

(1996) 07 P&H CK 0138
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4514 of 1996

Tara Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17(1), 17(2), 5A

Citation : (1996) 113 PLR 766

Hon'ble Judges : V.K. Jhanji, J;A.S. Nehra, J

Bench : Division Bench

Advocate : C.B. Goel and R.C. Chauhan, for the Appellant; M.L. Sarin, A.G. and S.S. Dhaliwal, DAG, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—In this petition under Article 226 of the Constitution of India filed by some of the residents of village Rarra, Sub Tehsil Tanda, District Hoshiarpur, challenge is to the action of the Government invoking the urgency provisions of Section 17(1) & (2) read with Section 17(4) of the Land Acquisition Act, 1894 (in short the Act) and of dispensings with the enquiry u/s 5-A of the Act while issuing notification u/s 4 of the Act.

2. It has been contended by the learned counsel for the petitioners that the notification u/s 4 of the Act deserves to be quashed on the ground that in the same, it has not been stated that in the opinion of the Government there was any urgency to take recourse to the provisions of Section 17 of the Act. In this regard, he has placed reliance on the judgment of the Apex Court in Dora Phauli Vs. State of Punjab and Others, . Against this, Mr. M.L. Sarin, learned Advocate General, Punjab, has contended that the urgency provisions were invoked for the purpose of construction of Tanda side approach road to high-level bridge over the River Beas near Hargobindpur, District Hoshiarpur. It has been pointed out that the provisions of Section 5-A of the Act have been dispensed

with so as to meet the time bound construction of the road as the main bridge is likely to be completed by 31.7.1996. The learned Advocate General has contended that the question whether an urgency exists or not is a matter solely for the determination of the Government and it is not a matter for judicial review. In this regard, he has placed reliance upon a recent judgment of the Apex Court in Union of India and Ors. v. Ghanshyam Dass Kedia and Ors. 1996 (1) RLR 274, wherein the Apex Court relying upon a judgment of the constitutional Bench in Onkarnath Singh and Others Vs. The State of U.P., has held that for exercising power of urgency u/s 17 of the Act it is the subjective satisfaction of the Government based on material on record. In order to show that the satisfaction was arrived at on consideration of the relevant material, he has placed before us the record.

3. In order to appreciate the contention of learned counsel it is necessary to note down few facts :

4. On River Beas near Sri Hargobindpur one boat bridge had been existing facilitate the people of the area to cross the river. A strategic road from Tanda to Sri Harbogindpur is existing which leads to the said boat "bridge. At this stage, high-level bridge is being constructed to make the road all weather motorable. According to the State, four tentative proposals were marked to consider the feasible road to the new bridge and as per approval of P.W.D. (B&R) Branch, Patiala, the proposal for Tanda side approach road was approved after detailed examination and accordingly, the process of land acquisition was completed by the department. In the written statement, it has come that the alignment approved by the department is, technically the most feasible one and also as per geometries of the road. Further according to the State, the alignment as approved is the most economical one. It was for the construction of Approach road to high-level bridge over River Beas the Government decided to invoke the urgency provisions, dispensing with the objections u/s 5-A of the Act. In this regard, the State Government issued a notification u/s 4 of the Act, published in Punjab Government Gazette on 16.2.1996, for acquiring the land measuring 24.59 acres. Notification is sued u/s 6 of the Act is dated 20.2.1996 and has been published in the Punjab Government Gazette on 1.3.1996.

5. The record produced before us has shown that the Superintending Engineer, Central Works Circle, PWD B&R, Jalandhar vide letter dated 16.5.1995 addressed to Chief Engineer, Punjab, PWD B&R Branch, Patiala, requested that sanction of the Government for acquiring 24.59 acres of land under emergency provisions be obtained as the land was required for the construction of approach road. He in this communication also stated that the normal course of land acquisition being time consuming will result in delay. In response to this, the Chief Engineer vide letter dated 29.6.1995 asked the Superintending Engineer to send the papers for submitting the same to the Government for necessary action. The Superintending Engineer submitted the papers with the request to get the sanction at the earliest as the work of constructing high-level bridge over River Beas was

of national importance and the main bridge over River Beas of Sri Hargobindpur was nearing completion and the work of Tanda side approach road was to be taken in hand on priority basis. He again requested that the necessary sanction of the Government to acquire the land under the urgency provisions be conveyed to his office. The Chief Engineer vide his letter dated 20.11.1995 submitted a proposal to the Secretary to Government, Punjab, PWD B&R Branch, Chandigarh. The Government after taking into consideration the material on record took a decision on 29.11.1995 for according approval to acquire the land under the urgency provisions of the Act. In accordance with this decision, the Government in exercise of the powers u/s 17(1), (2) and (4) of the Act dispensed with the enquiry u/s 5-A of the Act and issued a notification u/s 4 for acquiring the land.

6. The Punjab Legislature has amended the Central Act by Land Acquisition (Punjab Amendment) Acts No. 2 of 1954 and 17 & 18 of 1956 whereby an explanation has been added to sub-section (1) of Section 17 of the Act. Sub-section (2) has been added in which clause (b) of sub-section provides :

"(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 inhabitants of such village, or any godown for any society registered under Co-operative Societies Act, 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."

The Government thus, by virtue of the State Amendment is empowered to exercise the "urgency clause to dispense with the enquiry u/s 5-A of the Act for the purpose of construction of "any public road". Admittedly, in this case, the urgency provisions has been invoked for construction of public road. In Chameli Singh and others etc. Vs. State of U.P. and another, , it has been held by the Apex Court that the opinion of urgency formed by the appropriate Government to take immediate possession is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by mala fides or colourable exercise of power. In Ghanshyam Dass Kedia's case (supra) it has again been reiterated by the Apex Court that the High Court is not a court of appeal over subjective satisfaction and the opinion of the Government is entitled to great weight. The Apex Court has also held that it is not necessary that the notification should specifically recite the nature of the urgency. It is enough if the record discloses the consideration by the Government on urgency for taking action Under Sections 17(1) and (2). It is thus, settled that the opinion of the State Government cannot be challenged in a Court of law if the State Government has applied its mind to a question of urgency or the action of the State Government in invoking the urgency provisions is not mala-fide. In this case, the petitioners have neither alleged mala-fide against the Government in

invoking the urgency provisions nor they have been able to show that the question of urgency has been decided on grounds which are non-existent or irrelevant or on the material on which it would be an impossible conclusion to reach. The judgment in Dora Phalauli's case (supra) cited by counsel for the petitioner has no application to the facts of the present case. In that case, the notification was quashed as in it, neither it had been "mentioned that the land was "waste or arable" nor had it been stated that in the opinion of the Government there was any urgency to take recourse to the provisions of Section 17 of the Act. This judgment was delivered by the Apex Court before the Act was amended by Act No. 68 of 1984. After amendment, the urgency provisions are not confined to "waste and arable land" but are applicable to any land" needed for public purpose. In the present case, not only in the notification u/s 4 it has been stated that the land is needed by the Government for a public purpose, namely, for construction of Tanda side approach road to high level bridge over River Beas, but the record has also shown that the Government had considered all aspects of the matter before invoking the" urgency provisions. The satisfaction of the Government being subjective based on material cannot be interfered with by this Court in exercise of powers under Article 226 of the Constitution of India.

7. It has next been contended by counsel for the petitioners that the proposal to acquire the land was mooted somewhere in 1994, whereas the land has been sought to be acquired in January, 1996 by invoking the urgency provisions. He thus contended that in these circumstances, the Government is not justified in dispensing with the enquiry u/s 5-A of the Act. This contention too is without any merit. In the context of pre-notification and post-notification delay, the Apex Court in Chameli Singh's case (supra) has observed :

"Very often the officials, due to apathy in implementation of the policy and programmes of the Government, themselves adopt dilatory tactics to create cause for the owner of the land to challenge the validity or legality of the exercise of the power to defeat the urgency existing on the date of taking decision u/s 17(4) to dispense with Section 5-A inquiry.

In the present case there was pre-notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked the urgency clause and dispensed with inquiry u/s 5-A. As held by the Supreme Court, the delay by itself accelerates the urgency. Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power mala fide."

The project of constructing high-level bridge over River Beas was taken in hand

by the Public Works Department (PWD) but due to paucity of funds the work could not be commenced at a full pace. During the year 1995-96, sufficient funds were made available for this project and for its completion the State Government provided Rs. Five crores from the Rural Development Board. It was thereafter that for the construction of approach road, a proposal was made by the Superintending Engineer for acquiring 24.59 acres of land under the urgency provisions. Although some time was spent in considering the matter at different levels but the delay is not such as to justify the quashing of the notification.

8. Learned counsel for the petitioners has then made a reference to site plan, Annexure R-1, and contended that out of the four proposals marked on the site plan, proposal No. 1 is best-suited and the department be directed to accept proposal No. 1 instead of proposal No. 4. this contention too cannot be accepted as it is for the Government to take a decision as to which place is convenient and best-suited for approach road. It has come in the written statement that the proposal was approved after considering a number of factors, i.e. economic, length, feasibility and geometries of the road. Moreover, the amount of compensation to be paid to the owners on account of acquisition has already been deposited with the Land Acquisition Officer. The tenders for the work have been approved and the work has been awarded to a contractor at a cost of Rs. 2.04 crores. Acceptance of the prayer of counsel for the petitioners would result in further delay, besides defeating the very purpose for which the urgency provisions has been invoked by the Government.

9. For the reasons recorded above, this writ petition fails and is accordingly dismissed. There shall be no order as to costs.