

Smt. Gunwant Kaur and Others

Vs

Municipal Committee, Bhatinda and Others

Civil Appeal No. 1337 of 1969

(J.C. Shah, K.S. Hegde JJ)

04.12.1969

JUDGMENT

SHAH, J. -

1. This is an appeal against the judgment of the High Court of Punjab dismissing in limine a petition filed by the three appellants in this appeal.
2. The third appellant purchased from one Hari Ram a plot of land approximately 500 sq. yds. at Bhatinda and applied on August 4, 1960 for permission of the local Municipal Committee to construct a house on that plot of land. Sanction was granted on August 10, 1960, and the third appellant constructed a residential building on the land. The first appellant also purchased 500 sq. yds. from Hari Ram on April 4, 1961 and submitted an application with plans to the Municipal Committee for constructing a house. The application was granted on August 9, 1963. The second appellant purchased a plot measuring 268 sq. yds. on November 5, 1962 adjacent to the land purchased by the first appellant from one Tarsem Singh who in his turn had purchased it from Hari Ram. He also applied for constructing a structure and that was sanctioned by the local Municipal Committee on August 9, 1963.
3. A notification had been issued by the State Government of Punjab under Section 4 of the Land Acquisition Act on June 26, 1959 declaring that land specified in the schedule to the notification was needed for a public purpose, i.e., for construction of Mall Road leading from the Railway Station Bhatinda to the Main Road known as Goniana-Bhatinda Road. In the schedule to the notification the land was described as Khasra No. 2030 and 11 sets of persons were shown as owners of two pieces out of the land. The aggregate area of the land likely to be needed was shown as 15 bighas and 5 biswas and Hari Ram was shown as owner of two pieces out of the land. By an amendment of the notification published on July 31, 1959, the holding of Hari Ram was shown in the aggregate as 8 bighas and 15 biswas. A notification under Section 6 of the Land Acquisition Act declaring that the lands were needed for a public purpose was issued on January 6, 1960 and published on January 15, 1960. The Schedule to the notification was in the same form as it was originally published in the notification under Section 4 and modified on July 31, 1959. It was recited in Paragraph 3 of the notification that the plans of the land may be inspected in the office of the Bhatinda District and of the Municipal Committee, Bhatinda.
4. In the view of the Municipality of Bhatinda the demarcation of the land according to the plan published with the notification under Section 6 did not tally with the situation on the site. The matter was accordingly referred to the Public Works Department of the State. Later the Municipal Committee resolved to reduce the width of the road which was originally intended to be 100 feet to

60 feet. On February 15, 1965, the Municipal Committee resolved to abandon the scheme for it appeared to the Municipal Committee that even with the reduced width of 60 feet certain Municipal installations and lands used for public purposes were likely to be included in that road width. There was correspondence between the Municipal Committee and the local Government under which the alignment of the road was sought to be modified. The Government of Punjab, however, insisted that the Municipal Committee should proceed with the acquisition and directed the Collector to issue the requisite notices and to make his award of compensation.

5. The appellants then filed a writ petition in the High Court of Punjab on December 16, 1968, alleging that the substance of the notification under Section 4 and its corrigendum was not published in the locality by the Collector; that the proposed land which was sought to be acquired for the Mall Road was not demarcated at site under Section 4(2) of the Act; that the procedure laid down in Section 5-A of the Act was not followed; that the notification was vague and since the land sought to be acquired not fully described in the notification, the interested persons could not file their objections against the acquisition; that Khasra No. 2030 was a very large plot of land consisting of several building plots which were all part of the main Khasra No. 2030 and the original owners of this field number had divided this field into several abadi plots and had sold them to different persons before the notification and unless the portions of Khasra No. 2030 sought to be acquired were specified, by the mere reference to certain areas thereof the owners could not be deemed to have intimation that their plots were to be acquired; and that the notification issued by the Government under Section 6 and the plan accompanying thereto did not tally with the alignment of the road as originally intended to be laid or subsequently modified by the Municipal Committee.

6. The High Court of Punjab dismissed the petition in limine. The High Court observed;

"The grievance of the petitioner's complaint is that the area now sought to be taken possession of was not included in the acquisition notification of 1959. In the elaborate order of the Collector the condition is, 'I am satisfied that the true area of land demarcated corresponds to the area notified and that it has been demarcated on the ground with as much accuracy as was reasonably possible'. This Court cannot determine disputed question of fact and this petition is dismissed accordingly."

With certificate granted by the High Court the petitioners have appealed to this Court.

7. The notification under Section 4 is the foundation of a proceedings for acquisition of land. In the present case the notification under Section 4 did not set out with precision the parts of Khasra No. 2030 belonging to different owners sought to be acquired. The notification merely set out the areas intended to be acquired out of Khasra No. 2030 but the location of the areas under Khasra No. 2030 could not thereby be ascertained. No plans demarcating the land to be acquired were published or made available to the owners of the land.

8. The contention of the appellants is that they had no opportunity to avail themselves of their statutory right to object to the proposed acquisition under Section 5-A of the Land Acquisition Act and on that account the proceedings for acquisition are ultra vires.

9. Section 4 of the Land Acquisition Act does not expressly require the Collector to publish or make available the plans of the lands intended to be notified to the owners of the lands. But the acquiring authority is bound to publish sufficient information giving due notice to the owners of the lands that their properties are intended to be compulsorily acquired. Under Section 4(1) the appropriate

Government being of the opinion that land in any localities needed or is likely to be needed for any public purpose, may publish a notification to that effect. The Collector has then to cause public notice of the substance of such notification to be given at convenient place in the locality. After the notification is issued the Collector may exercise the power to enter upon and survey the land and set out the boundaries of the land proposed to be taken and the intended line of the work proposed to be made thereon. By Section 5-A any person interested in any land notified under Section 4 as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification, submit in writing to the Collector his objection to the acquisition of the land or of any land in the locality as the case may be. The Collector has to give to the objector an opportunity of being heard and has after hearing the objections and making such further inquiry as he thinks necessary, to submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. Under Section 6 of the Act the Government is satisfied after considering the report of the Collector under Section 5-A that the land is needed for a public purpose. The inquiry and the report under Section 5-A may be dispensed with only if a notification is issued under Section 17(4) of the Land Acquisition Act.

10. In the present case no order under Section 17(4) was issued by the Government of Punjab. The owners of the lands were, therefore, entitled to be heard on the question whether their lands or any land in the locality should be acquired for the purpose for which it was intended to be acquired. The appellants contended that they had no opportunity of making their representations, for the notification gave no notice to them that the land in their occupation was intended to be acquired.

11. In summarily rejecting the petition; two grounds were given in the order of the High Court - first that the Collector was satisfied that the true area of the land demarcated corresponded to the area notified and that it had been demarcated on the ground with accuracy as was reasonably possible, and the second, that the question raised was one of fact. The writ petition filed before the High Court was not in the nature of an appeal against the decision of the Collector. The Collector was acting for and on behalf of the State Government to make an offer of compensation for the lands to be acquired. The appellants were entitled to challenge the correctness of the Collector's opinion. Again the jurisdiction of the Collector depended upon the issue of a valid notification and the mere fact that the Collector was satisfied that the true area of land demarcated "corresponded to the area notified" - whatever that expression may mean - did not prevent the owners of the lands from contending before the High Court that they had no opportunity of making their representations under Section 5-A of the Act and of satisfying the Collector that their lands should not be acquired. The three appellants had applied to the local Municipal Committee had sanctioned the constructions. Prima facie, this may indicate that in the view of the Municipal Committee the lands on which the buildings were allowed to be constructed were not within the area notified for acquisition, or would not be needed for the road.

12. The Government of Punjab did not publish any plans, nor did they inform the owners of the lands in the locality to which the notification under Section 4 of the Land Acquisition Act related, that plans were available for inspection at the office of the Collector; the owners of the lands were only informed that some parts of Khasra No. 2030 belonging to the owners were required. There is no evidence on the record that the entire area of Khasra No. 2030 was intended to be acquired. The notification was not, therefore, due notice to the owners that their lands were intended to be notified for acquisition. In Paragraph 2 of the petition it is also averred that there was no due publication of the notification in the locality by the Collector.

13. The pleas raised by the petitioners about the infirmity in the notification and the proceedings for compulsory acquisition were serious.

14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit in reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.

17. It was urged by Mr. Hazarnavis on behalf of the Municipal Committee, Bhatinda, that the three appellants were purchasers of the lands claimed by them after the notification under Section 4 was issued and they had no right to challenge the issue of the notification. If, however, the notification under Section 4 was vague the three appellants who are purchasers of the land had title thereto to challenge the validity of the notification. The appellants have spent in putting up substantial structures considerable sums of money and we are unable to hold that merely because they had purchased the lands after the issue of the notification under Section 4 they are debarred from challenging the validity of the notification, or from contending that it did not apply to their lands.

18. The appeal is, therefore, allowed and the order passed by the High Court is set aside. The proceeding is remanded to the High Court with the direction that the petition be readmitted to its original number and that it be heard and disposed of according to law after considering the affidavits in reply and the other evidence adduced by the parties. Costs of the appeal will be the costs in the petition.

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