
(2008) 12 P&H CK 0040
In the Punjab And Haryana At Chandigarh

Vinod Kumar Ghai

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-12-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2009) 156 PLR 472 : (2009) 3 RCR(Civil) 575

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surya Kant, J.—This Civil Writ Petition seeks quashing of the notifications dated 25.2.2004 and 16.2.2005 [Annexures P1 and P9] issued under Sections 4 and 6 of the Land Acquisition Act, 1894 [for short "the Act"] whereby land measuring 26 kanals 3 marlas including that of the petitioner to the extent of his 1/6th share situated in village Dogri within the municipal limits of Jalandhar City is sought to be acquired for the construction of 132 KV Sub Station in village Kahanpur [Village Dogri] by the Punjab State Electricity Board.

2. Earlier also, the aforementioned land was acquired by the respondents for the same "public purpose" vide notifications dated 6.4.2000 and 15.6.2001 issued under Sections 4 and 6 of the Act respectively. The said acquisition proceedings came to be challenged by the petitioner along with his brother by way of CWP No. 12194 of 2001 which was allowed by a Division Bench of this Court vide judgment dated 11.9.2003 [Annexure P-2]. Suffice it to say that after taking judicial notice of the deliberate "actions and omissions" on the part of the public officers which frustrated the acquisition process meant for an important public purpose, this Court arrived at the conclusion that the award was not passed within the stipulated period of two years as provided u/s 11-A of the Act. The Bench further held as under:

In the result, the writ petition is allowed. Notifications dated 6.4.2000 and

15.6.2000 are declared illegal and quashed. However, keeping in view the fact that the land of the petitioners was being acquired for a large public good, we deem it proper to observe that the State Government shall be absolutely free to re-initiate the proceedings for acquisition of the land. We also direct the State Government to initiate disciplinary action against the Land Acquisition Collector who was responsible for not pronouncing the award within the prescribed time limit and submit a report to this Court within six months after completing the disciplinary proceedings. It will also be appreciated if the State Government issues written instructions to all the Land Acquisition Collectors that they must pronounce the award within the time limit prescribed under the Act and their failure to do so would necessarily result in initiation of departmental enquiry for major penalty.

It was thereafter that fresh acquisition process was initiated by issuing the notification dated 25.2.2004 u/s 4 of the Act (Annexure P-1). The petitioner submitted his objections u/s 5-A of the Act, inter-alia, pointing out that (i) the alleged public purpose for which the land is sought to be acquired has already been successfully achieved by installing 132 KV Sub Station at village Alawalpuri; (ii) the Senior Engineers of the Board are of the view that the subject land is no longer required for establishing a power Sub Station; (iii) the acquired land is an Orchard where plants of Mango, Orange, Lemon of grown-up age are standing and no useful purpose will be served by acquiring such land; (iv) all Sub Stations have been established on a piece of land measuring not more than one or one and half acres, therefore, the entire land of the petitioner is not required for the alleged public purpose.

3. The objections having not found favour with the State Government and on the issuance of the resultant notification u/s 6 of the Act, that the petitioner has again approached this Court.

4. Respondents No. 2 and 3, i.e., Punjab State Electricity Board and its authorities have filed their counter-affidavit. Thereafter, an additional affidavit dated 27.11.2008 has also been filed by the Land Acquisition Collector, PSEB, Patiala. The reconstructed records (original is reported to have been lost) of the office of the Land Acquisition Collector as well as of the State Government have also been produced and perused.

5. Learned Counsel for the parties have been heard at some length.

6. It is argued on behalf of the petitioner that the entire acquisition process is vitiated in law for the reason that the petitioner's objections have not been dealt with or disposed of in accordance with the mandatory procedure laid down u/s 5-A of the Act. It is urged that the petitioner was served with a notice to appear in person on 10.8.2004 by the Land Acquisition Collector and on submission of additional objections in writing on his behalf by his counsel on that day, the matter was adjourned to enable the PSEB authorities to submit their comments on those additional objections. Thereafter, no opportunity of being heard was

ever given to the petitioner and the objections were sent by the LAC to the State Government for appropriate decision. Relying upon the order dated 10.8.2004 (Annexure P-4) and the communication dated 8.2.2005 (Annexure P-7), it is contended that the objections submitted by the petitioner have been rejected by the State Government without there being any report from the Collector u/s 5A of the Act. To be precise, it is urged that while the Collector failed to afford an opportunity of being heard, the objections have been turned down by the Authority who did not even call for hearing. It is strenuously urged that the duties of the Land Acquisition Collector u/s 5A are of quasi-judicial nature and not an empty formality and right of hearing u/s 5A is akin to fundamental rights as the only opportunity of being heard before acquisition of one's land is envisaged by the said provision. In support of this contention, learned Counsel has relied upon a judgment of this Court Gopal Krishan Gupta and Others Vs. The State of Haryana and Others, .

7. It is then argued that the Board's own experts, namely, Additional Superintending Engineer vide his memo dated 9.11.2004 (Annexure P-5) has categorically opined that there is no necessity to construct the Sub Station at the proposed site. Reference is then made to a communication dated 9.8.2005 (Annexure P-13) by the Chief Engineer (Operations) to the Member (Distribution), PSEB, Patiala wherein also he has elaborately dealt with the issue of construction of the proposed Sub Station and then recommended that "there is no need of the proposed 132 KV Sub Station at Kahanpur (Dogri)". Reliance is also placed upon another letter dated 11.11.2005 (Annexure P-14) by the Engineer-in-Chief, Sub Stations, PSEB informing the Secretary of the Board that there is no need of the proposed 132 KV Sub Station at Dogri and intimation to this effect may be sent to the LAC of the Board. The petitioner's case appears to be that notwithstanding the recommendations made by the Senior Engineer of the Board for not acquiring the land, some officers/higher authorities in the Board, on account of their personal vendetta, were hell bent to acquire the petitioner's land and it was with that ulterior motive that Memo dated 19.12.2005 (Annexure P-15) was sent to the Additional Superintending Engineer to give his second opinion as to whether or not the subject land was required for construction of 132 KV Sub Station at Kahanpur (Dogri), more so when there were no directions issued by the High Court as wrongly mentioned in the said letter. Alternatively, it is maintained that all the Sub Stations have been constructed over land measuring not more than one or one and half acres whereas the petitioner and his family's land measuring more than three acres is sought to be acquired.

8. On the other hand, learned Counsel for the respondents have argued that the Competent Authority to take the final decision as to whether or not the subject land is required for the construction of the proposed Sub Station is the Secretary and the Chairman of the Board and not the Engineer-in-Chief or so. It is pointed out that the recommendations made by the Senior Engineers of the Board in favour of the petitioner were duly considered by the Competent Authority but the

same did not find favour as the Board had taken a conscious decision to construct 132 KV Sub Station at Kahanpur [Dogri] in order to meet the increasing demand of power supply to the Industries growing in the adjoining areas. Relying upon the records of the Land Acquisition Collector, it is argued that an opportunity of being heard was duly afforded to the petitioner who put in appearance through his counsel. Reference to the notings from the Government file has also been made in order to show that there was due application of mind and a conscious decision has been taken as to why the subject land should be acquired for construction of the Sub-Station in question. On this premise, learned Counsel submitted that the procedure envisaged by Section 5-A of the Act has been faithfully complied with.

9. It is then argued that even if there are no specific recommendations, either way, by the Collector, the State Government is not precluded from taking a decision regarding acquisition of a land. Reference has been made to the judgment of this Court in *Dharam Pal and Anr. v. State of Haryana* (2007)148 P.L.R. 299. Reliance is also placed upon the judgment in *Scindia Employees' Union Vs. State of Maharashtra and Others*, to contend that the scope of inquiry u/s 5-A of the Act pertains to as to whether the land sought to be acquired is needed for a public purpose or not.

10. Having heard learned Counsel for the parties, I do not find any merit in this writ petition. There is no gain in saying that Section 5-A(2) of the Act contemplates observance of natural justice and a fair procedure by giving an opportunity to the landowners to submit their objections in writing and then an opportunity of being heard in person or through a representative or by pleader on such objections. If the situation so permits, the Collector can hold a further inquiry and then submit his report/recommendations together with the records of the proceedings to the State Government, who being the Competent Authority is required to take a final decision on such objections. It is true that the procedure provided u/s 5A(2) is not an empty formality nor the role of the Land Acquisition Collector is that of a postal authority to receive the objections and pass-on to the State Government. At the same time, the Collector does not enjoy upon any adjudicatory powers under Sub-section (2) and he is just to send his recommendations to the State Government, as held by the Hon'ble Supreme Court, on the limited issue as to whether or not the land proposed to be acquired is required for the public purpose. It is not in dispute that there was a difference of opinion amongst the Engineers of the Board as to whether or not 132 KV Sub Station is required to be constructed in Kahanpur (Dogri). Indeed, the record does suggest that the State Government rejected the objections of the petitioner u/s 5-A of the Act after accepting the opinion of the Engineers to the effect that the Sub Station was required to be constructed and a communication to this effect was sent to the petitioner also vide Annexure P-7, followed by the notification u/s 6 of the Act. It further appears that after the issuance of notification u/s 6, some of the Engineers working in the Board recommended that there was no necessity to construct the Sub Station at the acquired land.

Their recommendations were again considered by the State Government which took a conscious decision, agreeing with the Secretary/Chairman of the Board that the Sub-Station in question is required to be constructed.

11. The construction of a power Sub Station entails huge expenditure. Its corresponding utility for the public purpose sought to be achieved, is also to be kept in view. In such like matters, difference of opinion amongst the functionaries of the acquiring department is neither unusual nor unexpected. While exercising the powers of judicial review, this Court would be well within its right to see as to whether the divergent views have been accepted or rejected mechanically and/or there is a due application of mind by the Competent Authority. If one goes through the contents of the decision taken by the State Government second time, it is manifest that the decision to construct the Sub-Station has been taken after due deliberations and not in a casual fashion and/or to deprive the petitioner of his land. Adverting to the next contention that after the construction of a Power Sub-Station at Alawalpur, there is no need to construct the present Sub-Station, suffice it to say that such like decisions fall within the domain of the experts and are beyond the scope of judicial review. The necessity of a public utility is to be seen mainly by the State Government or the Board. Both of them have taken a categorical stand that the Sub-Station is required to be constructed at the site. It has also been explained that some new industrial units have been set up in the vicinity and there is a growing demand for power supply. It is to facilitate the additional demand for the power supply that a new Sub-Station is required to be constructed at the site in question. There is nothing on record to suggest that the respondents would not utilize the land for construction of a Sub- Station inasmuch as they have got no opportunity to raise the construction till date as dispossession of the petitioner remained stayed under the orders of this Court.

12. Similarly, the contentions that there are some fruit plants standing over the land or that a lesser area could serve the public purpose also merit rejection. The award passed by the Land Acquisition Collector suggests that a compensation of Rs. 1,170/- has been granted towards the value of the fruit trees which leaves no manner of doubt that these were newly planted trees only. So far as achieving of the public purpose by acquiring a smaller piece of land is concerned, the respondents have come up with a categorical stand that the entire land is required not only for the present purpose but for its future expansion also. For the reasons aforementioned, I do not find any merit in this writ petition which is accordingly dismissed, however, leaving the parties to bear their own costs.