
(2002) 10 P&H CK 0121
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4749 of 1997

Siri Ram Sharma

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-10-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 17(2), 4

Citation : (2003) 133 PLR 277

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amar Dutt, J.—Siri Ram Sharma has filed the present petition under Article 226 of the Constitution of India for quashing the notification dated 21.2.1997 issued u/s 4 read with Clause (c) of sub Section (2) of Section 17 of the Land Acquisition Act, 1894 (in short "the 1894 Act") and the notification dated 20.3.1997 issued u/s 6 of the 1894 Act, Annexures P4 and P6 respectively.

2. The facts leading to the filing of the present petition are that the State of Haryana-respondent No.1 had, through a notification dated 24.5.1971 u/s 4 read with Clause (b) of sub Section (2) of Section 17 of the 1894 Act evinced its intention to acquire 13.10 acres of land in villages Badha, Maheshpur, Alika, Bamnika and Rajulka for the construction of Rajaulka Minor, which was to take water from Uttawad Lift Dis-tributory to the land situated in village Rajaulka. On 29.5.1971 notification u/s 6 of the 1894 Act was issued and thereafter the State proceeded to announce the award and paid compensation to the persons whose land was acquired.

3. In 1980 another notification u/s 4 of the 1894 Act was issued with the intention of acquiring land in village Maheshpur for construction of drain. This notification too was followed by a notification u/s 6 of the 1894 Act and after carrying out proceedings for evaluation of the compensation, award was

announced and compensation was paid to the persons whose land had been acquired. During this acquisition, the land of the petitioner comprised in khasra Nos. 18/1/2 and 18/2 of rectangle No. 24 in village Maheshpur was also acquired.

4. A third notification No. 2414/Lc-III dated 21.2.1997 was issued u/s 4 read with Clause (c) of sub Section (2) of Section 17 of the 1894 Act whereby the land in villages Maheshpur, Alik, Bamnika and Rajaulka has been sought to be acquired for construction of Rajaulka Minor from Uttawad Lift Distributory, In this notification, 19 kanals 7 marlas of land of the petitioner comprised in khasra Nos. 4 (0-17), 5/1 (2-10), 7(8-0), 14(8-0 of rectangle No. 29 In Village Maheshpur was sought to be acquired.

5. The grouse of the petitioner is that by invoking the provisions of Section 4 read with Clause (c) of sub Section (2) of Section 17 of the 1894 Act, the respondents seek to deprive of the petitioner of the valuable right to file objections u/s 5A of the 1894 Act against the proposed acquisition. It is also urged that the notification dated 21.2.1997 has not been published in two newspapers having circulation in the locality as is required by sub Section (1) of Section 4 of the 1894 Act, according to which, one of the two newspapers has to be of regional language having circulation in the locality. It is also asserted that public notice of the substance of the notification as is required to be given in the locality by way of publication of the notification for acquisition of land was caused by the Collector-respondent No. 3 and a perusal of this public notice shows that it does not disclose that date of publication and the newspapers in which the publication has been issued. Thereafter on 20.3.1997 a notification u/s 6 of the 1894 Act in order to declare its intention to acquire the land of the petitioner was issued and publication of this notification in the locality on 9.4.1997 does not disclose the newspapers in which the publication was carried out or the date on which the same was issued. The action of the respondents is being assailed on the ground that this is an abuse of the process of law inasmuch as although since 1971 respondent No. 1 has been invoking the provisions of Section 17 of the 1894 Act, no visible progress has been made in the construction of the Rajaulka Minor which fact would indicate that actually no urgency existed to justify the invocation. The petitioner asserts that he has been denied valuable right of filing objections u/s 5A of the 1894 Act for pointing out that on earlier two occasions, the respondents had already acquired land for constructing the Rajaulka Minor and, therefore, it would not be in public interest to allow them to invoke the provisions for 1997 acquisition. After highlighting the inability of the respondents to carry out the project for which earlier two acquisition had been made, the petitioner goes on to assert that the compensation has not been determined nor an award was made as required under the 1894 Act, according to which within 15 days of the issuance of the notice u/s 9 of the 1894 Act, the determination and offer to pay has to be made. He asserts that the action of the respondents amounts to an attempt to circumvent the guarantee enshrined in Article 300A of the Constitution of India and without paying any compensation had deprived the petitioner of his property.

6. In the reply filed by the Executive Engineer, Palwal, a preliminary objection was taken regarding maintainability of the petition in view of the fact that the requirement of Sections 4 and 6 of the 1894 Act regarding publication of notification has been duly complied with. It has also been submitted that the award has been given on 14.7.1997 by the Land Acquisition Collector and the amount had been deposited with the District Revenue Officer-cum-Land Acquisition Collector, Faridabad in the month of March, 1997 but the landowners have refused to accept the same on the ground that the rate was not adequate. It is also submitted that 90 per cent of the earth work required to be done as per the site plan Annexure R4 has been completed and the work has only to be done on the strip of land which belongs to the petitioner regarding which stay has been granted by this Court. The respondents have also indicated that on the earlier occasion when the land of the petitioner was acquired, it was done for extension of Badha Link Drain. It has also been explained that the Minor as proposed would give irrigation facility to the landowners of villages Maheshpur, Kairaka, Bamnikhera and Rajaulka as there is no other source of water to their fields. It was also stated that there was long standing demand for the construction of the Minor which could not be acceded to due to the non-availability of the funds and this time a budget has been sanctioned by the Nabard for this Minor and, accordingly, the work was started on 30.3.1997. Approximately 80 per cent work has been completed. Asserting all this and highlighting the fact that the completion of work which has been funded by the Nabard is being held up because of the order of this Court, the respondents state that the writ petition is devoid of merit and should be dismissed.

I have heard the learned counsel for the parties and with their help have gone through the record of the case.

7. The petitioner, in the present case, was seeking to assail the notification dated 20th of March, 1997 and attacked the same for the reason that, according to him, this is the third time since 1971 that the State Government has sought to acquire the land for the construction of the Rajaulka Minor. The fact that a project for construction of the minor for carrying water from the Uttawad Lift Distributory to village Alika was planned, is not in dispute. It is also not in dispute that the execution of the project has been delayed for want of funds. Further more, the respondents do not deny the fact that since 1961 i.e. the time of its original conception the alignment of Rajaulka Minor has been changed and through the impugned notification a portion of the land belonging to the petitioner is being acquired for the re-alignment of the minor.

8. The petition, which was filed in the year 1997, was admitted on 28.9.1998, when an order directing the stay of dispossession was obtained. During the pendency of the petition, according to the respondents, 90 per cent of the work of the minor has been completed and work only remains to be done on the 10 per cent of the canal which passes through the newly acquired land of the petitioner. The petitioner also does not deny the averments made on behalf of

the respondents that the compensation for the land sought to be acquired has since been determined, though it has not been received by the petitioner, in view of this, we have a case where project sought to be executed for the interest of the villagers of village Rajaulka is lying incomplete because of the objections raised by the petitioner regarding the invocation of the urgency provisions of Section 4 read with Section 17 of the 1894 Act. From the circumstances narrated herein before it can hardly be inferred that the provisions were wrongly invoked merely with a view to deprive the petitioner of his valuable land without resorting to the procedure prescribed by law and, therefore, the acquisition would be hit by Article 300A of the Constitution of India.

9. The invocation of urgency provisions of Sections 4, 17(4) and 5A Of the 1894 Act cannot, in these circumstances, be held to be unjustified and mechanical so as to warrant interference by this Court. The fact that the respondents have completed 90 per cent of the work of the canal minor, would also indicate that the invocation exercise of power available in the aforementioned Sections has not been exercised in a mala fide manner, which would require any interference by this Court in its writ jurisdiction. In my view, I find support from the decisions of the Apex Court in *Shri Kishan Dass and Ors. v. The State of U.P. and Ors.* 1996 L.A.C.C. 1 and *Union of India and Ors. v. Shri Ghanshyam Dass Kedia and Ors.* 1996 L.A.C.C. 169.

For the reasons recorded above, there is no merit in this writ petition and the same is dismissed.