
(2008) 05 P&H CK 0164
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7438 of 2007

Siri Ram Sahni and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 27-05-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 17, 17(1), 17(3A), 3
Post Office Act, 1898 — Section 28, 29

Citation : (2009) 1 ILR (P&H) 533 : (2008) 4 RCR(Civil) 193

Hon'ble Judges : Sabina, J;M.M. Kumar, J

Bench : Division Bench

Advocate : Naresh Prabhakar, for the Appellant; D.V. Sharma Sudepti Sharma, AAG, A.P.S. Mann and Hari Sharma, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This order shall dispose of Civil Writ Petition Nos. 7438 of 2007 and 17333 of 2005 as common question of law and facts is involved in both the petitions. The facts are being taken from CWP No. 7438 of 2007. The petition has been filed under Article 226 of the Constitution with a prayer for quashing notification dated 22nd November, 2004 issued u/s 4 read with Section 17 (Annexure P-I) and declaration dated 6th December, 2004 made u/s 6 read with Section 17 (Annexure P. 2) of the Land Acquisition Act, 1894 (for brevity "the Act"). A further prayer for setting aside award dated 16th March, 2007 (Annexure P. 3) has also been made. When CWP No. 17333 of 2005 came up for consideration on 19th April, 2007 a Division Bench of this Court stayed dispossession of the Petitioner and in the connected petition i.e. CWP No. 7438 of 2007 interim directions were issued on 17th May, 2007 which are continuing in both the cases till today.

2. Brief facts of the case necessary for disposal of the controversy raised are that the Petitioners (CWP No. 7438 of 2007) are enjoying perpetual lease on the land in dispute for a period of 99 years executed in their favour by the land owners

and as such they are "persons interested" in the land comprised in Khasra No. 28//3 min (East) 5k-8m, 8/1 min (east) 1k-1m, 18//23 min (east) 5k-8m, 24//8-0, total 19k-17m with Petitioner Nos. 1 and 2 vide registered lease dated 11th May, 1978. It is pertinent to notice that land comprised in khasra No. 28//8/1/0-6, 3/0-13 is on perpetual lease with Ashok Kumar (Petitioner) and land comprised in khasra No. 28//3/0-10 is on lease with Tirlok Kumar vide registered lease deed dated 7th February, 1984. The Petitioners in CWP No. 17333 of 2005 are owner in possession of land comprised in khasra No. 17//22/2 (4-12), 23(8-0), 24(8-0), 28/ /2/2(4-7), 3/1(0-4), 3/2 (0-10), 3/3/ (0-16), 3/4 (6-10), 4Min (4-0), 8/ 1/1(0-3) 8/1/2 (1-3) total 38 K 05 M. They have constructed buildings over their land after obtaining necessary sanction to their site plans from the Municipal Council, Kapurthala on 26th September, 2002 and 11th February, 2003. They have also placed on record receipt of building fee, malba development fee and boundary wall fee etc. Even the "No Objection Certificate" issued by the District Town Planner, Kapurthala on 20th January, 2003 has been placed on record in respect of land comprised in Khasra No. 28//2/2 and 3/1 it has been asserted that one Kaushalya wd/o Ambika Dutt had leased for 99 years and the Petitioner had entered into an agreement of sale on 26th December, 1991, 15th July, 1993 and 12th April, 1994 with Smt. Kaushalya Devi and her sons. All the facts have been given apparently with the object of showing that had there been an opportunity to file objections u/s 5A of the Act then the Petitioner could have highlighted a reasonable ground for exempting the land from acquisition. The Respondent-State had earlier attempted to acquire the land vide notification, dated 25th May, 1995 and on the objection raised by the Petitioners u/s 5-A of the Act alongwith other similarly situated persons the scheme was dropped. The Respondent-State has issued the impugned notification u/s 4 read with Section 17 of the Act on 22nd November, 2004 (Annexure P. 1) for the purpose of providing proper access to the existing Urban Estate and also for laying Kapurthala main out fall sewer of Urban Estate by invoking urgency provisions. A declaration has also been issued u/s 6 read with Section 17 of the Act on 6th December, 2004 (Annexure P-2). Thereafter award has been announced on 16th March, 2007. It is alleged that the award has been announced beyond the statutory period of two years. According to the requirements of Section 11A of the Act the award could be announced only within a period of two years from, the date of the publication of the declaration u/s 6 of the Act. In the absence of announcement of award within the stipulated period the entire proceedings for acquisition of land would lapse.

3. In the written statement, the stand taken by the Respondent is that the urgency provisions have been invoked on account of better planning of Urban Estate, Kapurthala for providing proper access to the existing Urban Estate, Kapurthala and for laying main out fall sewer of Urban Estate, Kapurthala. The total land sought to be acquired vide two notifications was 4 Acres 3 Kanal 15 Marias and 4 Acres 7 Kanals 10 Marias respectively. The land is situated in village Mansoorwal Dona and Dhaliwal Dona located in Tehsil and District Kapurthala. It

is further stated that period of two years referred to in Section 11 -A of the Act is to be computed from the date of last declaration of the notification u/s 6 of the Act as prescribed modes of publication which are: (a) publication in the official gazette; (b) publication in two daily newspapers circulation in the locality where the land is situated; and (c) causing public notice of the substance of the declaration which is given at convenient places in the locality where the land is situated. The Respondents have claimed that proclamation u/s 6 of the Act was made on 18th March, 2005 in the locality where the land is situated and a Rapat Roznamcha Waqati bearing No. 589, dated 18th March, 2005 was also got entered in the revenue record. These facts also find mention in the impugned award and therefore the award has been announced within a period of two years and, it is not vitiated on account of violation of Section 11-A of the Act. The stand of Respondent Nos. 2 and 3 i.e. the Land Acquisition Collector and Estate Officer concerning invoking of urgency provisions is that the work of providing access to Urban Estate by laying out fall sewer was required to be completed and accordingly to meet time bound work urgency provisions were invoked.

4. Mr. Naresh Prabhakar, learned Counsel for the Petitioners has made two submissions before us. Firstly, he has argued that the award has been announced after a lapse of period of two years and is vitiated because it flagrantly violates the provisions of Section 11-A of the Act. According to the learned Counsel the entry of rapat roznamcha cannot extend the period of two years because these are self serving pieces of evidence and would not constitute a valid basis for validation of the award. The second argument of the learned Counsel that no proof of urgency has been shown by the Respondents to the effect that possession of the land has been taken. Learned Counsel has maintained that notification u/s 4 read with Section 17 of the Act was issued on 22nd November, 2004 and declaration was made u/s 6 read with Section 17 (3-A) of the Act on 6th December, 2004. No notice u/s 9 of the Act has however been issued for the purpose of taking possession in order to execute the work on the acquired land nor 80 percent of the compensation as envisaged by Section 17(3) (A) of the Act has been deposited. Therefore, the execution proceedings are liable to be set aside as the rights of the Petitioners to file objections u/s 5-A of the Act which are akin to fundamental right of the land owners have been flagrantly violated.

5. Mr. D.V. Sharma and Mr. A.P.S. Mann learned Counsel for the Respondents have however argued that award has been announced within a period of two years from the date of declaration made u/s 6 read with Section 17 of the Act, if the period of two years is counted from the date of mustari muniadi carried on in the locality where the land is situated. They have insisted that the period of two years is to count from that date and therefore acquisition proceedings are consistent with the provisions of law. They have also submitted that all steps as per the requirements of statute have been taken and the principles of natural justice are not available to the Petitioners once urgency provisions have been invoked. They have argued that the purpose for which acquisition has been made

is a public purpose within the meaning of Section 3(f) of the Act and therefore it cannot be argued that the acquisition proceedings have been vitiated. It has further been urged that merely because there is delay in execution of the public work would not ipso facto lead to the conclusion that urgency has vanished especially when there are no allegations of mala fides levelled for execution of public purpose.

6. After hearing learned Counsel for the parties and perusing the paper book with their able assistance we have reached the conclusion that this petition deserves to be allowed. It has come on record that notification u/s 4 read with Section 17 of the Act was issued on 22nd November, 2004 (Annexure P. 1) and declaration u/s 6 read with Section 17 of the Act was made on 6th December, 2004 (Annexure P.2). For a long period of 2 1/2 years no steps were taken for taking possession of the land in accordance with the procedure postulated by Section 9 of the Act. According to the provisions of Section 9 of the Act, a notice is required to be served on the person interested in the land alongwith the amount and particulars of their claims to compensation in respect of such interests. It postulates inviting of objections to the measurements made u/s 8 of the Act. In the present case, admittedly no public notice u/s 9(1) of the Act or individual notice u/s 9(2) of the Act were served on person interested or the occupier of the land after notification u/s 4 and Section 6 read with Section of the Act either. Section 9 of the Act reads thus:

9. Notice to persons interested (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made u/s 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situated.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and [registered under Sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)].

7. It is further appropriate to mention that Section 17(1) and (3A) of the Act deals with special power of the Government in cases of urgency which reads as under:

17. Special powers in cases 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, Sub-section (1), take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

XXX XX XX

(3A) Before taking possession of any land under Sub-section (1) or Sub-section (2), the Collector shall, without prejudice to the provisions of Sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and (b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, Sub-section (2), (Emphasis added) and where the Collector is so prevented, the provisions of Section 31, Sub-section (2) (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section

(emphasis added)

8. A perusal of the afore-mentioned provisions shows that Government is empowered to make urgency provisions on the expiration of 15 days of publication of the notice as contemplated by Section 9(1) of the Act for taking up possession of any land needed for public purpose and such land would thereupon vest absolutely in the government free from all encumbrances. However, Sub-Section 3-A of the Act imposes an obligation on the Government that the Collector must tender payment of 80 percent of compensation for such land as estimated by him to the person interested/entitled thereto before taking possession.

9. In the present case, after notification was issued on 22nd November, 2004 and declaration made on 6th December, 2004 no steps have been taken for taking possession nor for payment of compensation to the extent of 80 percent postulated by Section 17(3A) of the Act have been taken. Notices u/s 9 of the Act and award u/s 11 of the Act have been passed in a routine manner on 16th March, 2007. The requirement of urgency looks to have evaporated once the State Government turned a blind eye to the project and even did not take possession of the land belonging to the Petitioner. Once the possession has not been taken after making declaration u/s 6 read with Section 17 of the Act on 6th December, 2004 and routine procedure of announcing the award have been followed then it must be concluded that urgency as contemplated by Section 17 of the Act should not have been invoked and the Petitioner should have been

given a chance to file objection u/s 5-A of the Act which requires only a period of 30 days for filing of objection and a few weeks to decide those objections. If the project can wait from 6th December, 2004 till 16th March, 2007 when the award was announced then the claim that there was urgency would be totally to a false claim without any rational basis. If the project can brook the delay for 2 1/2 years then the filing of objections u/s 5-A of the Act could have been easily permitted and the delay could have been easily accommodated. The Petitioner could have very well shown the difficulty in the acquisition of their constructed houses and leaving the leased land from acquisition especially when earlier scheme for acquisition was dropped after hearing objections u/s 5-A of the Act and even could have suggested some alternative land. The object of providing proper access to the existing urban estate and for laying main out fall sewer might be covered with the urgency provision but failure to take possession of the land would also show that there was infact no urgency.

10. In the case of Union of India (UOI) and Others Vs. Mukesh Hans etc., the urgency provision came up for consideration of their Lordships and it has been concluded that under Sub-section (1) of Section 17 possession of the land in case of urgency without making an award could be taken and that can only be after publication of notice u/s 9(1) of the Act and that too after the expiration of publication of 15 days of such a notice. The appropriate government is also under an obligation "to issue notification u/s 4(1) of the Act and declaration u/s 6 read with Section 17(1) of the Act even if urgency is to be invoked and after the completion of procedure contemplated under Sections 7, 8, 9(1) of the Act and on expiration of 15 days of notice u/s 9(1) of the Act the possession could be taken even before passing of the award. After observing in the manner aforesaid the Supreme Court in para 32 has concluded as under:

32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4) that by itself is not sufficient to direct the dispensation of 5-A inquiry. It requires an opinion to be formed by the concerned government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5-A inquiry which indicates that the Legislature intended that the appropriate government to apply its mind before dispensing with 5-A inquiry. It also indicates the mere existence of an urgency u/s 17(1) or unforeseen emergency u/s 17(2) would not by themselves be sufficient for dispensing with 5-A inquiry. If that was not the intention of the Legislature then the latter part of Sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with, But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry inspite of the existence: of unforeseen emergency. This understanding of ours as to the requirement of an application of

mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in and every case when there is an urgency contemplated u/s 17(1) and unforeseen emergency contemplated u/s 17(2) exists that by itself would not contain the need for dispensing with Section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government u/s 17(1) or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated u/s 17(1) and (2) of the Act.

11. Therefore, we do not find that there is any justification for invoking the urgency provisions which could not have brooked the delay of 30 days. Similar view has been expressed by Hon"ble the Supreme Court in the case of Om Prakash and Another Vs. State of U.P. and Others, . In the aforementioned judgment it has been concluded that after 1984 for acquisition of any type of land if the appropriate authority is satisfied about the existence of urgency requiring acceleration of taking possession as per Section 17(1) of the Act before award or acceleration before issuance of notification u/s 6 of the Act as per Section 17(4) of the Act then the filing of objection u/s 5-A of the Act could be dispensed with. It has also been laid down by the Hon"ble Supreme Court in the case of Hindustan Petroleum Corporation Ltd. v. Darius Shahpur Chennai (2005) 7 SCC 624 that Section 5-A of the Act confers a valuable and important right in favour of a persons whose lands are sought to be acquired and having regard to the provision contained in Article 300 A of the Constitution it has been held to be akin to the fundamental right.

12. We further find that the award has been announced on 16th March, 2007 which is after a period of two years and three months from the date of declaration which does not support the endeavour of the Government to invoke urgency provisions. The Respondent has tried to assert that the award has infact been announced within two years by arguing that period of two years would run from the last date of publication of the notification (Mustari Muniandi) in the locality. In that regard our attention has been drawn to the request made by the Punjab Urban Development Authority, Jalandhar to Tehsildar Kapurthala requesting him that a report (rapat) of this notification dated 23rd November, 2004 be entered in the daily record (roznmacha) of the concerned village and mustari munadi be got done. According to the calim made by Respondents it was carried out by Patwari on 18th March, 2005 and the award having been announced on 16th March, 2007 is within two years. Such documents are self serving pieces of evidence and it is not safe to place reliance on them because if that is permitted to be done then any delayed award could be saved from lapsing because public notice of the declaration could be made in the locality at the discretion of the Respondent authorities. It further shows that public notice of declaration has not been made by the Government but by the Punjab Urban

Development authority which is not the acquiring authority. It is a different matter that the land is being acquired for PUDA yet all functions on acquisition are required to be done by the appropriate government as is clear from the perusal of Sections 4 and 6 of the Act. The relevant portion of Section 6 of the Act reads thus:

6. Declaration that land is required for a public purpose. (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5-A, Sub-section (2), that any particular land is needed for public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) u/s 5-A, Sub-section (2)

13. It is evident from the perusal of Section 6 of the Act that it does not contemplate publication of the substance of the notification at convenient place in the locality as is provided by Section 4 of the Act nor Section 11 -A of the Act uses the expression for the purpose of reckoning the period of two years that public notice of the substance of such declaration u/s 6 of the Act is required to be given at convenient places in the locality and that last date of such declaration and last date of notice is to be regarded as date of publication of the notification which is the language used in Section 4 of the Act. Therefore, it is an attempt to over-come the difficulty and defeat the rights of the citizens which is wholly unwarranted and is not appreciable. A Constitution Bench of seven Judges of the Hon"ble the Supreme Court in the case of Nagpur Improvement Trust and Another Vs. Vithal Rao and Others, has categorically laid down that acquisition may be for a government or non government agency or at their instance but nevertheless the acquisition is by the Government. Therefore, the defence of extending the period of two years from the date of letter written by Punjab Urban Development Authority is wholly unsustainable and is hereby rejected.

14. For the reasons afore-mentioned this petition succeeds. The notification dated 22nd November, 2004 (Annexure P. 1) issued u/s 4 read with Section 17 of the Act and declaration dated 6th December, 2004 (Annexure P. 2) issued u/s 6 read with Section 17 of the Act are hereby set aside alongwith the award dated 16th March, 2007 (Annexure P. 3). The result of setting aside the aforementioned declarations would not amount to create a bar on the Respondents to issue fresh notifications of acquisition of land if such necessity still persists. The Petitioners are entitled to their costs which are quantified at Rs. 20,000 in each of the petitions.

15. A copy of this order be placed on the file of connected petition.