Before G.C. Garg & N. K. Agrawal, JJ

MELA SINGH & OTHERS,—*Petitioners*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

CWP No. 18870 of 1997

20th February, 1998

Constitution of India, 1950—Arts. 226/227—Land Acquisition Act, 1894—S. 4 (1)—Publication of notification—Notification challenged on grounds of non-compliance of S. 4(1)—Publication improper & insufficient—Entry in Rapat Roznamcha was that munadi was made—Not clear as to where munadi was made or copy of notification affixed—Held that entry made in Rapat Roznamcha can be challenged by evidence—In absence of any material on record it would be appropriate to reject entry in Rapat Raznamcha.

Held that we have considered the petitioners' plea regarding the publication and we are of the view that the petitioners have not been able to show by any material on record that the publication in the locality by way of Munadi and affixation was improper or insufficient. The entry in the Rapat Roznamcha can be challenged by proper evidence. In the absence of any material on record, it would not be appropriate to reject the entry in the Rapat Roznamcha as false. Therefore, the plea regarding insufficient and improper publication is found to have no substance.

(Para 6)

Constitution of India, 1950—Arts. 226/227—Land Acquisition Act, 1894—S. 5-A—Challenge to notification on ground that there was non-compliance of S.5-A-Hearing of—Objections-Petitioner had filed joint petition of objections-Notice given to one of them and duly heard—Nothing to indicate that personal hearing had been denied—Objections duly considered.

Held that the petitioners had been given notice about the date of hearing and some of them did appear before the Land Acquisition Collector. Since some of the petitioners had filed joint petition of objections, notice regarding hearing was given to one of them. There is nothing to show that personal hearing has been denied to the petitioners. The objections were duly considered by the Land

Acquisition Collector and notices for personal hearing were also served on them.

(Para 10)

Constitution of India, 1950-Arts. 226/227—Land Acquisition Act, 1894-S. 17 (2)—Notification under section 4 issued to set up urban estate—Under notification issued under section 17(2) public purpose changed to setting up of water treatment plant—Challenged—Held, that there is no change in purpose—Specific purpose specified in notification cannot be said to be essentially different from original purpose specified in notification issued under section 4.

Held that there is no change of purpose. The specific purpose specified in the notification under section 17 (2) of the Act cannot be said to be essentially different from the original purpose specified in the notification issued under section 4 of the Act.

(Para 13)

M.L. Sarin, Sr. Advocate with Hemant Sarin, Advocate *for the Petitioners*

Hemant Kumar, Addl. A.G. Punjab, *for Respondents No. 1 & 2*

H.S.Mattewal, Sr. Advocate with Sanjeev Sharma, Advocate *Respondents for No. 3 & 4*

JUDGMENT

N.K. AGRAWAL, J

(1) This is a petition by 8 persons, under Articles 226 and 227 of the constitution, for quashing the notification issued under the Land Acquisition Act, 1894 (for short, "the Act").

(2) Petitioners are the residents of village Lodhipur, Tehsil Anandpur Sahib, District Rup Nagar and owned agricultural land measuring 47 Kanals 14 Marlas situated in that village. Some petitioners are said to have constructed their houses on the land. A notification under Section 4 of the Act was issued by the State of Punjab on 17th July, 1997 acquiring land measuring 580 Kanals 9 Marlas in village Lodhipur, Mataur, Anandpur Sahib and Jhinjiri, District Rup Nagar. The land was sought to be acquired for setting up an urban estate. The petitioners' land was also covered under that notification. Two notifications were subsequently issued under Section 6 of the Act, one on 13th October, 1997 and the other on

12th November, 1997. Another notification, dated 3rd December 1997, was issued under Section 17 (2) of the Act.

(3) The petitioners have challenged the acquisition primarily on the ground that there was no proper publication of the notification issued under Section 4 of the Act. The second challenge is regarding the denial of personal hearing to them, while deciding objections filed under Section 5A of the Act. There are certain other pleas also which shall be dealt with hereinafter.

(4) The petitioners have alleged that there was no proper and sufficient publication of notification dated 17th July, 1997 at the convenient places in the locality where the petitioners reside. An entry dated 6th August, 1997 was made by the officials in the 'Rapat Roznamcha' (Annexure P-3) but that would not show as to where 'Munadi' was made and where copy of the notification was affixed in the locality. It is, therefore, argued that the publication was neither sufficient nor proper and was, therefore, not in accordance with law. It was necessary to publish the substance of the notification issued under Section 4 of the Act at the convenient places of the locality. The entry made in the 'Rapat Roznamcha' is said to be a formal entry without any real publication of the notification. Since it was not clear as to where the 'Munadi' was made and where the copy of the notification was affixed, the publication is said to be bad in law.

(4-A) The State Government has defended the publication with the plea that all the petitioners were the residents of village Lodhipur and 'Munadi' was made in that village. It would be, therefore, not necessary to specify anything else then the village in which the 'Munadi' was made. Similarly, substance of the notification was duly published in the village and there is nothing on record to challenge this action. A mere allegation that no 'Munadi' was made in the locality or no notice was affixed there, would not be sufficient to render the entry made in the Rapat Roznamcha as incorrect and bad in law.

(5) Shri M.L. Sarin, learned Senior counsel for the petitioners, has placed reliance on a decision of this Court in *Ghansham Dass Goyal and others* vs. *The State of Haryana and others* (1), wherein it was held that ordinarily naming a village would amount to specifying the locality unless the village is too much large to be

(1) 1982 Revenue Law Reporter 267.

treated as a locality. That was a case where publicity was made in the town of Hisar which had a pupulation of few lakhs. It was observed that 'locality' must be construed to mean an area which is sufficiently small and compact so that naming it or publicity in that area amounts to a notice to all the inhabitants of that locality. The Supreme Court had an occasion to examine a matter for the publication of the substance of the notification at convenient places in the locality. In *'Narinder Singh* vs. *The State of U.P. and others'* (2), it was held that the provisions of Section 4 (1) cannot be held to be mandatory in one situation and directory in another. If the Collector fails to cause public notice to be given at convenient places in the locality where the land sought to be acquired is situated , the whole acquisition proceedings are vitiated. In a similar case, *'State of Mysore* vs. *Abdul Razak Sahib'* (3), the Supreme Court had again an occasion to examine the publication of the notification. It was observed that the publication of the notice in the locality is a mandatory requirement. In the absense of such publication, the interested persons may not be able to file their objections about the acquisition proceedings and they will be deprived of the right of representation provided under Section 5A which is very valuable right.

(6) We have considered the peitioners plea regarding the publication and we are of the view that the petitioners have not been able to show by any material on record that the publication in the locality by way of Munadi and affixation was improper or insufficient. The entry in the Rapat Roznamcha can be challenged by proper evidence. In the absence of any material on record, it would not be appropriate to reject the entry in the Rapat Roznamcha as false. Therefore, the plea regarding insufficient and improper publication is found to have no substance.

(7) The second contention raised by the petitioners is about the denial of personal hearing. It is stated that the petitioners filed objections under section 5A of the Act before the Land Acquisition Collector. Thereafter, the Land Acquisition Collector issued notices of hearing to petitioners No. 1 and 2 only and not to all the petitioners, though they had filed objections. Those petitioners who received the notices, appeared before the Land Acquisition Collector on 22nd September, 1997 but the Land Acquisition Collector did not hear them personally and only assured them that their land

(2) A.I.R. 1973 S.C. 552.
(3) A.I.R. 1973 S.C. 2361.

would be released. There were about 50 other land owners present before the Land Acquisition Collector for hearing but no effective hearing was afforded to the land owners. It is alleged that the Land Acquisition Collector did not go into the merits of the written objections filed by the land owners. It was necessary for the Land Acquisition Collector to afford effective opportunity of hearing to the land owners as is required under Section 5A of the Act.

(8) The respondents case is that objections filed by the petitioners were duly considered by the Land Acquisition Collector after affording personal hearing to them. Original record has been produced before us to show that notice for hearing was duly served on petitioner No. 1. Similarly, notice was also served on petitioner No. 2. Since petitioner No. 2, Inderpal Singh, had filed objections jointly with petitioners No. 4,5,6 and 8, notice was sent to him by the Land Acquisition Collector for personal hearing. Since it was a joint application filed under Section 5A of the Act, notice of hearing was served on petitioner No. 2. Similarly, notice was served on petitioner No. 7 also. It is, therefore, argued by the learned counsel for the respondents that sufficient and reasonable opportunity of hearing was afforded to all the petitioners and effective hearing was given to them on 22nd September, 1997. Petitioner No. 1, Mela Singh, had filed objections on 13th August, 1997 and notice dated 11th September, 1997 was sent to him for hearing before the Land Acquisition Collector on 22nd September, 1997. Similarly, notice was sent to petitioner No. 2 after receiving a joint petition cotaining objections on behalf of petitioners No. 2 to 8. Petitioner No.7, Beant Singh, filed his objections dated 11th August, 1997 and his son Balbir Singh was present at the time of hearing.

(9) Mr. M.L. Sarin, learned counsel for the petitioners, has placed reliance on a decison of this Court in *'Gopal Krishan Gupta and others* vs. *The State of Haryana and another'* (4), wherein it has been held that the objections filed under Section 5A should be looked into by the Collector properly by considering the point of view of the objectors. One sided report, suggesting the acquisition of land, is not a sufficient compliance of the Section. In *'Farid Ahmed Abdul Samad and another* vs. *The Municipal Corporation of the City of Ahmedabad and another'* (5), the Supreme Court was

(4) 1993 (3) Rent Law Reporter 526.
(5) A.I.R. 1976 S.C. 2065.

examining a question regarding personal hearing and it was held that personal hearing is to be mandatorily provided. In *'Shyam Nandan Prasad and others* vs. *State of Bihar and others'* (6), the Supreme Court has also examined a matter relating to hearing under Section 5A of the Act. It has been held that the provision embodies a just and wholesome principle that a person whose property is being, or is intended to be acquired should have the occasion to persuade the authorities concerned that his property be not touched for acquisition. It is, thus, clear that personal hearing has to be given, unless dispensed with under Section 17 of the Act. It would be necessary to see if the Land Acquisition Collector did afford opportunity of hearing to the petitioners or not.

(10) After perusing the original record, we are of the view that the petitioners had been given notice about the date of hearing and some of them did appear before the Land Acquisition Collector. Since some of the petitioners had filed joint petition of objections, notice regarding hearing was given to one of them. There is nothing to show that personal hearing has been denied to the petitioners. The objections were duly considered by the Land Acquisition Collector and notices for personal hearing were also served on them.

(11) Therefore, the contention raised about the denial of personal hearing is also found to have no merit.

(12) Another plea raised by the petitioners is that there was discrimination in the matter of acquiring land. It is alleged that no land, belonging to Gurmat Sagar Trust or Anand Sagar Housing Society or any Dera or religious body, was acquired, though such land was lying vacant near the land of the petitioners. The petitioners have expressed apprehension that the land acquired from them might be transferred by the Government to the said Trust or the Society. Since the land, situated in the same locality and the vicinity, is lying vacant and has not been acquired, it is said to be discriminatory. We have considered this argument but we are not impressed at all because no material has been brought on record to show that the other land lying nearby was required for the purposes of the Government and has been left out with malafide intentions. Therefore, this argument is rejected in the absence of any material on record regarding discrimination or arbitrariness.

(6) 1993 (4) S.C. Cases 255

(13) Next argument of Shri M.L. Sarin, learned Senior counsel for the petitioners, is that while issuing notification. under Section 17 (2) of the Act, the State Government has changed the purpose of acquisition. Earlier the notification was issued under Section 4 of the Act for setting up an urban estate whereas in the notification issued under Section 17(2), the public purpose mentioned is the setting up of a water treatment plant. Shri Sarin has drawn our attention to a decision of this Court in *'Jai Pal Singh and others* vs. *State of Haryana and another'* (7). It was held therein that the Government has to stick to the same purpose of acquisition till the proceedings attained finality. In reply, learned counsel for the respondents has explained that the water treatment plant was an integral part of the larger scheme and was required to be installed in the proposed urban estate only and, therefore, it was nothing different but part of the scheme for which notification under Section 4 was issued. The State Government found it expedient and necessary to instal a water treatment plant at the earliest so that the urban estate could be set up after complying with the enviromental requirements regarding the water treatment. We have considered the arguments of the parties and we are of the view that there is no change of purpose. The specific purpose specified in the notification under Section 17(2) of the Act cannot be said to be essentially differnet from the original purpose specified in the notification issued under Section 4 of the Act.

(14) Shri Sarin has also argued that the urgency provisions contained in Section 17 (2) of the Act have been invoked without sufficient reasons. It is explained by him that there was no urgency so as to dispense with the compliance of Section 5A of the Act. Learned counsel for the respondents has pointed out that petitioner No. 1, Mela Singh, has already accepted compensation equivalent to 80% thereof on 29th November, 1997 after handing over possession of the land. Award has been made by the Land Acquisition Collector on 28th January, 1998. It is therefore, argued by him that after the pronouncement of the award, the petitioners had no right to challenge the notification. It is also explained that Section 17(2) of the Act was invoked because the project relating to the water treatment plant was required to be set up in the urban estate before the said estate was established. It was a technical project and was to be completed under a time-bound programme. Land measuring 47 kanals 14 Marlas situated in village Lodhipur was

(7) 1891 Revenue Law Reporter 387

acquired and utilised for the purposes of the water treatment plant. It was for that reason that provisions of Section 17(2) were used by the State Government. We find force in the plea of the learned counsel for the respondents and do not find that the urgency provisions were wrongly invoked. It may be noticed that while issuing notification under Section 4 of the Act, urgency provisions were not invoked and the land owners were permitted to file objections under Section 5A of the Act. In view of that, the action taken under Section 17(2) of the Act is found to be not liable to be assailed.

(15) In the result, we find no force in the writ petition and the same is, therefore, dismissed.

J.S.T.

Before G. C. Garg & N. K. Agrawal, JJ

SHANTI SARUP SHARMA,—*Petitioner*

versus

COMMISSIONER OF INCOME TAX, HARYANA, ROHTAK & ANOTHER,—*Respondents.*

C.W.P. No. 6879 *of* 1997

1st December, 1998

Constitution of India, 1950—Arts. 226/227—Income Tax Act, 1961—S. 273-A—Penalty for non-payment of tax on interest received—Land acquired—Petitioner paid compensation with interest—Not a regular assessee—Not liable to pay income tax on amount of compensation received—Could not anticipate receipt of interest unless finally determined—Not supposed to pay advance tax in the same assessment year in which 'interest' received—Levy of penalty unjustified.

Held that there is considerable force in the petitioner's plea that he could not anticipate the receipt of interest unless it was finally determined by the competent authority. Therefore, the petitioner was not supposed to pay advance tax in the assessment year in which the interest accrued. In these circumstances, the petitioner cannot be held liable for penalty for failure to file the