

State of Punjab and Others

Vs

Raja Ram and Others

Civil Appeal No. 2063 of 1970

(A.D. Koshal, Baharul Islam JJ)

29.01.1981

JUDGMENT

ISLAM, J. –

1. This appeal by the State of Punjab and two others namely, the Collector, Rupar district and the sub-Divisional Officer (Civil)-cum-Land Acquisition Collector, Rupar, is on a certificate granted by a Division Bench of the High Court of Punjab & Haryana in respect of its judgment in a letters patent appeal holding the acquisition of the land in question to be bad in law on the grounds that the Food Corporation of India for which the land in question was sought to be acquired was not a company within the meaning of Section 3(e) of the Land Acquisition Act", that could acquire the land under that Act only for a public purpose or for the purpose of a company.

2. The material facts of the case may be stated thus. Nine Biswas of the disputed land situated within the municipal area of Morinda in the District of Rupar was owned by respondent 1, Raja Ram. Respondents 2 and 3 are Raja Ram's sons. The State of Punjab issued a notification dated December 17, 1968 under Section 4 read with Section 17 of the Land Acquisition Act of 1894 (hereinafter called the L. A. Act"). The notification related to 15 different plots of land including the land of the present acquisition proceedings. The material portion of the notification is as follows :

Whereas it appears to the President of India that the land is likely to be needed by government, at public expense for a public purpose, namely, for the construction of godowns for storage of food grains at below is likely to be required for the above purpose.....

Further in exercise of the powers conferred by the said Act, the President of India is pleased to direct that the action under Section 17 shall be taken in this case on the grounds of urgency and provisions of Section 5-A shall not apply in regard to this acquisition.

3. On the same day another notification under Sections 6 and 7 read with Section 17(2) (c) of the L. A. Act was issued. The material portion of this notification runs thus :

Whereas the President of India is satisfied that the land specified below is needed by government at the public expense for a public purpose, namely, for the construction of godowns for storage of good grains at Morinda, it is hereby declared that the land described in the specification below is required for the aforesaid purpose. This declaration is made under the provisions of Section 6 of the Land Acquisition Act, 1894.

4. Against the aforesaid notifications a writ petition was filed by respondents 1 to 3. The writ petition was heard by a single Judge of the High Court and was dismissed. The learned single Judge, inter alia, found that the provisions of Part VII of the L. A. Act relating to the acquisition of land for companies were not applicable to the present case as the Food Corporation of India (hereinafter called the Corporation") was a department of Government and not a company within the meaning of Section 3(e) of the L. A. Act although, undoubtedly, according to the learned Judge, there was no manner of doubt about the fact that the land in dispute was in fact being acquired for the Corporation and that the purpose for which the land had been acquired was a public purpose.

5. Against the aforesaid Order of the learned single Judge a letters patent appeal, being L. P. A. 1283 of 1969, was filed by respondents 1 to 3 before the Division Bench, that allowed the appeal and quashed the land acquisition proceedings as stated earlier.

6. With respect we find it difficult to agree with the learned Division Bench when it held that the Corporation was not a company" within the meaning of Section 3(e) of the L. A. Act which runs thus :

3. In this Act, unless there is something repugnant in the subject or context, -

(e) the expression company" means a company registered under the Indian Companies Act, 1890 or under the (English) Companies Acts, 1862 to 1882 or incorporated by an Act of Parliament of the United Kingdom or by an Indian law, or by Royal Charter or Letters Patent and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Cooperative Societies Act, 1912, or any other law relating to cooperative societies for the time being in force in any State.

7. The section mentions in unmistakable terms that a company incorporated by an Indian law would be a 'company' for the purposes of the L. A. Act. Now the corporation was admittedly created by Section 3 of the Food Corporation Act, 1964 (hereinafter called the F. C. Act"). That section states :

3. (1) With effect from such date as the Central Government may, by notification in the official Gazette, specify in this behalf, the Central Government shall establish for the purposes of this Act a Corporation known as the Food Corporation of India.

(2) The Corporation shall be a body corporate with the name, aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by that name, sue and be sued.

8. Sub-section (2) which, we need hardly say, is an Indian lay, clothes the Corporation with the attributes of a company. It cannot, therefore, be contended with any plausibility that the Corporation is not a 'company' within the meaning of the definition of that term appearing in clause (e) of Section 3 of the L. A. Act.

9. Learned counsel for the appellant then urged that the Corporation is a Government department. We are unable to accept this submission also. A Government department has to be an organisation which is not only completely controlled and financed by the government but has also no identity of its own. The money earned by such a department goes to the exchequer of the government and losses incurred by the department are losses of the government. The Corporation, on the other hand,

is an autonomous body capable of acquiring, holding and disposing of property and having the power to contract. It may also sue or be sued by its own name and the government does not figure in any litigation to which it is a party. It is true that its original share capital is provided by the Central Government (Section 5 of the F. C. Act) and that 11 out of the 12 members of its Board of Directors are appointed by that Government (Section 7 of the F. C. Act) but then these factors may at the most lead to the conclusion (about which we express no final opinion) that the Corporation is an agency or instrumentality of the Central Government. In this connection we may cite with advantage the following observations of this Court in *R. D. Shetty v. International Airport Authority of India* : (SCC p. 507, para 14)

A corporation may be created in one of two ways. It may be either established by statute or incorporated under a law such as the Companies Act, 1956 or the Societies Registration Act, 1860. Where a corporation is wholly controlled by government not only in its policy making but also in carrying out the functions entrusted to it by the law establishing it or by the charter of its incorporation, there can be no doubt that it would be an instrumentality or agency of government. But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, oftentimes made, that it shall be bound by any directions that may be issued from time to time by government in respect of policy matters. So also a corporation incorporated under law is managed by a Board of Directors or Committee of management in accordance with the provisions of the statute under which it is incorporated. When does such a corporation become an instrumentality or agency of government ? Is the holding of the entire share capital of the corporation by government enough or is it necessary that in addition, there should be a certain amount of direct control exercised by government and, if so what should be the nature of such control ? Should the functions which the corporation is charged to carry out possess any particular characteristic or feature, or is the nature of the functions immaterial ? Now, one thing is clear that if the entire share capital of the corporation is held by government it would go a long way towards indicating that the corporation is an instrumentality or agency of government. But, as is quite often the case the corporation established by statute may have no share or shareholders in which case it would be a relevant factor to consider whether the administration is in the hands of a Board of Directors appointed by government, though this consideration also may not be determinative, because even where the directors are appointed by government, they may be completely free from governmental control in the discharges of their functions.

10. Even the conclusion however, that the Corporation is an agency or instrumentality of the Central Government does not lead to the further inference that the Corporation is a Government department. The reason is that the F. C. Act has given the Corporation an individuality apart from that of the Government. In any case the Corporation cannot be divested of its character as a 'company' within the meaning of the definition in clause (e) of Section 3 of the L. A. Act, for it completely fulfils the requirements of that clause, as held by us above.

11. The Corporation being a 'company' compliance with the provision of Part VII of the L. A. Act had to be made in order to lawfully acquire any land for its purpose. It is not denied that such compliance is completely lacking in the present case.

12. As a result of the foregoing discussion it must be held that the land in dispute has not been

acquired in accordance with law, although our reasons in that behalf are different from those forming the basis of impugned judgment. This appeal is thus found to be without merit and is dismissed but with no order as to costs.

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