

Before M. R. Sharma, J.

GURDEV SINGH AND OTHERS—*Petitioners.*

versus

STATE OF PUNJAB ETC.—*Respondents.*

Civil Writ Petition No. 1083 of 1974

March 14, 1978.

Land Acquisition Act (1 of 1894)—Sections 4, 5(A), 6, 17(2) (c) and 18—Constitution of India 1950—Article 226—Urgency provisions invoked on the ground that proceedings before the tribunals take a long time—Such consideration—Whether extraneous to the scope of section 17—Land owner claiming enhanced compensation under section 18—Whether debarred from challenging notification of acquisition under article 226.

Held, that the right of a land owner to raise objections under section 5 A of the Land Acquisition Act 1894 about the feasibility of the acquisition is an important right which cannot be set at naught by adopting circuitous means. It is understandable if the plea raised on behalf of the State is that a particular purpose of acquisition was of urgent importance. The defence that the tribunals are likely to prolong the case so as to defeat the very aim of the Government in achieving a public purpose relates to a matter of policy, designed to cope with the situation arising out of the lethargic working of the Tribunals. Such a defence is totally extraneous to the scope of section 17 of the Act.

(Para 4)

Held, that there is no reason for holding that since the land owner has filed a reference under section 18 of the Act for claiming enhanced compensation, the High Court should not quash the acquisition in proceedings under Article 226 of the Constitution of India. If this argument is accepted, it may introduce an element of uncertainty in the procedure which entitles a citizen to enforce his rights.

(Para 6)

Petition under Article 226 of the Constitution of India praying that :—

- (a) *That all the relevant records may be summoned;*
- (b) *That a writ, order or direction quashing the impugned Notifications contained in Annexures 'P. 1' and 'P. 2' be issued;*
- (c) *That the costs of this petition be allowed to the petitioners.*

H. L. Sibal, Sr. Advocate with R. C. Setia, Advocate, for the petitioners.

Ashok Bhan, Advocate, I. S. Tiwana, Addl. A. G. (Punjab), for the respondents.

JUDGMENT

M. R. Sharma, J. (Oral).

(1) This order will also dispose of Civil Writ Petitions Nos. 1084, 1085, 1086, 1087 and 1427 of 1974.

(2) The State of Punjab issued a notification under section 4 of the Land Acquisition Act (hereinafter referred to as the Act) on February 21, 1974, declaring its intention to acquire the land of the petitioners for setting up a new Mandi Township at Goraya. On the same day another notification was issued under section 6 of the Act, in which it was mentioned that since the public purpose for which the land was being acquired was of urgent importance it would be open to the authorities concerned to proceed to take possession of the land in dispute under section 17(2)(c) of the Act. The petitioners have challenged the legality of these two notifications *inter alia* on the ground that the setting up of a new Mandi Township being a long drawn out process, in fact, the purpose of acquisition was not of urgent importance. It has also been averred that the land of the petitioners was very fertile, yielding three crops in a year and that in the vicinity of the said land some other land which was not so productive was also available which could have been more conveniently acquired at less cost to the State exchequer.

(3) In the return filed on behalf of the respondents Nos. 1 and 2 it has not been specifically denied that the land belonging to the

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petitioners was capable of yielding three crops in a year. The following reasons have been given for invoking the urgency provisions:—

“The proceedings can be visited with the leading of evidence and a good number of adjournments. The Government on the executive side has no control over the statutory tribunal examining objections under section 5-A so as to curtail or limit the time of disposal of the case under section 5-A. The likelihood or say the danger of the case being prolonged so as to defeat the very aim of the Government in achieving a public purpose as a welfare state is not ruled out. Section 17 of the Act does give powers to the Government to take possession immediately if the aim of achieving a public purpose would be throttled otherwise. The uncertainty of the completion of proceedings under section 5-A in a limited and specified period, there being nothing in the Act to this effect and the haunting danger of the proceedings being prolonged unduly and unnecessarily and the case remaining hanging fire before another superior tribunal and Court, is a very sufficient and a good circumstance for the Government to take a decision for taking an action under section 17 in this case. By taking possession immediately, temporary arrangement for shaping and figuring the area for a grain market can be made by the Government which area is certainly more spacious to meet the requirement urgently”.

(4) Mr. Jasbir Singh Ahluwalia, who has stated these facts on affidavit, deserves to be congratulated for indulging in plain speaking. But I am somewhat astonished at the stand taken on behalf of the State Government. In substance it amounts to denying a statutory Tribunal a right to perform its duty of hearing objections under section 5-A of the Act. The Tribunal itself is appointed by the State Government and if the latter at the time of appointing the Presiding Officer of the Tribunal does not take care to appoint such persons who dispose of the cases expeditiously, the citizens cannot be made to suffer. It has been held in a large number of cases that the right of a landowner to raise objections under section 5-A of the Act about the feasibility of the acquisition is an important right which cannot be set at naught by adopting circuitous means. I could

have understood if the plea raised on behalf of the State had been that the instant purpose of acquisition was of urgent importance. Unfortunately, the defence put forth relates to a matter of policy, designed to cope with the situation arising out of the lethargic working of the Tribunals. Such a defence is totally extraneous to the scope of section 17 of the Act. In *The Printers House Private Ltd. versus Misri Lal and others*, (1), a Full Bench of this Court had the occasion to deal with such a matter when it observed:—

“We think, therefore, that if the question of urgency has been decided on grounds which are non-existent or irrelevant, or on material on which it would be an impossible conclusion to reach, it could legitimately be inferred that the mind has not been applied at all. Even Mr. Kaushal conceded that the proved *mala fides* would alter the complexion of the conclusion reached on subjective satisfaction on the question about the existence of urgent importance or urgency. It seems manifest to us that the question must be examined by Court before it could be found that the decision was reasonable. In other words, the question is not such which could be declared non-justiciable outright”.

(5) I am bound to follow this view with respect. I may also add that with the advancement of industrialization in the State of Punjab more and more burden has started falling on the petty farmers whose sole means of livelihood is agriculture. In the circumstances, the authorities exercising functions under the Act should try to follow the salutary provisions of section 5-A of the Act, in its letter and spirit as far as possible before making acquisitions of land. Such authorities should, as far as possible, acquire inferior land so that the State exchequer may also not suffer. In this view of the matter the petition deserves to succeed.

(6) Mr. Tiwana, learned Additional Advocate-General, Punjab, has, however, argued that the petitioners have filed references under section 18 of the Act for claiming enhanced compensation and for that reason I should not quash the acquisition in proceedings under Article 226 of the Constitution. In support of his contention he has placed reliance on *Tirthalal De versus The State of West Bengal*

(1) I.L.R. Pb. and Haryana (1970) Page 76.

Surat Singh v. Jagdish and others (S. C. Mittal, J.)

and others (2), and *Mohammad Habibullah Sahib and others versus Special Deputy Collector for Land Acquisition Madras and others* (3). The argument of Mr. Tiwana, if accepted, would bring about a curious situation. A landowner who has a genuine feeling that the notification regarding the acquisition of land is illegal would either have to challenge the legality of the notification by filing a petition under Article 226 of the Constitution or to forego his right to make such a challenge and to claim enhanced compensation only. I see no ground to introduce an element of uncertainty in the procedure which entitles a citizen to enforce his rights. The other ground impels me to take this view that the notification under section 4 of the Act was issued on February 21, 1974 and the instant petition was filed on March 21, 1974. At the time of admission of the petition further proceedings were ordered to be stayed by the Motion Bench and according to the learned counsel for the petitioners the landowners continued to be in possession of the land. In the Madras case cited above the acquisition was challenged after a long delay of three years. In the circumstances, I see no force in the contention raised by Mr. Tiwana. These petitions are accordingly allowed with costs. Counsel's fee Rs. 300 in each case.

N. K. S.

REVISIONAL CIVIL

Before S. S. Sandhawalia and S. C. Mittal, JJ.

SURAT SINGH—(Plaintiff) Petitioner

versus

JAGDISH AND OTHERS—(Defendants) Respondents.

Civil Revision No. 1368 of 1974

March 17, 1978.

Court Fee Act (VII of 1870) as amended by the Court Fee (Punjab Amendment) Act (XXXI of 1953)—Section 7(iv) (c) proviso—Suit for cancellation of a money decree—Court fee—Whether payable ad valorem.

(2) 66 Calcutta Weekly Notes, Page 115.

(3) A.I.R. 1967 Madras 118.