Pandit Jhandu Lal & Ors.

Vs

The State of Punjab & Ors.

Civil Appeal No. 4 of 1960

(CJI B. P. Sinha, J. L. Kapur, K. N. Wanchoo, P. B. Gajendragadkar, K. Subha Rao JJ)

16.11.1960

JUDGMENT

SINHA, C.J. -

This appeal, by special leave granted on May 29, 1959, is directed against the decision of the Letters Patent Bench (G. D. Khosla, C.J., and Dulat, J.) dated January 28, 1959, affirming that of the learned single Judge (Bishan Narain, J.) dated February 17, 1958, whereby he dismissed the appellants' Writ Petition under Art. 226 of the Constitution.

It appears that the appellants are the owners of, what is said to be, agricultural land, measuring about 86 bighas odd, in village Munda Majra, Tehsil Jagadhari, in the district of Ambala. On October 27, 1954, the Additional District Magistrate of Ambala ordered the land aforesaid to be requisitioned under the Punjab Requisitioning & Acquisition of Immoveable Property Act (XI of 1953) for the construction of houses by members of the Thapar Industries Co-operative Housing Society Ltd., Yamuna Nagar. Possession of the land was taken on November 5, 1954. The appellants, at once, instituted a suit on November 14, 1954, in the Court of the Subordinate Judge, Jagadhari, challenging the requisition proceedings. The suit was ultimately decreed by the Court on June 21, 1955, and the possession of the property in question was restored to the petitioners. On May 27, 1955, the first respondent, i.e., the State of Punjab, through the Secretary, Labour Department, issued a notification under section 4 of the Land Acquisition Act (1 of 1894) (which hereinafter will be referred to as the Act). The notification, under section 4 is in these terms -

> "No. 4850-S-LP-55/14144. Whereas it appears to the Governor of Punjab that land in the locality hereunder specified is likely to be needed by the Government for a public purpose, namely, for the construction of a Labour Colony under the Government sponsored Housing Scheme for the Industrial Workers of the Thapar Industrial Workers' Co-operative Housing Society Limited, Jamna Nagar (District Ambala), it is hereby notified that the land described in the specifications below is likely to be required for the above purpose.
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> This notification is made under the provisions of Section 4 read with section 17 of the Land Acquisition Act, 1894, as amended by the Land Acquisition (Punjab Amendment) Act, 1953, to all to whom it may concern and the Collector shall cause public notice of the substance of this notification to be given at convenient places in the said locality;
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> In exercise of the powers conferred by the aforesaid sections, the Governor of the

> Punjab is pleased to authorise the President of the above said Society with the members and servants to enter upon the survey any land in the locality and do all other acts required or permitted by that section.
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> Further in exercise of the powers conferred by sub-section (4) of Section 17 of the said Act the Governor of Punjab is pleased to direct that, on the grounds of urgency, the provisions of Section 5(a) of the said Act, shall not apply in regard to this Acquisition".

Later, the same day, another notification, under section 6 of the Act, was issued. This notification, under section 6, states that it appeared to the Governor of Punjab that the land is required to be taken by Government for a public purpose, namely, for the construction of a Labour Colony under the Government sponsored Housing Scheme for the Industrial Workers of the Thapar Industrial Workers' Co-operative Housing Society Limited (which is the second respondent in this case). It also says that under the provisions of section 7 of the Act, the Collector, Ambala, is directed to take order for the acquisition of the land. The Patwari effected delivery of possession of the lands in question to the second respondent on August 21, 1955. Even before the delivery of possession had been effected, the appellants promptly instituted their suit on August 20, 1955, in the Court of the Subordinate Judge Class I, Jagadhari, for a perpetual injunction restraining the second respondent from entering upon or taking possession of the land in question, or making any construction thereon. The trial Court dismissed the suit on June 25, 1956, on the preliminary ground that the suit was not competent in the absence of a previous notice under section 59 of the Punjab Co-operative Societies Act, 1955 (XIV of 1955). The appellants appealed to the Senior Sub-Judge, Ambala, who dismissing their appeal, upholding the decision of the trial Court that the notice was a condition precedent to the institution of the suit. Their second appeal was dismissed by the Punjab High Court on February 6, 1957. During the pendency of the civil litigation aforesaid, in spite of the fact that the second respondent had obtained delivery of possession through Government agency, by an Order of Injunction issued by the Court, construction had been stayed. As soon as the High Court decided the suit in favour of the respondents, the second respondent "started making huge construction on the land in dispute in a very speedy manner", as alleged by the appellants in their petition under Art. 226 of the Constitution, which they filed on February 13, 1957. From the High Court also, they obtained similar Stay Orders whereby building operations were stopped. In their Writ Petition, the appellants, as petitioners in the High Court, challenged the acquisition proceedings on a number of grounds, of which it is only necessary to notice the one which has formed the subject matter of decision in the High Court, namely, that the proceedings were void for want of compliance with the procedure laid down in Chapter VII (mistake for Part VII) of the Act. It is not necessary to refer to the other contentions raised in the Writ Petition, because it is common ground before us that the whole controversy must be determined by the answer to the question, 'whether or not the proceedings were vitiated by reason of the admitted fact that no proceeding sunder Part VII of the Act had been taken in making the acquisition'.

The matter was heard, in the first instance, by Bishan Narain, J. The learned Judge dismissed the petition, holding that the acquisition was by the Government for a public purpose, namely, of construction of tenements for industrial workers, under a scheme subsidised by the Government out of public funds; that Part VII of the Act had no application to the present proceedings, and that, therefore, the notification under section 6 was not invalid. The appellants preferred an appeal, under the Letters Patent. The Letters Patent Bench dismissed the appeal, but for different reasons. After an examination of the precedents of the different High Courts, bearing on the controversy in this case, the Bench came to the conclusion, which may better be expressed in its own words :-

> "There is thus considerable authority for the view advanced by the learned counsel for the appellants that compliance with the provisions of Part VII is obligatory in the case of all acquisitions for a company. In the present case the acquisition was undoubtedly for the benefit of a company. I have given this matter my most anxious consideration, and, with great respect to the learned Judges, whose decisions have been noted above, I find myself unable to subscribe to the views expressed by them. It seems to me that their views were coloured by the background of the provisions of the Constitution. Article 31 of the Constitution prohibits compulsory acquisition of property for anything except a public purpose. Therefore, acquisition for anything which is not a public purpose cannot now be done compulsorily, but it has never been disputed that before the Constitution came into force land could have been acquired compulsorily by Government for a purpose which was not public. There is nothing in the Land Acquisition Act to warrant the assumption that the embargo placed by Article 31 of the Constitution found place in the Act. It seems to me that the Land Acquisition Act contemplates two categories of acquisitions".

After an examination of the provisions of the Act, the High Court observed that the Land Acquisition Act came into force when there was no bar to compulsory acquisition for private purposes. Such a bar was only imposed, for the first time, by Art. 31 of the Constitution. After the Constitution came into force, Part VII of the Act became redundant or null and void. But, in its view, the present acquisition proceedings were saved from all attack based on non-compliance with the provisions of Part VII of the Act. The reason for this conclusion, according to the High Court, was that as the land was acquired for a public purpose, there was no need to comply with the provisions of Part VII, even though the Company is to bear all the expenses for the acquisition.

It is manifest that the main point for determination in this appeal is : Whether or not the acquisition proceedings had been vitiated by reason of the admitted fact that there was no attempt made by the Government to comply with the requirements of Part VII of the Act. It is equally clear that the Letters Patent Bench of the High Court was misled in its conclusions, because all the provisions of Art. 31 of the Constitution had not been brought to their notice. It is not correct to say that Part VII of the Act had become redundant or null and void, as suggested by the High Court, because that Part provided for acquisition for a private purpose. As held by this Court in a recent decision, in the case of Babu Barkaya Thakur v. The State of Bombay, ([1961] 1 S.C.R. 128.) the Act deals with two kinds of acquisitions : (1) for a public purpose, at the cost of the Government, and (2) for a purpose akin to such a purpose, at the cost of a Company, and to the latter class of acquisition, the provisions of Part VII are attracted. It was further held in that case that acquisition of a site for building residential houses for industrial labour was a public purpose, and that the Land Acquisition Act was immune from attack based on the provisions of Art. 31(2) of the Constitution, in view of the provisions of cl. 5(a) of that Article, which saved an existing law of the nature of the Act in question. As will presently appear, the conclusion of the High Court is entirely correct, but the process of reasoning by which it has reached that conclusion is erroneous. That process suffers from the initial error arising from the fact that the provisions of Art. 31(5) of the Constitution had not been brought to the notice of that Bench. If the Bench were cognisant of the true legal position that the Land Acquisition Act, in its entirety, including Part VII dealing with the acquisition of Land for Companies, was not subject to any attack under Art. 31(2) of the Constitution, it would not have based that conclusion on that ration. Otherwise, there would be no answer to the contention in which the appellants had persisted throughout the long course of litigation in which they have indulged in their vain effort to save the land from being used for the public purpose aforesaid. The Letters Patent Bench has also fallen into another error in assuming that "the compensation was paid

in its entirety by the Company". It is better to clear the ground by showing that this assumption is not well-founded in fact.

In their Writ Petition, as originally field in the High Court, it was not categorically stated by the appellants that the compensation in respect of the land in question was paid, or was to be paid, by the Company. It may be stated here, by the way, that it is common ground that the second respondent is a Company within the meaning of the Act, being a registered society under the Co-operative Societies Act. It is also common ground that the purpose for which the land was being acquired was of erecting residential quarters for industrial labour, which had organised itself into the Co-operative Housing Society, the second respondent. It was only at a later stage of the proceedings in the High Court, that is to say, in the replication filed on behalf of the appellants to the Written Statement filed by the Government, in answer to the appellant's Writ Petition, that, for the first time, it was alleged by the appellants that "the entire amount of compensation has been borne by the respondent society". This allegation has not been either supported or countered by evidence on either side. But it has been pointed out by the learned single Judge that it was clear from the Government Housing Scheme that a substantial amount to be expended on this Scheme comes out of the Revenues, in the form of subsidies and loans. It was stated at the Bar, with reference to the terms and conditions of the Government Housing Scheme, that 25% to 50% of the cost of land and structures to be built upon the land was to be advanced by Government out of public funds, in the shape of subsidy and loan. It would, thus, appear that the High Court was not right in the assumption made as aforesaid.

It is clear from the statement of facts on record that the respondent No. 2 is a 'Company', within the meaning of the Act; that the land is acquired for the benefit of the Company, and at its instance, and that a large proportion of the compensation money was to come out of public funds, the other portion being supplied by the Company or its members. There is also no doubt that the structures to be made on the land would benefit the members of the Co-operative Society. But, the private benefit of a large number of industrial workers becomes public benefit within the meaning of the Land Acquisition Act. In this connection, it may be mentioned that section 17 of the Act was amended by the Land Acquisition (Punjab Amendment) Act (II of 1954) in these terms -

> "17(2)(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 the inhabitants of such village, or any godown for any society registered under the Co-operative Societies Act, 1912 (II of 1912), or any dwelling-house for the poor, or the construction of labour colonies under a Government-sponsored Housing Scheme, or any irrigation tank, irrigation or drainage channel, or any well, or any public road,
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> 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".

It will appear from the (amended) section 17(2)(b), quoted above, that the construction of labour colonies, under a Government-sponsored Housing Scheme, has been included in the category of 'works of public utility'. As already indicated, even apart from the indication given by the (amended) section 17, quoted above, this Court has held, in the recent decision ([1961] 1 S.C.R.

128.) that building of residential quarters for industrial labour is public purpose. Hence, even apart from the amended provisions of section 17, it is clear on the authorities that the purpose for which the land was being acquired was a public purpose.

Having cleared the ground, it now remains to consider the terms of section 6, on which great reliance was placed on behalf of the appellants. There is no doubt that, as pointed out in the recent decision of this Court, the Act contemplates acquisition for a public purpose and for a Company, thus conveying the idea that acquisition for a Company, thus conveying the idea that acquisition for a Company is not for a public purpose. It has been held by this Court, in that decision, that the purposes of public utility, referred to in ss. 40-41 of the Act, are akin to public purpose. Hence, acquisition for a public purpose as also acquisitions for a Company are governed by considerations of public utility. But the procedure for the two kinds of acquisitions is different, in so far as Part VII has made substantive provisions for acquisitions of land for Companies. Where acquisition is made for a public purpose, the cost of acquisition for payment of compensation has to be paid wholly or partly out of Public Revenues, or some fund controlled or managed by a local authority. On the other hand, in the case of an acquisition for a Company, the compensation has to be paid by the Company. But, in such a case, there has to be an agreement, under section 41, for the transfer of the land acquired by the Government to the Company on payment of the cost of acquisition, as also other matters not material to out present purpose. The agreement contemplated by section 41 is to be entered into between the Company and the Appropriate Government only after the latter is satisfied about the purpose of the proposed acquisition, and subject to the condition precedent that the previous consent of the Appropriate Government has been given to the acquisition. The 'previous consent' itself of the Appropriate Government is made to depend upon the satisfaction of that Government that the purpose of the acquisition was as laid down in section 40. It is, thus, clear that the provisions of ss. 39-41 lay down conditions precedent to the application of the machinery of the Land Acquisition Act, if the acquisition is meant for a Company. Now, section 6 itself contains the prohibition to the making of the necessary declaration under that section in these terms -

> "Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Section 6 is, in terms, made subject to the provisions of Part VII of the Act. The provisions of Part VII, read with section 6 of the Act, lead to this result that the declaration for the acquisition for a Company shall not be made unless the compensation to be awarded for the property is to be paid by a company. The declaration for the acquisition for a public purpose, similarly, cannot be made unless the compensation, wholly or partly, is to be paid out of public funds. Therefore, in the case of an acquisition for a Company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But, that does not necessarily mean that an acquisition of a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition for a public purpose is that the cost of the acquisition is should be borne, wholly or in part, out of public funds. Hence, an acquisition for a Company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition for a Company is to be made at the cost entirely of the Company itself, such an acquisition comes under the provisions of Part VII. As in the present instance, it appears that part at any rate of the compensation to be awarded for the acquisition is to come eventually from out of public revenues, it must be held that the acquisition is not for a Company simpliciter. It was not, therefore, necessary to go through the procedure

prescribed by Part VII. We, therefore, agree with the conclusion of the High Court, though not for the same reasons.

The appeal, accordingly, is dismissed with costs.

Appeal dismissed.

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