

Lt. Governor of Himachal Pradesh and Another

Vs

Sri Avinash Sharma

Civil Appeal No. 514 of 1967

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

28.04.1970

JUDGMENT

SHAH, J. -

1. The Deputy Commissioner, Mahasu, apparently acting on the request of the Air Force authorities took possession on December 23, 1963, of an area of land in village Calu Chak. That area included 8-14-0 bighas belonging to the respondent. The record does not disclose the authority under which possession of the land was taken and delivered over to the Air Force. There was correspondence between the Air Force authorities and the State of Himachal Pradesh in regard to the land occupied by the Air Force and ultimately on March 31, 1964, a notification under Section 4 of the Land Acquisition Act, 1894, was published notifying that the area of land (including the land of the respondent) was likely to be needed by the State Government for a public purpose. By a composite notification under Section 6 and Section 17(1) and (4) dated May 16, 1964, the State of Himachal Pradesh declared that the land was needed for a public purpose, that since it was required urgently, the enquiry under Section 5-A of the Act was dispensed with, and that possession of the land will be taken under Section 17(1) of the Act after the expiry of fifteen days from the publication of the notice under Section 9(1) of the Act. The Collector of Mahasu then served notices under Section 9 of the Land Acquisition Act in June 1964. On October 5, 1965, the Government of Himachal Pradesh published an order cancelling the notification, dated March 31, 1964 and May 15, 1964, for acquisition of land for a public purpose.

2. The respondent then presented a petition before the Judicial Commissioner, Himachal Pradesh, for a writ quashing the notification dated October 5, 1965, withdrawing and cancelling the previous notifications and for a writ of mandamus directing the authorities of the State Government to act according to law and discharge the duties cast by law upon them in the matter of determination of compensation for compulsory and urgent acquisition. The petition was granted by the Judicial Commissioner. In the view of the Judicial Commissioner when the notification was issued under Section 17(1) and (4) was issued, and possession was taken by the State Government, the land vested in the Government and it was not competent to the State Government thereafter to withdraw the notifications in exercise of the power under Section 48 of the Land Acquisition Act. Against the order of the Judicial Commissioner, this appeal has been preferred with special leave.

3. The Solicitor-General appearing on behalf of the State contended that under Section 21 of the General Clauses Act the State has the power to cancel the notifications at any time, and that Section 48 of the Land Acquisition Act did not trench upon that power. Under the Land Acquisition Act a notification under Section 4 of the Act may be issued by the appropriate Government that any land is needed or is likely to be needed for a public purpose. Unless the inquiry under Section 5-A is

dispensed with, any person interested in the land notified may object to the acquisition of the land, or of any land in the locality. On the objections made, the Collector holds a inquiry after giving the objector an opportunity of being heard, and makes a report. The appropriate Government may, if satisfied, after considering the report, if any, of the Collector under Section 5-A(2), make a declaration that the land is needed for a public purpose. The declaration is conclusive evidence that the land is needed for a public purpose. Then follows an inquiry as to the amount of compensation payable to the owner of the land and to the other claimants. If the land is waste or arable, the Government may in case of urgency dispense with the inquiry under Section 5-A and direct that possession may be taken on the expiration of fifteen days after the publication of the notice under Section 9(1) of the Act even though no award of compensation is made by the Collector. When the possession is taken the land vests exclusively in the Government free from all encumbrances.

4. In the present case a notification under Section 17(1) and (4) was issued by the State Government and possession which had previously been taken must, from the date of expiry of fifteen days from the publication of the notice under Section 9(1), be deemed to be in the possession of the Government. We are unable to agree that where the Government has obtained possession illegally or under some unlawful transaction and a notification under Section 17(1) is issued the land does not vest in the Government free from all encumbrances. We are of the view that when a notification under Section 17(1) is issued, on the expiration of fifteen days from the publication of the notice mentioned in Section 9(1), the possession previously obtained will be deemed to be the possession of the Government under Section 17(1) of the Act and the land will vest in the Government free from all encumbrances.

5. It is true that the notification issued by the State of Himachal Pradesh under Section 17(1) and (4) does not recite that the land notified was "waste or arable". But it was not contended under Section 17(1) and (4) without authority. Power under sub-sections (1) and (4) of Section 17 may be only exercised when the land is waste or arable, and the Government having issued the notification, it is not open to them to contend for the first time at this stage that the land of the respondent was not waste or arable and the notifications were unauthorised.

6. Section 48 of the Land Acquisition Act by the first sub-section provides :

"Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession had not been taken."

Power to cancel a notification for compulsory acquisition is, it is true, not affected by Section 48 of the Act; by a notification under Section 21 of the General Clauses Act, the Government may cancel or rescind the notification issued under Sections 4 and 6 of the Land Acquisition Act. But the power under Section 21 of the General Clauses Act cannot be exercised after the land statutorily vests in the State Government.

7. In *State of Madhya Pradesh and others v. Vishnu Prasad Sharma and Others* ((1966) 3 SCR 557) on which reliance was placed, the only question which fell to be considered by the Court was whether notification under Section 4(1) may be followed by successive notifications under Section 6 for small parts of the land comprised in one notification issued under Section 4. The Court rejected the contention that the State was invested with such a power. In considering the argument the Court referred to the power to cancel the notification under Section 21 of the General Clauses Act, apart from the power conferred by Section 48 of the Land Acquisition Act. The Court observed :

"Section 48(1) is a special provision for those cases where proceedings for acquisition have gone beyond the stage of the issue of notice under Section 9(1) and it provides for payment of compensation under Section 48(2) read with Section 48(3). We cannot X X accept the argument that without an order under Section 48(1) the notification under Section 4 must remain outstanding. It can be cancelled at any time by Government under Section 21 of the General Clauses Act and what Section 48(1) shows is that once Government has taken possession it cannot withdraw from the acquisition. Before that it may cancel the notification under Sections 4 and 6 or it may withdraw from the acquisition under Section 48(1). If no notice has been issued under Section 9(1) all that the Government has to do is to pay for the damage caused as provided in Section 5; if on the other hand a notice has been issued under Section 9(1), damage has also to be paid in accordance with the provisions of Section 48(2) and (3)."

8. But these observations do not assist the case of the appellant. It is clearly implicit in the observations that after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification.

9. The appeal fails and is dismissed with costs.

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