

(1993) 05 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6992 of 1992

Vikram Bakshi

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 05-05-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A, 6(1)

Citation : (1994) 106 PLR 256

Hon'ble Judges : R.K. Nehru, J;G.R. Majithia, J

Bench : Division Bench

Advocate : Mukul Rohtagi and Nipun Mittal, for the Appellant; Kamal Sharma and D.D. Vasudeva, D.A., for the Respondent

Judgement

R.K. Nehru, J.—This judgment disposes of this and the connected writ petitions bearing C.W.P. Nos. 6992,6195,8968, 8969 and 8970 of 1992. In these petitions, challenge has been made to the acquisition of land measuring 160 Kanals situate in the revenue estate of village Lakkarpur, district Faridabad. The land was acquired by the Government of Haryana for a public purpose, namely, for the systematic development of the tourist place close to Surajkund, district Faridabad. Notification dated 8th/9th January, 1992 u/s 4 read with Section 17(2) (c) of the Land Acquisition Act, 1894 (for short, the Act) was issued and it was followed by a declaration u/s 6 of the Act published in Government Gazette vide Notification No. 4/154/90-6PP, dated January 31,1992.

2. The principal ground of attack in all these petitions is that resort to the provisions of clause (c) of sub-section (2) of Section 17 of the Act was not proper as no urgency existed. The purpose for which the land was acquired does not justify the abrogation of requirement of the provisions of Section 5A of the Act. The statute creates a right in appropriate Government to acquire land needed for public and other purposes. The sovereign power of every State has an authority to appropriate for purposes of public utility land situated within the limits of its jurisdiction. Section 5A enables a person, who is interested in the land which has

been notified u/s 4(1) of the Act, to file objections to the acquisition of the land. The grounds of objections which can be filed u/s 5A of the Act, amongst others, are : (a) that the purpose for which the land is required is not a bona fide public purpose, or (b) that the particular land notified is not the best adapted to the purpose or that the area is greater than is necessary, or (c) that the land contains religious buildings, tombs and grave-yards. The right to file objections is taken away if the appropriate Government has invoked the provisions of Section 17(2)(c) of the Act as amended by Punjab Act II of 1954, XVII of 1956. XLVII of 1956 and Act XXXI of 1966. Sub-section (2) of Section 17, as amended, reads as under-

"(2) In the following cases, that is to say, namely, --

(a) whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat station, or of providing convenient connection with or access to any such station;

(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;

(c) whenever land is required for a public purpose which, in the opinion of the Government, is of urgent importance, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours" notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience."

Clause (c) of sub-section (2) of Section 17 of the Act enables the appropriate Government to dispense with Section 5A if it is of the opinion that the land is required for a public purpose of urgent importance. In the circumstances of the case, we were satisfied that the landowners whose land was sought to be acquired should not be deprived of their right to file objections to the compulsory

acquisition. We found that the notification u/s 4 of the Act was valid and it was duly published as provided under sub-section (1) of Section 4.

3. We advised the learned State counsel to seek instructions from the Government whether it was willing to afford an opportunity to the persons interested in the land sought to be compulsorily acquired to file objections u/s 5A of the Act, and after hearing and disposing of those objections, declaration u/s 6 of the Act should be made. The State counsel sought adjournment, which was allowed by us. The State counsel produced before us a communication bearing Memo No. TM-93/AP-III, dated nil addressed by the Director, Tourism, Haryana, Chandigarh to the Advocate General, Haryana, and the same reads thus :-

"Subject: C.W.P. NO. 6992 of 1992 - Vikram Bakshi v. State of Haryana, C.W.P. No. 6195 of 1992, C.W.P. No. 8968 to 8970 of 1992.

S.O. No. 517, 24.3.93 from Sh. D.D. Vasudeva, Dy. Advocate General, Haryana addressed to Sh. R.L. Sudhir, IAS, Commissioner and Secretary, Tourism, Haryana.

Reference communication on the above subject noted in the margin.

2. In this case the Government had issued Notification dated 8th/9th January, 1992 u/s 4 read with Clause 17(2)(c) of the Land Acquisition Act, 1894 for acquisition of land measuring 160 Kanals in village Lakkarpur of Distt. Faridbad for a public purpose, namely, for the systematic development of the tourist place close to Surajkund, Distt. Faridabad. In the said notification it was also mentioned that the Governor of Haryana is satisfied that the purpose for which the land is required is of an utmost importance and it was directed that the provisions of Section 5A of the said Act shall not apply in regard to this acquisition. Consequently, objections from the landowners as envisaged u/s 5A of the Act were not invited. A notification u/s 6 of the Act was accordingly issued on 31st January, 1992.

3. Five landowners Shri Vikram Bakshi and 4 others filed 5 separate writ petitions No. 6992 of 1992, C.W.P. NO. 6195 of 1992, C.W.P. No. 8968 to 8970 of 1992 in this Hon''ble Court seeking a direction for quashing the notification dated 8-9 January, 1992 on the ground whether the public purpose warranting the invoking of urgency provisions dispensing with the requirement of Section 5A regarding hearing of objections filed by the land owners. They also sought exclusion of their area especially the built up area.

4. All these petitions came up before the Hon''ble Division Bench comprising the Hon''ble Mr. Justice G.R. Majithia and the Hon''ble Mr. Justice R.K. Nehru for regular hearing on 24.3.1993 and the law officer who appeared in these matters on behalf of the State communicated the observations of the Hon''ble Bench. The Government was informed that the main thrust of the arguments of the petitioners was that sufficient land in the vicinity is available for achieving the public purpose and that there was no justification for acquiring the land of the

petitioners alongwith Pakka structures thereon. Had the Government not invoked the urgency provisions and given them an opportunity to file objections, they would have been able to make out their case for exclusion of their land from acquisition. The Hon''ble Judges observed that whereas the Notification u/s 4 is good, it would be equitable and fair if the Government considers the question of affording the petitioners an opportunity of filing objections u/s 5A of the Act. Accordingly, the matter has been examined by the Government in the light of the observations of the Hon''ble Court.

By the impugned notification an area measuring 160 Kanals was sought to be acquired. However, only 5 petitioners claiming them to be the land owners have filed these petitions. Land measuring 105 Kanals is the subject matter of these five petitions. The land owners of the remaining 55 kanals have not challenged the acquisition proceedings so far. Perhaps they are satisfied with the acquisition and are interested only in the amount of compensation which will be paid to them in accordance with the law.

The Clause (ii) of the first proviso to Section 6 enjoins that no declaration in respect of any particular land covered by a Notification u/s 4(1) shall be made after the expiry of one year from the date of the publication of the Notification. Since in this case the Notification u/s 4(1) was issued on 8-9 January, 1992, the declaration u/s 6 of the Act after decision of the objections to be filed by the petitioner land owners could have been made within one year of the said Notification. By explanation 1 to Section 6 of the Land Acquisition Act lays down that in computing the period of one year the period during which any action or proceedings to be taken in pursuance of the Notification issued u/s 4(1) is stayed by an order of a Court shall be excluded. This Hon''ble Court has stayed dispossession of the petitioners. In C.W.P. No. 6195 of 1992 the order staying dispossession were passed on 21.5.1.992, in C.W.P. No. 6992 of 1992 the stay orders were issued on 2.6.1992 while in the remaining three petitions No. 8968 to 8970 of 1992 the orders staying dispossession were passed on 10.7.1992. All these stay orders are continuing till today. The Explanation 1 to Section 6 and Explanation to Section 11A of the Land Acquisition Act are similarly worded. Both respectively lay down in identical terms "that the period during which any action or proceeding to be taken in pursuance of the Notification issued u/s 4, Sub-section (1), is stayed by an order of a Court shall be excluded. The Hon''ble Supreme Court in the case of Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, had occasion to construe explanation to Section 11A of the Land Acquisition Act and it has been held that the said explanation is in the widest possible terms and covers proceedings for making of award and taking of possession. Thus, prima facie it appears that it would be perfectly legal if the declaration u/s 6 of the Act is made within one year from the date of Notification u/s 4(1) after excluding the period during which the dispossession of the petitioners continued to be stayed by this Hon''ble Court.

In view of the observations of this Hon''ble Court that the Notification u/s 4(1)

will be upheld, the Govt. has no objection if the Hon''ble Court directs the petitioners to file objections before the Land Acquisition Collector, Faridabad in terms of Section 5A which will be decided by the Government in accordance with the law and thereafter a declaration u/s 6 qua the land of the petitioners alone will be made. You are, therefore, requested to bring the following submissions on behalf of the State to the notice of the Hon''ble Bench for further orders:-

" (a) That the Hon''ble Court may allow the petitions only to the extent so far as the impugned Notification u/s 4(1) of the Act relates to Section 17 qua the land of the petitioners measuring 105 Kanals and quash the same as also that portion of the said Notification qua the 5 petitioners alone in which it is directed that the provisions of Section 5A of the Act shall not apply with regard to the acquisition. So far as Notification relates to Section 4 of the Act the same may be allowed to survive. The said Notification may be upheld in every respect as regards the land measuring 55 Kanals belonging to other land owners, the acquisition of which has not been challenged by them.

The declaration u/s 6 qua the land of the petitioners alone measuring 105 Kanals may also be set aside, saving the said declaration qua the owners of other land measuring 55 Kanals.

(b) The petitioners may be directed to file their objections within 15 days or such other period as the Hon''ble Court deems fit before the Land Acquisition Collector, Faridabad.

(c) The indulgence of the Hon''ble Court may be sought to clarify that the period during which the order of this Hon''ble Court staying dispossession of the petitioners continued to be in operation shall be excluded for purposes of computation of the period of one year specified in Ist proviso to Section 6 of the Act.

(d) The Hon''ble Court may also be requested to direct that the respondent State will be at liberty to take further proceedings with regard to acquisition of the remaining land of 55 Kanals not belonging to the petitioner."

4. The fair stand taken by the Director, Tourism, Haryana is appreciated.

5. The learned State counsel pointed out that it was not necessary to afford an opportunity of hearing to the person interested in the land other than those who had approached this Court. He submitted that the other persons interested in the land presumably are not objecting to the acquisition since they have not approached this Court. We are not impressed with the submission made. Even if those persons have not approached the Court, they have got a right, like the petitioners, to file objections to the compulsory acquisition as envisaged u/s 5A of the Act. They cannot be deprived of that right merely because they have not approached this Court.

6. The learned counsel then pointed out that declaration u/s 6 of the Act has to be made within one year from the publication of the notification u/s 4(1) *ibid*.

Notification u/s 4(1) of the Act was published in the Govt. Gazette on January 8/9, 1992. Declaration u/s 6 of the Act had to be made within one year of the publication of the notification u/s 4(1). Explanation (1) to Section 6 as inserted by Act 68 of 1984 provides that the period during which any action or proceedings to be taken in pursuance of the notification u/s 4(1) of the Act is stayed by an order of a Court shall be excluded. In C.W.P. No. 6992 of 1992, this Court stayed dispossession of the petitioner on June 2, 1992; in CWP No. 6195 of 1992 it was stayed on May 21, 1992, while in CWP Nos. 8968 to 8970 of 1992, it was stayed on July 10, 1992, and the stay orders are in operation. This period has to be excluded for the issuance of declaration u/s 6 of the Act. The stay order remained in operation from the date of the order to the date of the pronouncement of this judgment, i.e. for about 9 months and 25 days. This period has to be excluded for determining the period for issuance of the declaration u/s 6 of the Act after the publication of the notification u/s 4(1) of the Act. Reference can usefully be made to the judgment of the apex Court in *Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another*, where it was held thus :-

" The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings preceding the making of the award u/s 11 of the said Act. In the first place, as held by the learned Single Judge himself where the case is covered by Section 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Section 17 or otherwise. On the other hand, it appears to us that the Explanation is intended to confer a benefit on a land-holder whose land is acquired after the declaration u/s 6, is made in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the land-holder. In order to get the benefit of the said provision what is acquired is that the land-holder who seeks the benefit must have obtained any order from a Court restraining any action or proceedings in pursuance of the declaration u/s 6 of the said Act so that the Explanation covers only the cases of those land-holders who do not obtain any order from a Court which would delay or prevent the making of the award or taking possession of the land acquired. In our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment."

The petitioners through their respective counsel are permitted to file objections u/s 5A of the Act on or before June 22, 1993, before the Land Acquisition Collector, who will also issue at least fifteen days prior notice to the other persons interested in the land sought to be acquired inviting objections from them on or before the aforesaid date. He will afford an opportunity of hearing to the petitioners and other interested persons who file objections on or before the date specified by him. He shall thereafter submit his report to the State Government

and the State Government, after taking the same into consideration, issue a declaration u/s 6 of the Act.

7. With these observation, these writ petitions are disposed of.