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**(1995) 03 P&H CK 0131**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 3730 of 1994**

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| Smt. Swaran Kaur and Others | Vs | APPELLANT  |
| State of Punjab and Others  |    | RESPONDENT |

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**Date of Decision :** 23-03-1995

**Acts Referred:**

Land Acquisition Act, 1894 — Section 17(2)

**Citation :** (1995) 110 PLR 412

**Hon'ble Judges :** M.L. Koul, J;Jawahar Lal Gupta, J

**Bench :** Division Bench

**Advocate :** Ashwani K. Chopra, for the Appellant; S.K. Sharma, D.A.G., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Jawahar Lal Gupta, J.—Has the State of Punjab acted arbitrarily and illegally in invoking the provisions of Section 17(2)(c) of the Land Acquisition Act while acquiring land for the purpose of construction of building for the establishment of an Industrial Training Institute at Jalalabad (West), Tehsil Fazilka, District Ferozepur. This is the short question that arises in these two petitions under Article 226 of the Constitution. The petitioners submit that they are small landowners. The establishment of an Industrial Training Institute at Jalalabad has been under consideration of the Government for the last more than five years. In the circumstances, the right of file objections u/s 5-A of the Act could not have been taken away. If an opportunity had been granted, the petitioners could have shown that the land sought to be acquired was not suitable for an educational institution and that better land was available. The petitioners have also alleged that a Samadhi and a Gurdwara exist on the site. They, consequently, pray for the issuance of an appropriate writ, order or direction quashing the notification dated March 12, 1994, issued u/s 4 read with Section 17(2)(c) of the Act.

2. The respondents controvert the claim of (he petitioners. They aver that the urgency provisions can be invoked for setting up of an educational Institution in

view of the provisions of Section 17(2) as applicable to the State of Punjab. It has been pointed out that the provisions of Section 5-A have been dispensed with so as to "meet with the time-bound construction schedule of the building for the establishment of an Industrial Training Institute at Jalalabad...". The allegation that the matter has been pending for the last five years, has been denied. It has been pointed out that in the meeting held under the Chairmanship of the Chief Minister of Punjab on September 21, 1993, it was decided to open six Industrial Institutes in the State including the one at Jalalabad. The minutes of this meeting have been produced as Annexure R-I with the written statement. A perusal thereof shows that it had been decided to sanction an amount of Rs. 120 lacs during the year 1993-94 and Rs. 900 lacs during the 8th Five Year Plan for setting-up six Industrial Training Institutes. In pursuance to this decision, the Deputy Commissioner, Ferozpur, was asked to call the meeting of the Site Selection Committee for the selection of land. The meeting of the Committee was called on January 12, 1994. It ultimately met on February 11, 1994 when the present site was selected. The Deputy Commissioner issued a No Objection Certificate on the same day. It was specifically mentioned in this certificate that "there is no religious place such as Samadhi, Masjid, Gurdwara or Church on the land under acquisition". Thereafter, on March 12, 1994, a notification u/s 4 was issued. This notification was published in a vernacular paper on March 17, 1994 and in the Tribune on March 18, 1994. The notification u/s 6 was published in the Gazette Notification on March 18, 1994 respectively. Notice u/s 9 were issued to the landowners. Funds for tendering 80% of the compensation have been placed at the disposal of the Sub Divisional Officer (Civil) and the possession of the land shall be taken only after tendering the amount of compensation to the landowners. It has only been stated [hat according to the report submitted by the Sub Divisional Officer (C), the petitioners have after the publication of the Notification u/s 6, brought Guru Granth Sahib to a Pump House which exists on the land in dispute and installed Nishan Sahib. Even the Samadhi has been constructed after the publication of the notification.

3. Civil Writ Petition No. 3730 of 1994 had come up for preliminary hearing on March 23, 1994. While directing the issue of notice of motion to the respondents, the Bench had ordered that "status quo regarding possession" shall be maintained. Civil Misc. application No. 2328 of 1995 has been filed by the respondents for the vacation of this order on the ground that the admissions during the academic session 1994-95 had been made to the Industrial Training Institute, Jalalabad but the admitted students were actually studying at Fazilka. Fresh admissions for the year 1995-96 have to be made. Delay in the construction of the building will hamper the study of the students and cause avoidable inconvenience to them. It was, therefore, prayed that the stay order passed by the Bench on March 23, 1994, be vacated.

4. We have heard learned counsel for the parties.

5. M/s. Ashwani Chopra and Ravinder Chopra, learned counsel for the petitioners in these two petitions, have contended that in the facts and circumstances of these cases, the State Government was not justified in invoking the urgency provisions. On the other hand, Mr. S.K. Sharma, learned counsel for the respondents has submitted that in view of the time-bound schedule, it was necessary to invoke the urgency provisions so that students who have been admitted, are able to attend classes at Jalalabad.

6. Section 17(2) as substituted by the Punjab Act, inter alia provides that the urgency provisions can be invoked "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...." and "whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance". In this case, land is being admittedly acquired for the public purpose of establishing an educational Institution. The State Government has clearly notified its opinion that the land "is urgently needed...so as to meet the time-bound construction schedule...". Has it the power in doing so ? was the urgency such as could not brook a delay of 30 days ?

7. According to the Legislative mandate, the urgency provision can be invoked whenever land is needed for the purpose of establishing an educational Institution. The Legislature has made the "appropriate Government" as the "Judge" of "urgency". It has burdened the State Government with the responsibility of forming an opinion in that behalf. The action of the Government in this case is in conformity with the power vested in it by the Legislature. Consequently, it cannot be said that the Government has acted illegally in invoking the provisions of Section 17.

8. Prof. Wade in his treatise on "Administrative Law" has observed as under:-

"The Doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must, therefore, resist the temptation to draw the bounds tightly merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of the choices which the Legislature is presumed to have intended".

9. The above passage was approved by the Court of Appeal in the case of Boundary Commission (1983) 2 WLC 458. In the present case, the Legislature has given a broad guideline to the State Government that it can invoke urgency provision in case of acquisition of land for the setting-up of an educational Institution. It has also given it the authority to form an opinion regarding the existence of an urgency. The State Government in the exercise of its power under the Statute has formed an opinion that the land was urgently needed. It

cannot be said to have acted unreasonably or ultra vires.

10. Learned counsel for the petitioners have contended that the matter regarding the establishment of an Industrial Training Institute, has been pending consideration with the Government since the year 1991. Since the Government had taken almost four years, it cannot be said that a delay of 30 days involved in allowing the landowners to file objections would have seriously affected the public interest. This allegation as made by the petitioners, has been specifically controverted in the written statement filed on behalf of the respondents. It has been pointed out that the decision to establish the Institution was taken by the Government on September 21, 1993. After the minutes were drawn-up, the Deputy Commissioner was asked to call the meeting of the Site Selection Committee on October 27, 1993. Soon thereafter, the Committee had surveyed the land and selected the site on February 11, 1994. The other formalities regarding issue of No Objection Certificate etc. were complied with and thereafter the notification u/s 4 was issued on March 12, 1994. Taking all these factors into consideration, it cannot be said that the State Government had acted in such a lackadaisical manner that the proceedings for acquisition or the action of the State Government in invoking the urgency clause should be vitiated. Time was spent in consideration of the matter at different levels. Even, the execution of urgent projects is invariably delayed on account of interdepartmental communications. In the present case, atleast three Departments viz. Education, Industrial Training/Technical Education and the Finance Departments were involved. Sometimes, even the inter-departmental delays make the problem more acute and increase the "urgency of the necessity for acquisition." This is precisely what appears to have happened in the present case. In the circumstances of this case, it cannot be said that the time spent in the present case is "sufficient to nullify the urgency which existed at the time of the issue of the notification....".

11. Learned counsel for the petitioners also contended that the land selected by the Government is not suitable for setting-up an educational Institution. They pointed out that a Samadhi and a Gurdwara existed on the land. The respondents have pointed out that the Nishan Sahib was installed and the Samadhi was constructed after the publication of the notification u/s 6. In this situation, the plea raised on behalf of the respondents cannot be accepted. The petitioners cannot be permitted to take advantage of their own wrong.

12. Learned counsel for the petitioners have referred to certain decisions in support of their submission. Particular reference was made to a decision of their Lordships of the Supreme Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, . In this case, land was sought to be acquired for establishing a grain market. The acquisition proceedings were quashed by this Court as these were vitiated by malafides. The Government again sought to acquire the land after some years under urgency powers. It was found that the real intention was "to take away land of particular persons to vent the hostility of a local politician and

ex-Minister". The acquisition was held to be malafide. The action in invoking the provisions of Section 17 was found unjustified. It was categorically held that the statutory power to acquire land had been misused to satisfy the personal ends of an individual who had considerable political influence. Such is not the situation in the present case. Another decision referred to (*Mangat Singh and Ors. v. State of Punjab*, 1992 P.L.J. 129) is also clearly distinguishable on facts. In this case, it was alleged that the site had been selected on account of extraneous considerations. It was found that the notifications under Sections 4 and 6 had been issued on the same date viz. May 7, 1991. It was further found that the site had been selected in May 1990 but the notification for acquisition of land was issued a year later. In this situation, it was observed that if the State had taken a full year to finalise the decision to set up the Sugar Mill in Patran, it could have waited for a period of 30 days more which is required to be given to the owners to raise objections u/s 5-A of the Act. It was also found that the respondents had taken possession of the land while compensation had yet to be determined. What was paid to the landowner, was only the compensation for the crops standing on the land which were damaged. In view of these findings, the writ petition was allowed. No useful purpose would be served by multiplying decisions on the point.

13. It deserves mention that individual interest must run subservient to the general good. The private interest of individuals can be restricted so as to promote public good. In the present case, the State Government having decided to establish an educational Institution and having even proceeded to make admissions to the various courses, it would not be fair to allow the young students to suffer on account of the technical pleas urged by the counsel for the petitioners. Taking the totality of circumstances into consideration, it does not appear to be in the interest of justice to interfere with the acquisition proceedings in the exercise of discretionary jurisdiction under Article 226 of the Constitution.

14. Accordingly, we find no merit in these petitions, which are dismissed in limine. As a result, the stay orders dated March 23, 1994 and November 14, 1994, also stand vacated. Civil Miscellaneous applications Nos. 2328 and 2489 of 1955 are, thus, rendered infructuous and are disposed of as such.