on the 20th December, 1967, Shri Pritam Chand, Land Acquisition Patwari from Jullundur along with a Surveyor and 6 Beldars of the Public Works Department entered the garden enclosure of the petitioner without his consent and started demarcations in field no. 65/26, which was then under inter-crop of mature cotton besides the garden. They caused damage more than Rs. 2,000/- worth to the garden and the cotton crop. They put survey marks of a 32 feet wide road through the garden on that day. They returned to the spot on the third day and redemarcated a road 40 feet wide passing through the garden and the dwelling house of the petitioner. On enquiry, the petitioner was told that the land had been acquired by the Government for the road connecting village Chanan Khera with the Abohar-Malout road.

4. No notification under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter called "the Act") regarding the acquisition of land of the petitioner has been issued. Instead, two notifications nos. Amritsar-67/2/F and 67/3/F were published in the Punjab Government Gazette, dated 20th October, 1967, relating to acquisition of some land situated in the area of village Chanan Khera, Tehsil Muktsar, District Ferozepur, which apparently have no concern with the land of the petitioner. It was in pursuance of those invalid notifications that the Patwari and the Surveyor entered upon the land of the petitioner and made demarcation at site. The respondents are taking active steps to acquire land of the petitioner u/s 17 of the Act. The aforesaid notifications and the consequential proceedings are being assailed as illegal on the following grounds:

(1) No notification u/s 4 of the Act was issued with regard to the land which has been demarcated at site by the respondents. No substance of these notifications was published in the locality at any convenient place. The staff of the respondents entered the garden and the dwelling house of the petitioner without giving the requisite 7 days' notice required u/s 4 of the Act.

(2) The notification dated 11th October, 1967 (Annexure B) do not bear the signatures of any Secretary to the Punjab Government or any other Officer authorized to certify such notifications.

The signatures of Respondent 2 do not show that he had been authorized by the State to issue such notifications under his signatures

(3) notifications, Annexure "B", do not relate to the land of the petitioner which is sought to be acquired and which has been demarcated at site, because the petitioner's land is situated in village Balluana, Tehsil Fazilka, District Ferozepore, whereas the notifications relate to the land in village Chanan Khera, Tehsil Muktsar.

5. In the return, Respondent 3 (Executive Engineer, Public Works Department, Buildings and Roads Branch. Muktsar) has admitted that there is a garden on the

land sought to be acquired, but has denied that the petitioner has built any dwelling house therein, other than a mud-hut. The existence of any enclosure around the garden is denied. It is denied that the whole of the garden is in full fruit. It is admitted that a small portion of it is yielding fruit. It is admitted that the paths from village Chanan Khera, including the one girdling the garden of the petitioner on the eastern side, do exist. It is admitted that the road for straightening which the land in dispute is sought to be acquired, is being constructed under the Village Road Scheme. The other two paths are not suitable for being metalled. In reply to para 4 of the petition, it is pleaded that corrigenda to the earlier notifications (Annexure B) have been issued on 2nd February, 1968, because in the original notifications, through inadvertence, the names of the village and tehsil, in which the land was situate, were wrongly given. It is denied that the staff of the respondent entered upon the land of the petitioner and carried out any demarcation or put any survey marks. It is added that the petitioner did not permit them to enter upon his land. Consequently, doing of any damage whatever to the crop did not arise. It is also stated that the notifications were issued after completing due formalities as laid down by the law and the issuing authority had been authorized to issue the notifications on behalf of the Government.

6. In the rejoinder, the petitioner reiterated the original allegations and filed Annexure R. 1, a copy of the Khasra Girdawari, showing that 4 Kanals of land in field number 65/26 was "Ghair Mumkin Dhani". It is repeated that 37 fruit-bearing trees are standing at the spot over which the proposed road will pass, This road will bifurcate the garden of the petitioner into two and do irreparable damage to the dwelling house and the garden of the petitioner. It is further reiterated that the land was illegally demarcated as site by the staff of the respondents, a fact which was mentioned in the invalid notifications of the 11th October, 1967 (Annexure B). It was also stated that no notification u/s 6 of the Act could be issued relating to the land of the petitioner, which was under a garden, without complying with the provisions of Sections 5-A of the Act. Possession u/s 17 of the Act could be taken only of any waste or arable land needed for a public purpose and not of garden land. Corrigenda subsequently issued to the original notifications were also illegal, because Section 17 of the Act was not applicable to the land in question.

7. Mr. N.L. Dhingra, the learned counsel for the petitioner contends that in this case, the respondents have gone blundering forward at every step in a most arbitrary and illegal manner, throwing to the winds all the salutary provisions of the Act. It is contended that the provisions of Section 4 of the Act have been honored in breach, inasmuch as (a) particulars of the land were not given in the original notifications, and, instead wrong and vague particulars were given, which far from enabling one to identify the land sought to be acquired, would mislead him; and (b) that the substance of these notifications was not published in the locality at any convenient place by the Collector. It is added that the corrigenda subsequently issued do not cure the original illegality in the notifications.

8. I find force in this contention. The material part of Section 4 of the Act reads as follows:

4 (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, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specialty authorized by such Government in this behalf, and for his servants and workmen, to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil; to do all other acts necessary to ascertain whether the land is adapted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of work if any), proposed to be made thereon; to mark such levels, boundaries, and line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

9. An analysis of the above Section 4 would show that it peremptorily requires the doing of two things:

(a) The publication of a notification in the official Gazette by the Government that land in any locality is needed or is likely to be needed for any public purpose; and

(b) Public notice of the substance of such notification by the Collector at convenient places in the locality.

As held by their Lordships of the Supreme Court in *Khub Chand v. State of Rajasthan* (1967) 1 S.C.F. 120 both these requirements are mandatory and non-compliance therewith is fatal to the entire acquisition proceedings. The object of these mandatory requirements is two-fold: (1) to intimate the landowner or the occupier of the land the intention of the Officer or the Officers of the acquiring Department to enter upon the land; and (2) to enable him to file objections, if any, against the proposed acquisition. u/s 4(2), such a notice is a necessary condition precedent for the exercise of the power of the entry, and non-compliance with these conditions makes the entry of the Officer or his servants unlawful. As observed in *Khub Chand's* case, the fact that the owner may have notice of the particulars of the intended acquisition does not serve the purpose of Section 4.

10. In the instant case, in the original notifications, dated 11th October, 1967,

published in the official Gazette on the 20th October, 1967, it is stated that the land is likely to be required to be taken by Government at public expense for constructing a link road from DHS road to village Chanan Khera in Ferozepore District. In the schedule attached to this notification, it is mentioned that the land is situated in the revenue estate of Chanan Khera, Tehsil Muktsar, District Ferozepore, and its area is 0.54 acres. This notification was bad in law not only because it was vague and bereft of material particulars necessary for identifying the land, but because it gave some wrong and misleading facts about the locality where it was situated. It is true that at this preliminary stage when notification u/s 4 of the Act is issued, Government is not in a position to say precisely which particular piece of land is proposed to be acquired; nevertheless, the law as embodied in sub-section (1) of Section 4 requires that the locality in which the land is to be acquired has to be indicated with reasonable precision to show the whereabouts of the land. u/s 6 of the Act, however, full particulars of the land have to be specified in the declaration. In *Iftikhar Ahmed Vs. State of Madhya Pradesh and Others*, the notifications issued under Sections 4 and 6, only stated that an area of six acres of land "in Bhopal city" was proposed to be acquired. It was held by a Division Bench of the Madhya Pradesh High Court that the notifications were invalid because they were vague, and did not show with sufficient particularity the land to be acquired.

11. In the instant case, even the road for straightening which, the land is sought to be acquired, is not clearly described. Only its abbreviations "DHS Road" are given, which are by no means sufficient to identify the land. Further more, the land in dispute is admittedly a garden in an enclosure attached to a dwelling house, which according to the respondents is merely a mud-hut. The proviso to sub-section (2) of Section 4 was thus attracted. No such notice as is contemplated by the proviso, was ever given to the petitioner.

12. The notification, dated 11th October, 1967, published on 20th October, 1967 (Annexure B) is a composite notification and purports to have been issued not only u/s 4 but also u/s 17 of the Act, Notification No. Amritsar/67/2/F, dated 11th October, 1967, also says :

Further in exercise of the powers conferred by the said Act, the Governor of Punjab is pleased to direct that action u/s 17 shall be taken in this case on the grounds of urgency and that the provisions of section 5-A shall not apply in regard to this acquisition.

Combined with this notification is a declaration u/s 6 of the Act, which reads:

Whereas the Government of Punjab is satisfied that land specified below is needed by Government, at public expense, for a public purpose, namely, for a link road from D.H.S. Road to village Chanan Khera in District Ferozepore, it is hereby declared that the land described in the specification below is required for the aforesaid purpose This declaration is made under the provisions of Section 6 of the Land Acquisition Act; 1894, to all whom it may concern and Acquisition

Collector is hereby directed to take order for the acquisition of the said land. Plans of the land may be inspected in the office of the Land Acquisition Officer.

In view of the urgency of the acquisition the Government of Punjab, in exercise of the powers u/s 17 of the said Act, is further pleased to direct that the Land Acquisition Collector, P.W.D., B & R Branch, Jullundur, shall proceed, to take possession of the land therein specified in accordance therewith.

Mr. Dhingra contends that these acquisition proceedings are vitiated for the additional reason, also, that action under sub-section (4) of Section 17 of the Act can be taken only with regard to "waste or arable" land and not garden land attached to any house. In support of this contention, the learned counsel has cited Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, Sarju Prasad Saha Vs. The State of U.P. and Others, Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another, , Murari Lal Gupta v. The State of Punjab AIR 1966, Punj. 59 and Eardley Dudley Baxter Vs. T.L. Bhagtiani and Others,

13. Section 17 of the Act as amended by Punjab Act II of 1954, Punjab Act 17 of 1956 and Punjab Act 47 of 1956, reads as follows:

17(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, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

Explanation.-This sub-section shall apply to any waste or arable land, notwithstanding the existence therein of scattered trees or temporary structures such as huts, pandals or sheds. (2) In the following cases, that is to say,-

(a) x x x

(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 Co-operative Societies; Act, 1912 (Act II of 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 sub-section (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 sub-section without giving to the occupier thereof at least forty-eight 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.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by sudden dispossession and not excepted in section 24, and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5-A, shall not apply, and if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4, sub-section (1).

14. It is not disputed in this case that the land sought to be acquired is under a garden, which, as is apparent from the copies of the revenue records produced by the petitioner, was planted several years back. Fruit bearing plants are standing on it. That is to say, it is admittedly not waste land. The question is, whether it is "arable" land. In *Raja Anand Brahma Shah's* case, their Lordships of the Supreme Court have held that the expression "arable land" must be construed to mean "lands which are mainly used for ploughing and for raising crops," and the expression "waste land" would mean "land which is unfit for cultivation or habitation, desolate and barren land with little or no vegetation thereon". The jurisdiction of the State Government depends upon the condition imposed by Section 17(1). This view was reiterated by the Supreme Court in *Ishwarlal Girdharilal Joshi's* case. That is to say, the expression "arable land" is confined to land used for raising ordinary annual crops such as wheat, rice, Jowar, etc. "Garden land" cannot in the context of Section 17, be included in the definition of "arable land". Garden plants are not ordinary annual crops. This is also clear from the explanation appended to sub-section (1) of Section 17. It shows that the existence of scattered trees or temporary structures should not change the character of the land, which is waste or arable land. Another hint which supports the conclusion that "arable land" does not include land under a garden, is to be found in the proviso to sub-section (2) of Section 4.

15. The Government has to form an opinion as a condition precedent to issuing a notification under sub-section (4) of Section 17 for dispensing with the normal procedure of enquiry u/s 5-A of the Act, both as to the urgency as well as the nature and condition of the kind. Formerly, the view was that both these matters are left to the opinion of the Government and the correctness of the opinion

formed by them cannot raise a justifiable issue. This opinion appears to be no longer good law in view of the Supreme Court judgment in Raja Anand Brahma Shah's case supra that the High Court is entitled in a proceeding for the issue of a writ of certiorari to determine, upon its independent judgment, whether or not that finding of fact is correct.

16. In the present case, however, it is admitted by the respondents in the return that the land in question is garden land, which implies that it is not waste or arable land. It follows as a corollary there from that the respondent Government never applied its mind before issuing the notification under sub-section (4) of Section 17 of the Act, with regard to the nature and condition of the land. Rather, they have been conscious of the fact that the land is not waste or arable land, but is land under a garden within an enclosure attached to a house. In view of the rule laid down in Raja Anand Brahma Shah's case, therefore, the proceedings taken under sub-section (4) of Section 17 were illegal as the land in question was not waste or arable land.

17. Before I conclude, I may dispose of another argument advanced by Mr. H. S. Giani, the learned counsel for the State. It is canvassed by him that action in this case has been taken under sub-section (2) (b) read with sub-section (4) and not under sub-section (1) of Section 17 of the Act. It is maintained that sub-section (2)(b) is a self-contained provision and is not controlled by or dependent upon sub-section(1). Emphasis is placed on the fact that whereas in sub-section (1) the words waste or arable land, occur, in sub-section (2)(b) as amended by the various Punjab Acts of 1954 and 1956, the words "waste or arable" have been omitted, and instead, the words used are "any land". I am also adverted to the words "any public road" occurring in clause (b) of sub-section (2). It is contended that in this case the land is being acquired for a public road, and thus any kind of land, irrespective of the fact whether or not it is arable land could be acquired in accordance with Section 17(2)(b) read with sub-section (4). It is also suggested that the reference to subsection (1) in sub-section (2) is restricted only to the publication of the notice of urgency and this reference does not make the provisions of subsection (2)(b) subservient to those of sub-section (1).

18. The contention is attractive, but a little consideration will show that it is not tenable. A reading of Section 17, as a whole, reveals that it is an integrated and interdependent provision. Its various subsections are interwoven and have to be construed together. It can bear repetition that in sub-section (2) after clause (c), it is provided that "the Collector may, immediately after the publication of the notice mentioned in sub-section (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". The above-quoted clause governs all the cases mentioned in clauses (a), (b), and (c) of sub-section (2), and, under its very terms, imports action under sub-section (1) of Section 17 as a condition precedent. Sub-section (2)(b), therefore, could not be read in isolation. It has to be read subject to sub-section (1). It is a

fundamental principle of interpretation that all the provisions of a statute are to be construed in harmony rather than in antagonism with each other. Thus construed, it is quite clear that the meaning of the words "any land" in clause (b) of sub-section (2) is to be restricted to "any waste or arable land" referred to in sub-section (1) of Section 17 of the Act.

19. The issue of corrigenda on 9th February, 1968 to the original notifications, dated 11th October, 1967, could not remove the defects in the original notifications, nor cure the illegal proceedings taken on their basis. All that was attempted to be corrected by means of these, corrigenda, was, that the land to be acquired was not situated in Tehsil Muktsar, or in the area of village Chum Khera, but it was situated in Tehsil Fazilka in the area of village Balluani Even this correction did not sufficiently remove the vagueness in the original notifications with regard to the description of the locality of the land to be acquired. Nothing short of de novo acquisition proceedings in accordance with law would be necessary.

20. The other grounds taken in the petition have not been pressed.

21. For the foregoing reasons, I would allow this writ petition with costs, quash the notifications, dated 11th October, 1967 (Annexure "B") and all the proceedings taken on the basis thereof.

22. Counsel's fee Rs. 100/-.