
(2005) 04 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1310 of 1994 in Civil Writ Petition No. 2707 of 1984

State of Punjab and Others

APPELLANT

Vs

Jagjit Singh and Others

RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 34, 4, 6, 6(1)

Citation : (2005) 141 PLR 58 : (2005) 2 RCR(Civil) 842

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : M.S. Joshi, Asstt. Advocate General, for the Appellant;

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The present appeal under Clause X of the Letters Patent is directed against the judgment dated 4.3.1994 passed by the learned Single Judge whereby the writ petition filed by the respondents challenging the acquisition of their land was allowed.

2. The brief facts out of which present appeal arises is that land measuring 693 Kanals 7 Marias situated in village Jamalpur Awana, originally entered in the name Gram Panchayat, was allotted to Yusaf and Ali sons of Darda as evacuee land vide letter of allotment dated 18.12.1969. Another area measuring 239 Kanals 10 Marias situated in village Kuliwal was also allotted to aforesaid Yusuf and Ali. Thus, they were owners of land measuring 932 Kanals 17 Marias. Said Yusaf and Ali sold (i) land measuring 94 Kanals 11 Marias to petitioner No. 2 vide registered sale-deed dated 5.11.1971; (ii) land measuring 141 Kanals 4 Marias to Atamdev Singh, now represented by petitioner Nos. 3 to 6, vide registered sale-deed dated 5.11.1971; and (iii) leased 157/933 share to petitioner No. 1 for a period of 20 years vide registered lease-deed dated 28.4.1971. The State Government published notification dated 25.1.1978 in the Extraordinary Gazette dated 3.2.1978 u/s 4 of the Land Acquisition Act, 1894 (hereinafter to be

referred as "the Act") intending to acquire 425 Kanals 17 Marias including land measuring 116 Kanals 15 Marias owned by the petitioners, as well as notification u/s 6 of the Act in Extraordinary Gazette dated 3.2.1978 for the construction of New District Jail, Ludhiana.

3. The said acquisition of land was challenged by the petitioner, inter alia, on the ground that vide letter No. 1/55/78-LR(i) 26008 dated 18.12.1979, State Government issued directions to all the Deputy Commissioners that if possession of the land is not taken within one year after the issuance of notification u/s 6 of the Act, the same would be deemed to have lapsed. Since the possession of the land was not taken within one year, therefore, the acquisition stands lapsed and is ineffective and void. Annexure P-7 as appended with the writ petition reads as under:-

"Copy of Memo No. 1/55/78-LR(i)26008 dated 18.12.1979 from Dr. Brajendra Singh, IAS, Joint Secretary to Govt. Punjab. Revenue Department addressed to all the Deputy Commissioners in the State etc. etc.

Subject: Reduction of time limit provided u/s 6 of the Land Acquisition Act, 1894 and increase of interest provided in Section 34 ibid.

The Governor of Punjab is pleased to reduce the limit of 3 years laid down in proviso u/s 6(1) of the Land Acquisition Act, 1894, regarding the issue of notification u/s 6 ibid to one year. If the possession of the land is not taken within one year after the issuance of notification u/s 6, the same would be deemed to have lapsed.

You are requested to ensure that the lands which have been proposed to be acquired u/s 4 of the Land Acquisition Act, 1894, are taken possession of within one year invariably after the issue of the notification u/s 6.

The Governor of Punjab is further pleased to increase the rate of interest u/s 34 of the Land Acquisition Act, 1894, from 10% payable from the date of taking over possession of the land until the compensation is paid.

These instructions will come into force with immediate effect.

The receipt of this communication" may please be acknowledged.

Sd/- Joint Secretary to Govt. Punjab Revenue Department."

The said circular is dated 28.12.1979 in the orders passed by the Hon"ble Supreme Court whereas it is dated 18.12.1979 as appended with the writ petition. For the facility of reference, it would be referred to as "1979 Instructions".

4. In the written statement filed by the Land Acquisition Collector, Ludhiana, the possession of the petitioners over the land, subject matter of acquisition, was denied. It was alleged that the land is under the possession of Jail Department. It was also pointed out that 1979 Instructions have been withdrawn vide letter

1/55/78-LR(i)/4177 dated 3.3.1980 and, therefore, the plea put forward by the petitioners has become infructuous. In the separate written statement filed on behalf of Inspector General of prisons, it was pointed out that compensation amounting to Rs. 5,25,907.53 was deposited with the Land Acquisition Collector vide cheque dated 22.8.1980 but the writ petition has been filed in 1984 which is liable to be dismissed on the ground of laches. Still further, land was claimed to be in possession of the Prisons Department w.e.f. 20.3.1978 vide report No. 224 Rojnamcha Patwari for the year 1977-78.

5. The learned Single Judge vide judgment dated 4.3.1994 found that the State is not proved to have taken possession within one year of the issuance of notification u/s 6 of the Act, therefore, in view of the 1979 Instructions, the acquisition proceedings initiated by the Authorities under Sections 4 and 6 of the Act stood withdrawn or abandoned. Such finding of possession was returned on the basis of award dated 28.12.1979 wherein interest was not awarded to the land-owners as the acquiring department has not taken possession of the land. In view of said recital in the award, the entry made in the report Rojnamcha was interpreted to mean that only symbolic possession was delivered. The Court also relied upon decision of this Court reported as Parkash Chand v. State of Punjab and Anr., 1983 Current Law Journal 418 and Iqbal Singh and Ors. v. The State of Punjab and Ors. (1988) 93 PLR 575, wherein it was held that with the issuance of instructions referred to above, the acquisition proceedings stood withdrawn or abandoned and that the withdrawal of earlier instructions vide communication dated 3.3.1980 is only prospective in nature.

6. Learned counsel for the appellants has vehemently argued that in view of the orders of Hon'ble Supreme Court in Civil Appeal Nos. 2218-20 and 2222-30 of 1984 titled The State of Punjab and Ors. v. Ranjit Singh and Ors., decided on 5.5.1987; Civil Appeal arising out of SLP (C) No. 17116 of 1983 titled The State of Punjab v. Prof Kartar Singh, decided on 23.8.1990 and Civil Appeal No. 4904-4905 of 1991 titled The State of Punjab and Anr. v. Gurtej Singh and Ors., decided on 21.11.2001, the view taken by the learned Single Judge that the acquisition stands withdrawn or abandoned is not sustainable as such executive instructions could not abridge the period prescribed in the proviso to Section 6 of the Act. By executive instructions, a statutory provision cannot be altered. It was held to the following effect in Ranjit Singh's case (supra):-

"The executive instructions contained in the letter of 28th December, 1979, could not abridge the period prescribed in the proviso as by executive instruction a statutory provision cannot be altered. The instruction, if possession is not taken within one year from the date of issue of the notification u/s 6, the declaration would lapse is also contrary to the provisions contained in the Land Acquisition Act as it then stood.

It is not disputed that these acquisition notifications u/s 4 are of September, 1976 and, therefore, the proviso in Section 6 of the Act applies. We accept the submission of the learned Advocate for the appellants that the executive

instruction was, therefore, not operative and acquisition proceedings validly initiated and pending could not be nullified in the manner the December, 1979 order directed. Similarly, non-taking a possession within one year from the date of the declaration u/s 6 of the Act could not bring about termination of the acquisition proceedings".

Similarly, the appeals filed by the State of Punjab were allowed in Gurtej Singh's case (supra) with the following order-

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"The appeals are directed against the judgment of the Punjab & Haryana High Court. By the impugned judgment, the High Court came to the conclusion that the land acquisition proceeding itself must be held to have been dropped in view of the administrative instruction that was issued on 28.12.1979. The impact of the aforesaid instruction dated 28.12.1979 was the subject matter of consideration before this Court in C.A. Nos. 2218-2220 and batch of 1984 (The State of Punjab and Ors. v. Ranjit Singh and Ors.) which stood disposed of by judgment dated 5th May, 1987. A Bench of this Court came to the categorical conclusion that the acquisition proceedings would not lapse because of the executive instructions contained in the letter dated 28th December, 1979, as the said letter could not abridge the period prescribed in the proviso. The Bench also came to the conclusion that not taking of possession is also not material. This decision has been followed in yet another case by a three-Judge Bench of this Court in Civil Appeal arising out of SLP (C) No. 17116/83 (The State of Punjab v. Prof. Kartar Singh) disposed of on 23rd August, 1990. It is true that in another batch of appeals filed at the instance of Improvement Trust, Barnala, a two-Judge Bench of his Court did not interfere with the order of the High Court and the appeals stood disposed of on 19.9.1991.

It is unfortunate that the main judgment of this Court in Ranjit Singh's (supra) or the subsequent 3-Judge Bench decision of this Court dated 23.8.1990 was not brought to the notice of this Court when the matter was disposed of on 19.9.1991. We have no hesitation to hold that the aforesaid decision of this Court dated 19.9.1991 on which the counsel for the respondent placed reliance, does not lay down the correct law in view of the three-Judge decision already referred to as well as the decision of this Court in Ranjit Singh's case. In this view of the matter, we have no other alternative than to allow these appeals and set aside the impugned judgment of the High Court."

7. As per facts on record, the notifications under Sections 4 and 6 of the Act were published in the extraordinary gazetted of the State Government on 3.2.1978. After the said publication, the award was announced on 28.12.1979 and the compensation in terms of the award was deposited with the Land Acquisition Collector vide cheque dated 22.8.1980. The dispute is regarding taking over of possession by the Section on 20.3.1978. Even if the possession has not been taken on the said date, the said fact is in consequential in view of

the judgment of the Hon''ble Supreme Court referred to above wherein it has been held that 1979 Instructions are contrary to the provisions contained in the Act and will not amount to termination of acquisition proceedings even if the possession is not taken within one year.

Thus, the judgment of the learned Single Judge is contrary to the law enunciated by the Hon''ble Supreme Court and, therefore, the present appeal is allowed and the judgment dated 4.3.1994 is set aside. Consequently, the writ petition is dismissed with no order as to costs.