
(2004) 02 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17255 of 2001

Vikas Gupta and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Citation : (2004) 2 LJR 479 : (2004) 2 RCR(Civil) 481

Hon'ble Judges : V.K.Bali, J and Jasbir Singh, J

Advocate : Mr. M.L. Sarin, Sr. Advocate with Mr. Hemant Sarin, Advocate. Ms. Nirmaljit Kaur, Addl. A.G. Punjab., Advocates for appearing Parties

Judgement

V.K. Bali, J. (Oral)

1. Petitioners 1 and 3 purchased land measuring 11 marlas and 8 sq. yards in village Chohak, Tehsil & District Jalandhar, whereas petitioners 2 and 3 also purchased land measuring 11 marlas and 8 sq. yards in the same very village in the year 1998. Together, thus, they own an area measuring 22 marls and 16 sq. yards. It is their case that they had purchased the land with a view to set up an agro based business and had raised construction on the land and had also got electric connection sanctioned from the Punjab State Electricity Board. This land became subject matter of acquisition under the Land Acquisition Act, 1894 when notification under Section 4 was issued on 27.4.2000, land was sought to be acquired for a public purpose, namely, for establishment of wireless monitoring station. When objections raised by the petitioners under section 5A of the Land Acquisition Act, 1894 (for short the 'Act') in their endeavour not to acquire the land, failed and declaration under Section 6 was issued, they filed present petition under Article 226 of the Constitution of India challenging notifications issued under Sections 4 and 6 of the Act dated 27.4.2000 and 16.5.2001.

2. The two fold challenge to the notifications aforesaid pertains to incompetence of the officer issuing notification under Section 4 of the Act as also discrimination in the matter of acquisition. It is pleaded and so urged by learned counsel representing the petitioners that notification, Annexure P1, issued under Section

4 of the Act is liable to be quashed on the short ground that it has been issued by a person not authorised to do so. A perusal of the notification, Annexure P1, it is alleged would show that it has been issued by the Superintending Engineer, Central Works Circle, PWD (B&R), Jalandharrespondent No. 2 herein. It is the case of the petitioners that second respondent is only a Superintending Engineer and is not authorised to issue a notification under Section 4 of the Act as it is only the head of the Department, i.e., Secretary, who could have issued such a notification. It is further urged that even as per the Financial Commissioner's Standing Order No. 28 notifications under Sections 4 and 6 of the Act have to be forwarded to the Secretary to Government concerned for publication in the official Gazette and two newspapers. A perusal of the notification, Annexure P1, shows that this procedure has not been followed as it has been got published by the Superintending Engineer himself instead of the Secretary to the Government concerned. It is also the case of the petitioners that the State Government may not at all be aware about the initiation of the acquisition proceedings by the Superintending Engineer on the date when notification, Annexure P1, was published in the official Gazette.

3. While challenging the notifications on the plea of discrimination, it is pleaded and so urged by learned counsel that the respondents have illegally and arbitrarily released from acquisition land belonging to Dr K.B. Sharda. The land of Dr. K.D Sharda, which has been released from acquisition, is stated to be identically located as the land in dispute belonging to the petitioners which is being acquired. There is, thus, no justification on the part of the respondents to treat the petitioners differently from Dr. K.B. Sharda and not to release their land from acquisition.

4. There are other grounds also pleaded challenging the notification, but as mentioned above, what has been urged before us during the course of arguments is what has already been mentioned above.

5. In response to notice issued by this Court, respondents have filed reply. Initially, reply was filed on behalf of respondents 1 to 3 on 1.2.2002. It appears, during the course of pendency of the writ petition, respondents sought to amend the written statement by incorporating some more facts. Amended reply as such on behalf of respondents 1 to 3 was filed on 6.3.2002. The petitioners had filed reply to the unamended as also amended written statement. We shall, thus, give reference of only the amended written statement as also reply to the said written statement.

6. To the specific averments, on which two fold contention, as noted above, have been raised by learned counsel, it is pleaded in the written statement filed on behalf of respondents 1 to 3 that the site for acquisition was duly selected by the Selection Committee appointed by the Central Government, Ministry of Communication and notification under Section 4 of the Act was accordingly issued. It is then pleaded that the petitioners are not correct in pleading that the State Government was not aware of the acquisition proceedings. The fact is that

the said notification was issued after approval of the competent authority/Punjab Government. A copy of the letter No. 1/97/99LR1/5110 dated 19.7.1999 received from the Department of Revenue has been enclosed in support of the plea aforesaid. The Secretary to Government of Punjab, PWD (B&R), Chandigarh, in turn vide letter memo No. 7/42/99 3ES(3)/4477 dated 16.8.1999 forwarded the case to the Land Acquisition Officer, PWD (B&R), Punjab, Jalandhar, for publishing the Gazette notification (Annexure R3/3) and consequently the Land Acquisition Officer, Jalandhar, forwarded the same to the Superintending Engineer, Central Works Circle, Jalandhar (Annexure R3/4) for publishing the notification under Section 4 of the Act in the Punjab Govt. Gazette and also to publish the same in two leading local Newspapers, one in English and one in Punjabi. The Superintending Engineer, Central Works Circle, PWD (B&R), Jalandhar informed the Secretary to Government of Punjab, PWD B&R, Chandigarh that the notification under Section 4 of the Act had been published in the Punjab Govt. Gazette (Annexure R3/5). It is further pleaded that obviously, the notification was issued following the orders and with the approval of the Government of Punjab. The language employed in the notification also supports this contention. It is then pleaded that the purpose of notification under Section 4 is to carry on a preliminary investigation with a view to find out after necessary survey and the Hon'ble Supreme Court in *Barkya Thakur v. State of Bombay*, AIR 1960 SC 1208, had observed that it is not correct to say that any defect in the notification under Section 4 of the Act is fatal to the validity of the proceedings. Notification under Section 4 of the Act was issued on 27.4.2000 which was duly published in the Govt. Gazette on 19.5.2000 followed by publication in the newspapers and a proclamation in the locality. The petitioners raised objections under Section 5A of the Act which were duly considered and decided by the competent authority.

7. Insofar as discriminating the petitioners with the person, equally situate, namely, Dr. K.B. Sharda, is concerned, it is pleaded that the Government is at liberty to release any land even after the issuance of declaration under Section 6 of the Act. Out of total land measuring 26 kanals 5 marlas, which was originally proposed to be acquired, land measuring 3 kanals 6 marlas was left out by the acquiring department which was in consonance with the provisions of the Act. The site was selected by the Technical Officer of the Department for setting up of Wireless Monitoring Station.

8. In support of the pleadings, as referred to above, with regard to first contention, as urged by learned counsel representing the petitioners, as mentioned above, respondents have annexed with the written statement letter dated 19.7.1999, Annexure R3/2/1. It is a letter written by the Under Secretary, Revenue, with the subject "Notification No. 4 regarding acquisition of land for the establishment of Monitoring Station, Jalandhar, at CHOHAH (Jalandhar)". The body of the letter aforesaid reads as follows :

"Principal Secretary to Government of Punjab, Public Works Department (B&R)

may kindly refer to the subject cited.

2. Draft notification (4 copies) Land Acquisition Act, 1894, for acquisition of land measuring 3.25 acres at village Chohak (Jalandhar) to establish Wireless Monitoring Station is sent herewith for publication in the Punjab Government Gazette as per the provisions laid down in Financial Commissioner's Standing Order No. 28 Para 31(II)(b).

3. Its receipt may please be acknowledged".

The note underneath the letter aforesaid would show that a copy of the said was being forwarded to the Officer Incharge, Wireless Monitoring Station, Main Garha Road, Hardyal NagarI, Jalandhar with reference to his letter dated 10.6.1999 for information and necessary action.

9. Annexure R3/3 appended with the written statement is an English version of the letter addressed to the Land Acquisition Officer by the Additional Secretary with the subject "Notification regarding acquisition of land for the establishment of Monitoring Station in Jalandhar". The body of the letter aforesaid reads thus :

"Find enclosed herewith copy of letter No. 1/97/99LR. 1/5110 dated 19.7.1999 of Under Secretary, Revenue, Revenue Department, Punjab, along with four copies of Draft Notification in original and directed to take the necessary action, on time as per rules under intimation to Revenue Department, Punjab and this office accordingly".

A copy, it appears from the foot note of the letter aforesaid, was forwarded for necessary action, to the Chief Engineer, Punjab Works Department, B&R, Patiala and the Superintending Engineer, Central Works, Public Works Department (B&R), Jalandhar as also to the Under Secretary, Revenue, Revenue Department, Punjab, Chandigarh.

10. Annexure R3/4 is again an English version of letter endorsed on 1.3.2000 to the Superintending Engineer, Central Works Circle, PWD, Jalandhar by the Land Acquisition Collector, Punjab Public Works Department, Jalandhar, body whereof reads as follows :

"In reference to letter, copies of notification No. 4 duly countersigned are hereby sent to you for publication in the Punjab Govt. Gazette. Besides this, this notification may be published in two local newspapers, one in Punjabi and the other in English. Copies of Gazette notification and newspapers may be sent to this office at the earliest so that it may be publicised in the locality."

Annexure R3/5 appended with the written statement is a letter dated 11.7.2000 addressed to the Secretary, Government of Punjab, Public Works Department, Buildings and Roads Branch, Chandigarh, from the Superintending Engineer, Central Works Circle, PWD, Jalandhar, which reads thus :

"You are hereby informed that the above mentioned notification of land acquisition Act, 1894 u/s 4 has been published in the Punjab Govt. Gazette No.

714/R1 dated 27.4.2000".

Annexure R3/6 dated 27.4.2000 is, of course, notification under Section 4 of the Act and has indeed been signed by the Superintending Engineer, Central Works Circle, PWD B&R, Jalandhar.

11. From the facts, as fully detailed above, it appears to us that there was no violation of law or Standing Order No. 28 issued by the Financial Commissioner in the matter of publication of notification under Section 4 of the Act. It is not a case, as is sought to be projected in the writ petition, that the State Government may not at all be aware of the initiation of acquisition proceedings on the date when notification under Section 4 of the Act was published in the official Gazette. In fact, it is rather apparent from perusal of the documents, referred to above, that the draft notification under Section 4 of the Act (four copies) was sent for publication in the Punjab Govt. Gazette as per the provisions laid down in Standing Order No. 28 para 31(II)(b) (Annexure R3/2/1). The very beginning of the letter aforesaid mentions that "the Principal Secretary to Government of Punjab, Public Works Department (B&R) may kindly refer to the subject cited" and the aforesaid letter, it appears, was also sent to the Principal Secretary to the Government Punjab, Public Works Department (B&R), Chandigarh, as is clear from reading of Annexure R3/2/1 itself (para 44 of the paper book). Annexure R3/3 is once again written by the Additional Secretary to the Land Acquisition Officer giving reference of letter dated 19.7.1999, i.e. Annexure R3/2/1. The Land Acquisition Officer was asked to take necessary action as per the rules under intimation to the revenue department. The Land Acquisition Collector vide letter dated 1.3.2000, Annexure R3/4 had sent four copies of the notification duly countersigned for publication in the Punjab Govt. Gazette to the Superintending Engineer, Central Works Circle, PWD, Jalandhar. Annexure R3/5 is an intimation letter to the Secretary, Government of Punjab, Public Works Department, Chandigarh that he had complied with the orders. The procedure adopted, as fully detailed above, would clearly demonstrate that the Government applied its mind and the notification came to be issued under the directions of the Government and not that of the respondent No. 2, as is sought to be made out by the petitioners.

12. Before we may part with the contention of learned counsel, in all fairness to learned counsel, we would like to mention that he has relied upon two judgments of the Hon''ble Supreme Court in support of his contention that if there be defect in the notification under Section 4, same needs to be quashed. The first judgment, on which reliance has been placed is *Narinderjit Singh v. State of UP & Ors.*, AIR 1973 SC 552. No doubt, the head note of the judicial precedent would suggest that provisions of Section 4(1) of the Act are mandatory and noncompliance vitiates the entire acquisition proceedings but the violation in the case aforesaid, as the head note itself would suggest, was of the provisions contained in Section 4(1) of the Act. The question that came to be determined by the Hon''ble Supreme Court was as to whether, when the Collector fails to cause

public notice of the substance of the notification to be given at convenient places in the locality where the land sought to be acquired is situated, the whole acquisition proceedings are vitiated or not. While determining the question aforesaid, it was held that "the provisions of Section 4(1) can not be held to be mandatory in one situation and directory in other. Section 4(1) does not contemplate any distinction between those proceeding in which in exercise of power under Section 17(4) the appropriate Government directs that the provisions of Section 5A shall not apply and where such a direction has not been made dispensing with the applicability of Section 5A". The question, as framed above, came to be determined, it appears, as it was the contention of the State that when urgency provisions were invoked, there was no necessity of causing public notice of the substance of notification at convenient place. This judgment, in our view, is wholly inapplicable to the facts of the present case.

13. The second judgment of Hon'ble Supreme Court, on which reliance has been placed by the learned counsel is in *The Madhya Pradesh Housing Board v. Mohd. Shafi and others*, 1992(1) RRR 583 (SC) : 1992(2) PLR 1. The facts of the case aforesaid, in our view, have no parity with the facts of the case in hand. The Hon'ble Supreme Court in the case aforesaid, was dealing with requirement of sufficient clarity not only in the public purpose for which acquisition was made but also in the locality to enable the persons interested as to why the land was being acquired and for what purpose. In the case aforesaid, in the notification under Section 4(1) of the Act, khasra numbers were not given. Even the precise locality was not indicated and so much so even the public purpose was not clearly stated and was vague.

14. Insofar as second contention of learned counsel pertaining to discrimination is concerned, we would like to mention that notification under Section 4 of the Act was issued to acquire land measuring 26 kanals 5 marlas, which is equivalent to 3 acres 2 kanals 5 marlas. After objections under Section 5A of the Act were raised by the respective parties, declaration under Section 6 of the Act came into being with regard to land measuring 2 acres, 6 kanals and 19 marlas. Even though, insofar as written statement is concerned, pleadings are not enough to show as to why land of Dr. K.B. Sharda, which was first included in the notification under Section 4 was left out from the array of acquisition, but since with the written statement that has been filed, order of the Land Acquisition Collector recommending noninclusion of land of Dr. K.B. Sharda, which was ultimately accepted by the Government, has been annexed, we thought it was unnecessary to call upon the respondents to give a specific reply to the averments made in the petition alleging discrimination. The order of the Land Acquisition Collector, Annexure R3/8, dated 31.10.2000 deals with the objections filed by various persons including the petitioners. It is quite apparent from reading of the order aforesaid that Dr. K.B Sharda had also filed objections. The same were discussed under Objection (iii). While dealing with the objections filed by Dr. K.B. Sharda, it has been mentioned by the Land Acquisition Collector as under :

"Third objector, Dr. K.B. Sharda has stated in his written objection that he has purchased about 31/2 kanal of the land out of land proposed for acquisition for establishing a Charitable Hospital of Children which would be super specially center for sick new born babies which does not exist any where in Punjab except PGI, Chandigarh. He has stated he has finalised his project in consultation with world renowned authorities on the subject and the project is at a pretty advance stage. He has further stated that apart from the medical and curative services and treatment his center is meant to impart training to technical staff for usual curative services to serve the public at large and would also provide job to about one hundred person immediately and in addition would generate employment avenues to many people every year after it becomes fully operational. He has attached site plan of his center and certificates/opinions of work (world ?) renowned authorities like Dr. Vinod K. Paul of A.I.I.M.S., Dr. N.K. Bhaloo, former Prof. and Head of Pediatrics and Neonatology P.G.I., Chandigarh, to support his contention."

15. After so noting the objections raised by Dr. K.B. Sharda, the Collector observed as follows :

"After perusing the contents of the objection of Dr. K.B. Sharda in full, I am convinced that his project being charitable would go a long way in the service of society and will also generate job opportunities to a large number of people. His project is in advanced stage of planning and would cause him a lot of hardship if his piece of land is acquired. I, therefore, recommend that his piece of land be exempted from acquisition. Location of his plot has been marked on the attached rough sketch plan of the site. The "Approximate" requirement of the acquiring department is 3.25 acres. Department will still about 3 acres of land, if this piece of land is exempted from acquisition. Report is hereby sent u/s 5A of the Land Acquisition Act, 1894 for taking decision as appropriate Govt. under the provisions of the *ibid.*"

16. Alongwith the report recommending nonacquisition of land of Dr. K.B. Sharda he also sent the objections filed by him which consisted of more than fifty pages. Thus, Joint Secretary, Public Works Department, examined the report of the Land Acquisition Collector and addressed a letter, R3/8T, to the Land Acquisition Collector on that behalf wherein it has been mentioned that "In reference to the letter under consideration, objection raised against the land acquisition for the establishment of wireless station at Jalandhar, are viewed in depth. Agreed with your recommendation Anshul Gupta, Vikas Gupta son of & Kavita w/o Vinod Gupta & Sukhbir Singh, Lakhbir Singh minor sons and Kamaljeet Kaur widow Kulwinder Singh son of Shri Nazar Singh, Raghbir Singh son of Nazar Singh have no ground & their objections are hereby stand cancelled in public interest. Regarding objections raised by Dr. K.B. Sharda, M.D. son of Vidya Sagar, your proposal is admitted & his 31/2 kanal piece of land is exempted from the acquisition."

17. Vide a misc. application, the respondent also sought permission to place on

record some additional documents which was allowed. The project of Wireless Monitoring Station, it is stated, is highly sensitive project. Annexure A1 depicts the nature and functions of the said Station. The statement of the Officer Incharge and Junior Wireless Officer has been annexed with the application as Annexure A2. It is also pleaded in the application aforesaid that for setting up the project, the land was earmarked after a detailed survey. The same would be evident from the internal correspondence of the department. It has also been pleaded that the project of Wireless Monitoring Station is the World Bank Assisted Telecom Sector Reforms Project. The project is of National and International importance and is to be implemented at the earliest. A copy of letter written by the Director, Wireless Monitoring Organisation to the Monitoring Station, Jalandhar, dated 12.7.1995 has been annexed as Annexure A3. In this application, the reason as to why the land of Dr. K.B. Lal has been left out from the array of acquisition, has been given which reads thus :

"That the land in this case which was notified to be acquired u/s 4 for the purpose of setting up Wireless Monitoring Station was measuring 3.2 acre. The objections u/s 5A were invited from the land owners and after hearing the concerned parties, the Land Acquisition Collector accepted the objections of Dr. Sharda and released land measuring 31/2 Kanal of Dr. K.B. Sharda. It may be submitted that the land of Dr. K.B. Sharda was exempted from acquisition, keeping in view the fact that Dr. Sharda is setting up the charitable hospital for children which would be a Super Specialty Center for sick new born babies. Such a project was finalised in consultation with world renowned authorities. Keeping in view all these factors 31/2 kanals of land owned by Dr. Sharda was exempted from acquisition. It may be submitted that Wireless Monitoring Station is being adjusted in the remaining 2.87 acres. The copy of the communication to this effect from Government of India to the Land Acquisition Collector dated 1.8.02 alongwith its enclosures is annexed collectively as Annexure A4."

18. The pleadings of the parties, if taken as a whole, even though, as mentioned above, there may not be specific reply as to why land of Dr. K.B. Sharda was released from the array of acquisition in the written statement but the documents and, in particular, report of the Land Acquisition Collector and the order passed by the Joint Secretary thereon, as also pleadings made in para No. 6 of the misc. application aforesaid, would clearly reveal that the case of Dr. Sharda stood on entirely different footing. Further, the land of Dr. Sharda could be adjusted and any further deduction in the area would have frustrated the very public purpose which, as per the pleadings in the misc. application, is of national and international importance. No case of individuous discrimination in the present case, on the facts and circumstances of this case, is made out.

19. Before we may part with this order, we could like to mention that judgment in this case was reserved on 15.12.2003. It is on that day itself that an affidavit of Vikash Gupta was filed and the same was permitted to be placed on records. Ms. Nirmaljit Kaur, Additional Advocate General, Punjab, stated that she would

like to argue the case that day itself. In the affidavit aforesaid, it has been mentioned that the respondents have sought to justify the release of land belonging to Dr. K.B. Sharda by making averment that Dr. Sharda proposed to set up a Charitable Hospital of Children and that despite passing of three years of the recommendation by respondent No. 3, Dr. K.B. Sharda had not taken any step whatsoever to set up any charitable hospital on his land which has been released from acquisition and the land of Dr. Sharda has poplar trees growing thereon and no construction activity has been undertaken by him.

20. We would have examined this aspect of the case, but, as mentioned above, affidavit aforesaid was filed on the date when matter was fixed for arguments. The petition has been pending since 30.10.2001. The project undertaken to achieve the public purpose is of utmost important and urgency. It brooks no further delay. In fact, it has already been delayed beyond measures. Dr. K.B. Sharda is not party respondent. He is, thus, unable to defend himself. Be that as it may, while dismissing this writ petition, we issue a direction to the Government to find out the truth in the averments made in the affidavit dated 14.12.2003 filed by one of the petitioners and in case Dr. K.B. Sharda may not have started his project and there be no justifiable reasons for not doing so, action be taken in accordance with law after hearing Dr. Sharda. If, in the enquiry that may be made and which we order shall be made, it is found that Dr. K.B. Sharda has no intention to start the project, as stated by him in the objections filed under Section 5A of the Act or there may be no good reasons for not starting the project as yet, to take suitable action against him which shall also include acquiring his land, as surely it was needed in the first instance, even though, after his objections were accepted, the department agreed to adjust its project in the land which was ultimately acquired.

With the observations made above, this writ petition is dismissed, leaving, however, the parties to bear their own costs.