Jage Ram and Others

Vs

State of Haryana and Others

Civil Appeal No. 2034 of 1969

(K. S. Hegde, P. Jagmohan Reddy JJ)

02.03.1971

JUDGMENT

HEGDE, J. -

1. This appeal by certificate arises from the decision of a Division Bench of the Punjab and Haryana High Court in a writ petition wherein the appellants challenged the validity of proceedings under Section 4, 6, 9 and 17(2)(c) of the land Acquisition Act, 1894, as amended by the Punjab Legislature. For convenience sake we shall refer to that amended Act as 'the Act. The High Court dismissed the writ Petition.

2. It appears that several contentions were sought to be advanced before the High Court but in this Court only three contentions have been pressed for our consideration i.e. : (1) the acquisition in question being one for a company, proceedings should have been taken under Section 38 to 44(B) of the Act, the same having not been taken, the proceedings taken are void; (2) there was no urgency hence recourse should not have been had to Section 17 of the act; and (3) Section 17(2)(c) is inapplicable to the facts of the case.

3. Now we may state the facts relevant for the purpose of deciding the questions in dispute.

4. On 14/17th March, 1969, Government of Haryana issued a notification under Section 4 of the Act notifying for acquisition the land concerned in this case. The notification further directed that action under Section 17(2)(c) of the Act shall be taken on the ground of urgency and the provisions of Section 5-A shall not apply in regard to the said acquisition. The preamble to the said notification says that "whereas it appears to the Governor of Haryana that land is likely to the required to be taken by Government, at public expenses, for a public purpose, namely for the setting up a factory for the manufacture of China-ware and Porcelain-ware including wall Glazed Tiles etc., at village Kasser, Tehsil Jhajjar, District Rohtak, it is hereby notified that the land in locality described in the specification below is likely to be required for the above purpose". On March 18, 1969, the Government issued a notification under Section 6 of the act acquiring the land for a public purpose. On March 28, 1969, notices under section 9 of the Act were served on the appellants. On April 8, 1969, the appellants filed the writ petition giving rise to this appeal.

5. The allegations in the writ petition include the assertion that there was no urgency in the matter of acquiring the land in question and therefore there was no justification for having recourse to Section 17 and thus deprive the appellant of the benefit of Section 5-A of the Act. It was further alleged therein that the acquisition in question was made for the benefit of a company and hence proceedings should have been taken under Sections 38 to 44(B) of the Act and that there was no

public purpose involved in the case. It was further pleaded that the land acquired was not waste and arable land and that Section 2(c) of the act did not confer power on the Government to dispense with the proceedings under section 5-A. In the counter-affidavit filed by the Deputy Director of industries (Administration), Government of Haryana on behalf of the State of Haryana, the above allegations were all denied. Therein it is stated that at the instance of the state of Haryana, Government of India had issued a letter of intent to a company for setting up a factory for the manufacture of Glazed Tiles etc., in village Kasser. That project was to be started with the collaboration of a foreign company known as Pilkington Tiles Ltd. The scheme for setting up the project had been finalised and approved by the concerned authorities. On November 26, 1968, the Government wrote to one of the promoters of the project, Shri H. L. Somany asking him to complete the "arrangements for the import of capital equipment and acquisition of land in Haryana State for setting up of the proposed factory." It was further stated in that communication that the Government was pleased to extend the time for completing the project up to April 30, 1969. Under those circumstances it had become necessary for the State of Haryana to take immediate steps to acquire the required land. It was under those circumstances the Government was constrained to have recourse to Section 17 of the Act. The Government denied the allegation that the facts of this case did not come within the scope of Section 17 (2)(c). It was also denied that the acquisition in question was not made for a public purpose.

6. We have earlier seen that in the notification issued under Section 4, it had been stated that the acquisition was made "at public expense, for a public purpose", namely for the setting up a factory for the manufacture of China-ware and Porcelain-ware including all Glazed Tiles etc.

7. In the writ petition it was not denied that the acquisition in question was made at 'public expenses". All that was challenged in the writ petition was that the purpose for which the acquisition was made was not a public purpose.

8. There is no denying the fact that starting of a new industry is in public interest. It is stated in the affidavit filed on behalf of the State Government that the New State of Haryana was lacking in industries and consequently it had become difficult to tackle the problem of unemployment. There is also no denying the fact that the industrialisation of an area is in public interest. That apart, the question whether the starting of an industry in public interest or not is essentially a question that has to be decided by the Government. That is a socio-economic question. This Court is not in a position to go into that question. So long as it is not established that the acquisition is sought to be made for some collateral purpose, the declaration of the Government that it is made for a public purpose is not open to challenge. Section 6 (3) says that the declaration of the Government that the acquisition made is for public purpose shall be conclusive evidence that the land is needed for a public purpose. Unless it is shown that there was a colourable exercise of power, it is not open to this Court to go behind that declaration colourable and find out whether in a particular case the purpose of which the land was need was a public purpose or not : see Smt. Somavanti and Others v. The State of Punjab ((1963) 2 SCR 774 : AIR 1963 SC 151 : (1963) 2 SCJ 35.)and Raja Anand Brahms Shan v. State of U.P. ((1967) 1 SCR 373 : AIR 19677 SC 1081 : (1967) 2 SCJ 830.) on the facts of this case there can be hardly and doubt that the purpose for which the land was acquired is a public purpose.

9. In view of the pleadings referred to earlier it is not open to the appellant to contend that the State Government had not contributed any amount towards the cost of acquisition. We were informed at the bar that the State Government had contributed a Sum of Rs. 100/- towards the cost of the land which fact is also mentioned in the award of Land Acquisition Officer. That being so it was not necessary for the Government to proceed with the acquisition under Part VII of the Act : see

Somavanti's case (supra).

10. Now coming to the question of urgency, it is clear from the facts set out earlier that there was urgency. The Government of India was pleased to extend time for the completion of the project up to April 30, 1969. Therefore urgent steps had to be taken for pushing through the project. The fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not. The conclusion of the Government in a given case that there was urgency is entitled to weight, it not conclusive.

11. This takes us to the question of applicability of Section 17(2)(c) to the facts of the case. The appellant had denied in the affidavit that the entire land acquired is either waste or arable land. That contention of his has not been examined by the High Court. Therefore we have to proceed on the basis that the case does to come within the scope of section 17 (1). The State has also not purported to act under Section 17 (1). It has purported to act under Section 17(2)(c). Therefore we have to see whether the State could have proceeded on the facts of this case under section 17(2)(c). Section 17 as amended by the Punjab Act, 2 of 1954, Punjab Act, 17 of 1956, and Punjab Act, 47 of 1956, to the extent necessary for our present purpose reads thus :

> "17(1). In cases of urgency whenever, the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1) take possession of any waste or arable land needed for public purposes or for a company. Such land shall thereupon vest absolutely in the Government from for, all encumbrances.

Explanation.

> (2) In the following cases, that is to say :-
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> (a) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it become necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or that, station or of providing convenient connection with or access to any such station;
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> (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 (Act II of 1912), or any dwelling-house for the poor, or the construction of labour colonies or houses for any other class of people 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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> (c) Whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance, 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 :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hour's notice of his intention so to do.....

> (3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crop and trees (if any) on such land and for any the damage sustained by them caused by sudden dispossession.....

> (4) In the case of any land to which in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5-A shall not apply....."

12. Herein we are only concerned with the scope of Section 17(2)(c) as the vires of Section 17(2) is not challenged. Section 17(2)(c) if read by itself is plain. It seems to permit the appropriate Government to direct that the provisions of Section 5-A shall not apply whenever land is required for public purpose which in the opinion of the appropriate Government is of urgent importance. The conditions precedent for the application of Section 17(2)(c) are : (1) that the land must be required for a public purpose; and (2) the appropriate Government must be of the opinion that the purpose in question is of urgent important. But it was urged on behalf of the appellants that we should apply ejusdem generic rule in interpreting Section 17(2)(c). The contention on behalf of the appellants was that though section 17(2) (c) read by itself covers a very large filed, that provision should be given a narrower meaning as the general words contained in Section 17(2)(c) follow the specific words of the same nature, in Section 17(2)(a) and (a), those general words must be understood as applying to case similar to those mentioned in Section 17(2)(a) and (b).

13. The ejusdem generis rule is not a rule of law but is merely a rule of construction to aid the courts to find out he true intention of the Legislature. If a given provision is plain and unambiguous and the legislative intent is clear, there is no occasion to call into aid that rule. Ejusdem generis rule is explained in Halsbury laws of England (3rd Edn.) Vol. 36 p. 397, Paragraph 599 thus :

> "As a rule, where in a statute there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution, and subject to he primary rule that statutes are to be construed in accordance with the intention of Parliament. For he ejusdem rule to apply, the specific words must constitute a category, class or genus; if they do constitute such a category, class or genus, then only things which belong to that category, class or genus fall within the general words....."

14. It is observed in Craies on Statute Law (6th Edn.) p. 181 that :

> "The ejusdem generis rule is one to be applied with caution and not pushed too far, as in the cause of many decisions, which treat it as automatically applicable, and not as being, what it is, a mere presumption, in the absence of other indications of the

> intention of the Legislature. The modern tendency of the law, it was said, is 'to attenuate the application of the rule of ejusdem generis'. To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects".

15. According to Sutherland Statutory Construction (3rd Edn.) Vol. II, p. 395, for the application of the doctrine of ejusdem generis, the following conditions must exist -

> (i) The statute contains an enumeration by specific words;
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> (ii) The members of the enumeration constitute a class;
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> (iii) The class is not exhausted by the enumeration;
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> (iv) A general term follows the enumeration; and
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> (v) There is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires.

16. The scope of the ejusdem generis rule has been considered by this Court in several decisions. In State of Bombay v. Ali Gulshan ((1955) 2 SCR 867.)it was observed :

> "Apart from the fact that the rule must be confined within narrow limits, and general or comprehensive words should receive their full and natural meaning unless they are clearly restrictive in their intendment, it is requisite that there must be a distinct genus, which must comprise more than one species, before the rule can be applied."

In Lilavati Bai v. The State of Bombay ((1957) SCR 721.)it was observed

> :"The rule of ejusdem generis is intended to be applied were general words have been used following particular and specific words of the same nature on the established rule of construction that the Legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning."

The same view was reiterated by this Court in K. K. Kochini v. State of Madras and Kerala. (AIR 1960 SC 1050.)

17. Bearing in mind the principles set out earlier, we shall now consider whether the general import of the words in Section 17(2)(C) should be cut down in view of Section 17(2) (a) and (b). Under clause (a) of Section 17(2), the acquisition is to be made by the Railway administration when owing to any sudden change in the channel of any navigable river or other unforeseen emergency it becomes necessary of the administration to acquire the immediate possession of any land for the maintenance of the traffic or for the purpose of making there on a river-side or ghat station or for providing convenient connection with or access to any such station. We would like to emphasize

that under this provision, the acquisition can only be made by the Railway Administration and that when it considers that immediate possession of any land is necessary for the purposes mentioned therein. Under clause (b) of sub-section (2) of Section 17, before an acquisition can be made, the Collector must from an opinion that it has become necessary to acquire the immediate possession of the land concerned for the purposes mentioned therein. Under clause (c) of Section 17(2), the acquisition can be made only when the appropriate Government forms the opinion that because of urgent importance the concerned land has to be acquired for the purposes mentioned in that provision. Under clause (a) the decision to acquire has to be made by the Railway Administration. Under clause (b), the acquisition can be made only on the formation of the required opinion by the Collector. Under clause (c) the acquisition can be made only when the requisite opinion is formed by the appropriate Government. Further under Clause (a) the acquisition has to be made to meet certain unforeseen emergency as a result of which the immediate possession of the land is necessary. Under clause (b) the Collector must form an opinion that it has become necessary to acquire the immediate possession of land but under clause (c) the requirement is that the appropriate Government must form the opinion that the acquisition is of urgent importance. Under clauses (a), (b) and (C) of sub-section (2) of Section 17, the decision to acquire land has not to be made by the same authority but by different authorities. Further the conditions under which the acquisition has to be made differ from clause to clause. Therefore there is no basis to say that the general words in clause (c) follow the particular and specific words in clause (b) and (c). Nor can it be said that the specific words contained in clause (a) and (b) constitute a category, clause or genus. Hence we are unable to accept the contention that in interpreting clause (c) of Section 17(2), we should apply the rule of ejusdem generis.

18. As none of the contentions taken by the appellants are acceptable, this appeal fails and is dismissed. But in the circumstances of the case we make no order as to costs.

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