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(1963) 12 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 308 of 1962

The State of Punjab and Another — APPELLANT

Vs

Nauhar Singh and Others — RESPONDENT

Date of Decision : 16-12-1963

Acts Referred:
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17(4), 23, 4, 4(1), 4(2)

Citation : (1964) 2 ILR (P&H) 38

Hon'ble Judges : D. Falshaw, C.J;Harbans Singh, J

Bench : Division Bench

Advocate : H.S. Doabia, A.A.G, for the Appellant; J.S. Wasu and P.K. Wasu, for the Respondent

Final Decision : Dismissed

Judgement

D. Falshaw, C.J.—This is an appeal filed under Clause 10 of the Letters Patent by the State and the Collector and Estate Officer, Capital Project, Chandigarh, against the order of Grover, J., allowing a petition filed under Article 226 of the Constitution by 18 Petitioners owning land in the village of Nizampur Kumbra and quashing acquisition proceedings taken in pursuance of a notification u/s 6 of the Land Acquisition Act dated 9th of August, 1960, for the acquisition of 30 acres of land in the Petitioner''s village for public purpose described as the construction of the Sub-Jail at Chandigarh Capital.

2. The preliminary notification u/s 4 of the Act was dated the 23rd of March, 1948. This notification was to the effect that the land covered by the notification was likely to be required to be taken by Government at the public expense for a public purpose, namely, for the capital for East Punjab in the Ambala District, and it was notified that land in the locality described therein was likely to be required for the above purpose. It seems quite clear, however, that in March, 1948, all that had been decided was that the new capital was to be located somewhere in the Kharar Tehsil, of the district of Ambala and the land covered by the

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notification comprised all revenue estates included in the tehsil of Kharar measuring 371 square miles. It was further provided in the notification that under the powers conferred by Section 17(4) of the Act the Governor directed that the provisions of Section 5-A, should not apply in respect of this acquisition which meant that objections from persons interested were not to be entertained.

3. It seems, however, that in spite of the non-operation of Section 5-A what might be described as an agitation arose among the landowners of the area with the result that in 1950 certain decisions of the Government were issued in the form of a poster or handbill in the name of the Officer on Special Duty, Ambala, with the intention of allaying the public discontent. It contained such things as indications on the lines on which compensation would be assessed for the persons whose lands were actually acquired, an undertaking that any persons actually ousted would be given other land in Kharar Tehsil of similar grade in compensation, for their acquired lands and in particular in paragraph 7 it was stated that Government had already declared that they did not intend to go beyond the 17 villages for the Capital site. By that time the actual site had been determined and the land comprised in those 17 villages was acquired under a notification duly issued u/s 6 of the Act about that time. The impugned notification came about 10 years later for the acquisition of 30 acres of land in the village of the Petitioners for the purpose of constructing the Chandigarh Sub-Jail, and the basic objection of the Petitioners to this notification u/s 6 in pursuance of a notification u/s 4 issued about 12 years earlier is that that earlier notification had exhausted itself when the lard comprised in the 17 villages actually required for the Capital site was acquired under the first notification u/s 6, and that for any further acquisitions, even in connection with the capital project, a fresh notification u/s 4 is necessary.

4. In somewhat Similar circumstances a Division Bench of the Madhya Pradesh High Court in the writ petition Vishnu Prasad Sharma and Others Vs. State of Madhya Pradesh and Others, had accepted the contention of the Petitioners and quashed the acquisition proceedings by their order dated the 21st of February, 1962, and the learned Single Judge found himself in agreement with the decision.

5. The first objection raised before the learend Single Judge, and again before us, was that a single petition by 18 different landowners was not competent, reliance being placed on the decision of this Court in The Revenue Patwaris Union Punjab v. The State of Punjab (2), in which it was held by a Division Bench, of which the learned Single Judge in this case was a member, that an omnibus petition under Article 226 of the Constitution filed on behalf of all the Patwaris of the State by the Revenue Patwaris Union, Punjab, challenging the authority and jurisdiction of the District Boards in the entire State to impose profession tax could not be entertained. I fully agree with the view of the learned Single Judge that that case had no application whatever in the present case, and I am of the opinion that where a notification is issued for the acquisition of land in a particular village all or any of the persons affected by the notification can jointly

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file a petition challenging the validity of the notification. I find it somewhat surprising that this point was pressed at all, since even if the petition could only be entertained as being on behalf of any one of the Petitioners the effect in the event of its success would be the quashing of the whole acquisition proceedings once the notification was held to be invalid.

6. Before dealing with the main point I set out the relevant provisions of the Act--

4. Publication of preliminary notification and powers of officers thereupon:--

(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen--

to enter upon an survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;

.....

6. Declaration that land is required for a public purposes:--

(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 a 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:

.....

(2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for

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which it is needed, its approximate area, and where a plan shall have been made of the land the place where such plan may be inspected.

23. Matters to be considered in determining compensation:--

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration--

first, the market-value of the land at the date of the publication of the notification u/s 4, Sub-section (1);

.....

7. This latter provision is the underlying cause of grievance of the Petitioners whose land, situated as it is on the outskirts of what is now a flourishing city, is to be acquired, if the impugned notification is upheld, the are than twelve years later at its market value in 1948 when the preliminary notification was issued.

8. There is no doubt, as has been contended by the learned Additional Advocate-General, the Act itself does not contain any provision fixing any time-limit within which a notification u/s 6 of the Act must follow a notification u/s 4, nor is there any provision prohibiting a series of notifications u/s 6 at various intervals in pursuance of the same preliminary notification u/s 4, but obviously a reasonable interpretation is to be placed on ex-proprietary laws and where possible they ought not to be construed so as to inflict hardship on the persons whose property is being taken away.

9. Before I deal with the judgment of the Madhya Pradesh High Court I may mention certain facts raised in connection with the present case. There is first of all the public pronouncement embodied in the poster of handbill issued by the Government in 1950 which I have already mentioned. In the written statement of the Respondents it is not denied that such a pronouncement was made, but it is pleaded that any agreement if entered into by any officer against the statutory law is not binding. It is also pointed out in the petition that when certain land situated in a number of villages in the Kharar Tehsil and so covered by the notification u/s 4 of the Act was required for diverting streams called Patiala Ki Rao and Janta Devi Ki Rao to the river Sutlej, a notification dated the 9th of June, 1961, was issued u/s 4. Again, when land situated in the villages of Kharar and Khanpur was required for constructing an approach road to Garden Colony, Khanpur, a fresh notification dated the 5th of October, 1961, u/s 4 was issued. In 1962, a fresh notification dated the 23rd of January, 1962, u/s 4 was issued when some land was required on behalf of the Central Government for setting up a Terminal Ballistic Research Laboratory in the areas of Naraingarh and Kharar.

11. These three instances are relied on by the Petitioners as showing that in the case of acquisition of other lands covered by the preliminary notification, the Government itself recognised the necessity for issuing a fresh notification u/s 4. It is, however, pointed out on behalf of the authorities that none of these three acquisitions had anything whatever to do with the Capital Project, and the

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respective notifications u/s 4 were issued in the name of the Irrigation & Power Department, the Public Works Department and the Home Department. I am, therefore, of the opinion that these instances do not help the case of the Petitioners'' in any way.

12. It is, however, more pertinent that a fresh notification u/s 4 was issued on the 16th of March, 1961, when some land was required by the Punjab Government on behalf of the Central Government for the Air Force Station at Chandigarh. There can be no doubt that the Air-port at Chandigarh, which was a Civil Air Port in the first instance, was included in the Capital Scheme and although the land in this instance had to be acquired under orders of the Central Government because it was for use for one of the Armed Forces the Air Force Station is adjacent to the original Air Port. What is most significant of all is that the notification in the Gazette was issued in the name of the Capital Project Administration, and moreover this took place long before the decision of the learned Single Judge in this case.

13. Reliance was also placed oh behalf of the Petitioners on a statement made by the Deputy Advocate-General in connection with a writ petition filed by Attar Singh and others, C.W. No. 1257 of 1963. The Petitioners in that case were residents of a village called Hallo Majra, and they filed a petition in June, 1963, challenging the acquisition of land in their village under a notification issued u/s 6 based on the original notification u/s 4. An interim order was passed staying dispossession of the Petitioners by the learned Vacation Judge in July, but when the petition came up for admission on the 26th of July, 1963, it was pointed out that in respect of this acquisition a fresh notification u/s 4 dated the 15th of February, 1963, had been issued, and so the petition) was dismissed. It seems to me that while the present Petitioners cannot derive any additional strength for their legal argument from this, since obviously the notification was issued in consequence of the decision now under appeal, they may well claim on the ground of discrimination that if the landowners of village Hallo Majra whose lands are being acquired in connection with the Capital Project are to be compensated on the basis of the market value of their land in February, 1963, similar treatment ought also to be given to the landowners of Nizampur Kumbra who are the Petitioners in this case. In any case the principle which they are asserting was clearly recognised in 1961, when land was acquired for the Air Force Station.

14. To turn to the question of law involved, the general object of the relevant provisions of the land Acquisition Act is to prevent persons whose land is being acquired from profiting from the increase in the value of their land, brought about by the implementation of the public purpose for which the land is required. The authority concerned conceives some scheme and fixes the general area in which the scheme is to be carried out, and then the preliminary notification is issued u/s 4 under the terms of which all kinds of surveying can be, carried out so as to enable the authority to determine exactly what land out of the area referred to in the preliminary notification is actually to be selected and acquired.

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When this has been determined, the notification u/s 6 follows, and there is nothing unreasonable in restricting the compensation to be paid to the expropriated owners to the market value of their land on the date when the proposed scheme became known to the public. It may not be illegal, but it is certainly harsh if a long period, during which there is a general rise in value of property, is allowed to lapse between the preliminary notification and the notification, u/s 6 such as happened in Delhi in connection with the Improvement Trust''s, Ajmere Gate, glum Clearance Scheme, for which the preliminary notification was issued in 1939 and which was not carried out until after the War had ended, the second notification only being issued in 1948. Such a case obviously involved real hardship in that not only is the owner of the land compelled to accept compensation based on the value of his property at the time of the preliminary notification, but also the land, virtually remains frozen and the owner carries out any improvements or erects any buildings at his own risk of receiving no compensation for them.

14. However, the present case is not simply one of there being a long delay between the notifications under Sections 4 and 6, but it is complicated by the fact that within a reasonable time of the notification u/s 4, a notification was issued u/s 6 under which the land comprised in the 17 villages, the acquisition of which was considered necessary for the construction of the new capital, was acquired and the public discontent and fear occasioned by the threat, as it might be called, to acquire the whole of the land in the Kharar Tehsil were allayed by a pronouncement, which undoubtedly emanated from the Capital Project Department, to the effect, that the acquisitions were to be confined to the 17 villages so selected. Then after a lapse of about 10 years came the impugned notification for acquiring a further area of land for the construction of a Sub-Jail for the Capital.

15. I now advert to the decision of the Madhya Pradesh High Court which is reported as Vishnu Prasad Sharma and Others Vs. State of Madhya Pradesh and Others, . The facts in that case were that a notification u/s 4 was issued by the Government on the 16th of May, 1949, declaring that land in a number of villages including one called Chawani was likely to be needed for a public purpose, namely the erection of an iron and steel plant. The finalization of the scheme took a long time in that case and land in some of the villages concerned was acquired under a notification u/s 6 in the year 1955 and some land was acquired in Chawani under a notification u/s 6 in 1956 when it was understood that no further land was required in that village. However, on the 2nd of August, 1960, a fresh notification u/s 6 was issued for the acquisition of further land in Chawani and two other villages. This notification was challenged by some of the proprietors concerned by a petition under Article 226 of the Constitution. The learned Judges have held that on a reading of the provisions of Sections 4 and 6 of the Act the result is that once an area in the locality is fixed to be acquired and notified u/s 6 of the Act all the efficacy of the notification u/s 4 in pursuance of which the area was fixed comes to an end and it becomes a dead letter. Any

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proposal for further acquisition in the same locality would have to be followed up by a fresh notification u/s 4(1) of the Act and where this is not done a notification u/s 6 would be void and without jurisdiction as hot being preceded by a fresh notification u/s 4 of the Act. The learned Judges oberved--

Now the unfairness of this provision and irreparable injury to the landowner there from would be apparent when either there is a considerable lapse of period between the said two stages or as in the instant case when the acquisition is taken in hand piecemeal, after an interval of 11 years. The Petitioner-landowners are apparently being offered in 1960 market value of their lands prevailing in the year 1949. In our opinion, when a person could not be deprived of his property without being compensated for, it would be simply inconceivable that the Legislature had made no adequate provisions to safeguard that valuable right of the landowner. If, therefore, the provisions in the matter have to be treated as providing sufficient protection for the same, necessarily the provisions of the Act will have to be so interpreted and given effect to as to further that object rather than to defeat it. We should not be understood to suggest that the provisions in clause firstly of Section 23 of the Act are in any manner unfair or bade in law in its own terms. What we are trying to show is that ,its tendency to be likely to operate unfairly must have been in the view of the framers of the law, and hence the law has to be interpreted and given effect to in such a manner as to leave no scope or occasion for that provision to operate in any prejudicial manner, neither to the acquirer nor to the landowner who is being deprived of his property.

Now, therefore, if the aforesaid object is kept in view it will be clear that the first thing that the Government has to bear in mind is that there should not be any unreasonable time lag between its first notification u/s 4(1) of the Act and the period when it actually proceeds to acquire the land, and second by it should decide once for all what particular land is needed or is likely to be needed for the public purpose in view. A little well-thought out planning ahead would be quite adequate in the matter. As a matter of fact, in our opinion, the provisions of Sections 4 and 6 specially provide for such a planning. At any rate, they have to be so interpreted as providing for such a procedure, especially when they are not to be so interpreted as to allow the unfair result, already referred to, to ensue. There appears to be apparently no necessity of survey and demarcation, of the area found suitable as provided in Section 4(2). and no necessity to announce u/s 6 the extent of the area decided upon to be acquired. If the framers of the Act are to be understood to confer powers on the Government to acquire land at any time the State Government; may well issue today a notification u/s 4(1) of the Act stating therein that land in the whole of the State is needed or is likely to be needed for public purpose and then go on merrily acquiring lands anywhere and in any quantity thereafter till doomsday at the price prevailing on the date of notification. We do not think it will be fair and correct to ascribe such an intention to the framers of the law. We do not feel disposed to accept that in the absence of any legal provisions prohibiting piecemeal acquisition it has to be accepted as permissible. Expropriator law has to be interpreted and implemented very strictly

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within its own terms and in furtherance of its object. Just visualise the position of the Petitioners since the publication of the notification u/s 4(1) in. the year 1949. During all these 11 years they had but a qualified ownership or enjoyment of their property. They could not improve the land or build upon it; if they have a house they could not rebuild or repair it, however, urgent the necessity of doing so might have been, without the strong probability of getting no return for the money so Laid out if the Government were to have taken it ultimately. This suspense could never be intended by the framers of the law to be held over their heads for an indefinite, or for the matter of that, for an unreasonable period of time.

16. There is also another case, Corporation of Calcutta v. Omeda Khatun Bewa AIR 1956 Cal. 121, in which Chakravartti, C.J., and Lahiri J., writing separate judgment both expressed the opinion that piecemeal acquisition of land was not permissible under a notification u/s 6. In that case a notification had been issued under section. 6 of the Act on behalf of the Calcutta Corporation for the acquisition of certain land, but at the time they only acquired part of the land, and then several years later they wanted to acquire the land which had remained unequaled, and this was not allowed. The position in that case is not quite the same in that only one notification u/s 6 was in question, but the ratio decidendi was that when the notification had been made u/s 6 and the Corporation had only proceeded for acquiring part of the land, they must be deemed to have given up the idea of acquiring the rest in those proceedings. In the present case when the Government selected the 17 villages for the site of the capital and indeed announced that that was all they were intending to acquire, it seems to me that the original notification u/s 4 ceased to have any further force, as was held in similar circumstances by the learned Judges of the Madhya Pradesh High Court, with whose views I find myself in general agreement. The result is that I consider that the decision of the learned Single Judge is correct and that the appeal must be dismissed with costs. Counsel''s fee Rs. 100.

Harbans Singh, J.

17. I agree.

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