
(1996) 05 P&H CK 0141
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3196 of 1996

Zulafkar Ali Malik

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 22-05-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 17(2)

Citation : (1996) 114 PLR 179 : (1996) 1 RCR(Civil) 492

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : J.R. Mittal and K.S. Chahal, for the Appellant; Charu Tuli, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.

1.This petition involves a challenge to The notifications, Annexures P. 1 and P. 2, issued by the Government of Punjab for acquisition of land for construction of Government Polytechnic, Malerkotla, District Sangrur.

2. Petitioner and his brother are owners of land measuring 26 Kanals 11 Marias situated in the revenue estate of Village Ahmedabad. They are aggrieved by the land acquisition proceedings undertaken by the respondents vide notifications dated 29.1.1996 and 14.2.1996 issued by the Government of Punjab, Department of Technical Education and Industrial Training for acquisition of their hand alongwith land of six others for the construction of Government Polytechnic at Malerkotla. Petitioners have alleged that the provisions of Section 17 of the Land Acquisition Act, 1894 have been invoked with a mala fide intention of depriving the petitioner to avail opportunity to submit his objections against the acquisition of their property. It has been pleaded that the purpose of acquisition indicated in the impugned notifications is not a real and bona fide purpose and alternative site is available to the respondents for construction of the Polytechnic.

It has also been pleaded that the impugned acquisition has been made because the petitioner is an active worker of Akali Dal and is having political rivalry with Shri Gaffar who happens to be a Deputy Minister in the Government. In the written statement, the respondents have disputed the allegations made by the petitioner about mala fide exercise of power in the initiation of acquisition proceedings. Respondents have stated that construction of building for Government Polytechnic, Malerkotla is extremely urgent and, therefore, it became necessary to invoke the urgency clause so as to meet time bound programme for construction of the building. It has been Stated that imparting of technical education is one of the top priorities of the State Government because technical education is one of the strongest mode to deal with the growing problem of unemployment. The respondents have pleaded that no other suitable land is available for construction of building of Polytechnic. It has also been pleaded that the suitability of the land was determined by the site selection committee chaired by the Deputy Commissioner, Sangrur on 2.8.1995 and no personal interest of any particular individual is involved in the acquisition of the land.

3. In an additional affidavit dated 2.5.1996, Shri Ranjit Singh, Additional Director, Technical Education, Punjab has stated that a sum of Rs. 75 lacs has been provided in the annual plan for setting up a Polytechnic at Malerkotla and the construction is to start in the year 1996-97 so that it is completed by 1998-99 and it has been pleaded that urgency clause has been invoked in view of the time bound schedule of construction and admissions to the classes.

4. During the course of arguments, the learned Dy. Advocate General produced the file in which the issue of setting up of Government Polytechnic, Malerkotla has been dealt with. Apart from other documents, this file contain a letter dated 27.10.1995 written by the Director, Technical Education and Industrial Training to the Deputy Commissioner, Sangrur indicating that the department is willing to take possession of the land at the earliest because the State Government has already made provision for making payment for acquisition of the land and construction of a building during the current financial year. The Director pointed out that if the site is not decided the Department may not be in a position to utilise the funds resulting in their lapse which would cause embarrassment to the State Government. The records also show that the notifications issued by the government have been duly published in the official gazette and in the two newspapers, namely, Indian Express and Punjabi Tribune dated 17.2.1996. The records also show that in the new Polytechnic to be set up at Malerkotla, the courses of Diploma in Mechanical Engineering, Diploma in Printing Technology, Diploma in Plastic Technology and Post-Diploma in Packing Technology are to be started. The records further show that the notifications issued by the government have been published in the vicinity of the disputed site through Patwari and the same have been pasted on important places.

5. The only argument advanced by Sh. J.R. Mittal, learned counsel for the

petitioner is that construction of Polytechnic cannot be treated as so urgent as to dispense with the requirement of the enquiry contemplated by Section 5-A. Shri Mittal argued that the acquisition of land for the purpose of construction of Polytechnic is not of such a nature which cannot brook delay of few days within which opportunity of hearing can be afforded to all the landowners to submit their objections. Learned counsel argued that opportunity to submit objections is an important safeguard against any arbitrary or unreasonable action taken by the government for acquisition of the land upon which the livelihood of the Petitioner and other similarly situated persons depend. Learned Deputy Advocate General argued that once the government has taken a policy decision to set up the Polytechnic at Malerkotla and the funds have been allocated for the purposes of construction of building etc. and there is a great urgency to set up the Polytechnic College the government was justified in invoking the urgency clause.

6. Before we deal with the rival contentions, it will be useful to take note of the provisions of Section 17 which is in the form of an exception to the procedure laid down in Sections 4, 5-A, 6 and 9 of the Land Acquisition Act, 1894 (for short "the Act"). u/s 17, special powers have been conferred upon the competent authorities to take possession of the land needed for public purpose even before an award is passed. Section 17(2) has been amended by Punjab Act No. II of 1954. The object of the Land Acquisition (Punjab Amendment) Act, 1954 is to extend the scope of Section 17 to cases which are not covered by the central enactment. For the purpose of this case, it will be useful to quote Section 17(1) and 17(2) of the Act as it stands after Punjab Amendment.

"17. Special powers in cases of urgency.-

(1) In cases of urgency, whenever the (appropriate Government) so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), (take possession of any land needed for public purpose) Such land shall thereupon [Vest absolutely in the (Government)], free from all encumbrances."

"Explanation.- This sub-section shall apply to any waste or arable land, notwithstanding the existence therein of scattered trees or temporary structures, such as huts, pandals or sheds;"

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

(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 Cooperative 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 appropriate 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."

7. Clause (b) of Section 17(2) empowers the Collector to take possession of any land for various purposes enumerated in that clause including for educational institution. Clause (c) to Section 17(2) confers wide powers on the appropriate Government to acquire the land under urgency clause whenever land is required for a public purpose. This shows that for the purpose of educational institutions, a specific provision has been made by the legislature empowering the Government/other competent authorities to acquire the land. Before us constitutional validity of Section 17(2) as it stands amended has not been challenged and, therefore, we shall proceed on the premise that setting up of an educational institution is one of the public purposes for which urgency clause can be invoked.

8. Now it is to be seen whether the impugned acquisition suffers from mala fide or is otherwise arbitrary. The record which has been produced before us clearly indicates that the Government took a policy decision to establish the Polytechnic at Malerkotla in order to meet with the problem of unemployment by imparting technical education to the people of the area. In the process of implementation the Government had sanctioned the funds and gave directions for urgent acquisition of the land. It cannot thus be said that Government did not apply its mind to the requirement of urgency clause and came to the conclusion that it was proper to dispense with the departmental enquiry as envisaged u/s 5-A of the Act.

9. In *Swaran Kaur v. State of Punjab* 1995 P.L.J. 236, this court considered challenge to the invoking of urgency clause for acquisition of land to establish the Industrial Training Institute. While repelling the challenge, the Division Bench

took notice of Section 17(2) as substituted by the Punjab Act and observed:-

"Section 17(2) as substituted by the Punjab Act, inter alia provides that the urgency provision can be invoked "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.....and "whenever land is acquired for a public purpose which in the opinion of the appropriate Government is of urgent importance." In this case, land is being admittedly acquired for the public purpose of establishing an Educational Institution. The State Government has clearly notified its opinion that the land "is urgently needed.....so as to meet the time-bound construction schedule....." Has it the power in doing so? Was the urgency such as could not brook a delay of 30 days?"

10. The court also rejected the contention that departmental delays should by itself be a ground to hold that there was no urgency and proceeded to observe:-

"Learned counsel for the petitioners have contended that the matter regarding the establishment of an Industrial Training Institute, has been pending consideration with the Government since the year 1991. Since the Government had taken almost four years it cannot be said that a delay of 30 days involved in allowing the land owners to file objections would have seriously affected the public interest. This allegation as made by the petitioners, has been specifically controverted in the written statement filed on behalf of the respondents. It has been pointed out that the decision to establish the Institution was taken by the Government on September 21, 1993. After the minutes were drawn-up, the Deputy Commissioner was asked to call the meeting of Site Selection Committee on October 27, 1993. Soon thereafter, the Committee had surveyed the land and selected the site on February 11, 1994. The other formalities regarding issue of No objection Certificate etc. were complied with and thereafter the notification u/s 4 was issued on March 12, 1994. Taking all these factors into consideration, it cannot be said that the State Government had acted in such a lackadaisical manner that the proceedings for acquisition or the action of the State Government in invoking the urgency clause should be vitiated. Time was spent in consideration of the matter at different levels. Even, the execution of urgent projects is invariably delayed on account of inter-department communications. In the present case, atleast three Departments viz. Education, Industrial Training/ Technical Education and the Finance Departments were involved. Sometimes, even the inter departmental delays make the problem more acute and increase the "urgency of the necessity for acquisition". This is precisely what appears to have happened in the present case. In the circumstances of this case, it cannot be said that the time spent in the present case is "sufficient to nullify the urgency which existed at the time of the issue of the notification....."

11. In Mohan Singh v. State of Punjab (1996) RLR 280, invoking of urgency clause for establishing an Educational Institute and Tourism Complex has been upheld by the learned Single Judge. The learned Single Judge followed the decision of the Division Bench in Swaran Kaur v. State of Punjab (supra) and held

that there was sufficient material to support the invoking of urgency clause.

12. We may also refer to the decision of the Supreme Court in Rajasthan Housing Board and Others Vs. Shri Kishan and Others, . That was a case of acquisition of land for the Rajasthan Housing Board for construction of housing colony. A Full Bench of the High Court quashed the acquisition proceedings by a majority judgment. Their lordships reversed the judgment of the High Court and held that mere absence of express stipulation about the formation of opinion regarding urgency by the Government cannot be a ground for quashing the proceedings of acquisition. Their lordships observed:-

"In addition to the said fact, the Division Bench referred to certain other material also upon which the government had formed the said satisfaction, viz., that in view of the time-bound programme stipulated by the lender, HUDCO, the Board had already appointed a large number of engineers and other subordinate staff for carrying out the said work and that holding an inquiry u/s 5-A would have resulted in uncalled for delay endangering the entire scheme and time-schedule of the Housing Board. It must be remembered that the satisfaction u/s 17(4) is a subjective one and that so long as there is material upon which the government could have formed the said satisfaction fairly, the court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of this court not only u/s 17(4) but also generally with respect to subjective satisfaction."

13. In Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, an acquisition of land for providing house sites to the poor was held urgent necessity requiring exercising of power u/s 17(4). In taking the view, the Supreme Court relied on Clause 2(b) of Section 17 of the Act as it stands amended by the Punjab Amendment Acts, 1954 and 1956.

14. From these decisions, it is evident that the Government is empowered to invoke urgency clause for acquisition of land meant for educational purpose. Legislature has given a statutory recognition to the urgent requirement of land for educational purpose and once it is shown that the Government has formed a bona fide opinion about the existence of urgency, the court cannot substitute its opinion for the one formed by the Government and declare the acquisition to be invalid. In this case the respondents have placed sufficient material to show that the Government had not only formed the opinion about the existence of urgency but had taken positive steps for establishing Polytechnic at Malerkotla. The officers of the department expressed their apprehension that delay in the completion of acquisition would frustrate the object of setting up the Polytechnic. We do not find anything in the process of formation of opinion which can give indication of mala fide exercise of powers by the respondents and, therefore, there is no reason for us to interfere with the impugned acquisition.

15. Before concluding, we may refer to the two decisions on which Shri Mittal placed reliance. In Gurdev Singh Vs. Punjab State, , that is a decision of Division

Bench of which one of us was a party.

16. The Division Bench quashed the acquisition proceedings meant for Government Polytechnic by holding that urgency clause could not be invoked. Main thrust of that decision is the absence of any material to show the urgent need for setting up of Government Polytechnic. The court also observe that the Government did not place any material before the court to indicate as to when it has examined the need for establishing Polytechnic at Mansakalan. Therefore, on facts that decision is clearly distinguishable. Moreover we find that attention of the court was not drawn to the amended Section 17(2). Thus decision in Gurdev Singh's case (supra) cannot be treated as an authority that for establishing educational institutions urgency provision cannot be invoked.

17. In *Hukam Singh and Others v. State of Haryana and Anr.* (1996) RLR 295, the learned single Judge held that failure of the Government to file written statement or to apply for vacation of the stay order was sufficient to show that there was no immediate urgency for acquisition and there was no ground to dispense with the enquiry wider Section 5-A of the Act. Perusal of that decision shows that the writ petition was filed in the year 1982 and it came to be decided some time in the year 1995. During 13 years" period nothing was done by the respondents for expediting the hearing of the case. On that basis, the learned single Judge took the view that urgency clause could not be invoked. With great respect we are unable to agree with the view taken by the learned single Judge. No doubt the respondents were lax in prosecuting the matter but delay in the decision of the case could not be attributed to them. It was system failure and not the respondents who could be blamed for the delay in the decision in the case. The purpose for which the acquisition was being made was to provide residential plots to landless poor harijans for expeditious implementation of the 20 Point Programme of the Government of India. This, in our opinion, provided sufficient ground to justify the invoking of urgency clause. This is also the view taken by the Apex Court in *Chameli Singh and Ors. v. State of U.P.* 1996 (1) SCC 101 and *B. Khatri Educational and Industrial Trust, Amritsar v. State of Punjab and Ors.* (supra).

18. On the basis of the above discussion, we hold that the impugned notifications do not suffer from any illegality. Hence the writ petition is "dismissed. The parties are, however, left to bear their own costs.