

Balmokand Khatri Educational and Industrial Trust, Amritsar

Vs

State of Punjab and others

Civil Appeal No. 2684 of 1981

(K. Ramaswamy, S. Saghir Ahmad JJ)

14.02.1996

JUDGMENT

1. Notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short, the "Act") was published in the State Gazette on February 26, 1976. Dispensing with the enquiry under Section 5-A, declaration under Section 6 was published on the same day. Notice under Section 9 was served on March 3, 1976. The appellant filed Writ Petition No. 1359 of 1976 on March 7, 1976. On March 18, 1976, the High Court granted stay of dispossession. After the counter-affidavit was filed by the respondent, the High Court dismissed the writ petition on April 4, 1976. In the meanwhile, award enquiry was conducted and the award under Section 11 was made on March 18, 1976. Possession of the land was taken on April 17, 1976. It would appear that the Land Acquisition Officer (LAO) had deposited the compensation on May 18, 1976. Record has been placed before us to show that the land was earmarked and distributed to 592 landless workers on April 22, 1976. On December 11, 1979, the appellant again filed Writ Petition No. 4460 of 1979 which came to be dismissed by the High Court on February 7, 1980. Thus this appeal by special leave. Interim stay granted on May 8, 1980 was modified by this Court, maintaining status quo, by the order dated September, 13, 1981.

2. It is clear from these facts that after dispensing with the enquiry under Section 5-A, immediate action was taken by issuance of the notice under Section 9 and award enquiry was conducted since dispossession was ordered by the High Court. After the dismissal of the writ petition, possession was taken on April 17, 1976. Thus the process of the requisition was completed and the acquisition became final. What remained to be done was only the determination of the compensation in respect of the acquired land. In this case, the land acquired is of the extent of 121 canals 10 marlas. Shri P. H. Parekh, learned counsel appearing for the appellant with his thorough preparation, has contended that dispensing with enquiry under Section 5-A is bad in law. However, we find no force in the contention. The Punjab Legislature has amended the Central Act by Amendment Acts II/1954, XVII/6 and XLVIII/1956 whereunder an explanation has been added to sub-section (1) of Section 17 of the Act. Sub-section (2) was also added in which Clause (b) of the sub-section envisages thus :-

"(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 inhabitants of such village, or any godown for any society registered under Co-operative Societies Act, 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;"

3. Thus the Government, by virtue of State Amendment is empowered to exercise the urgency clause under sub-section (4) of Section 17 and to dispense with the enquiry under Section 5-A of the Act. Shri Parekh has contended that mere existence of the power is not sufficient. The urgency should be such as would not brook delay of 30 days in conducting the enquiry contemplated under Section 5-A. In this case, allotment of the house sites to the poor is not such an urgency which cannot wait for conducting the enquiry. Therefore, exercising the power under Section 17 (4) is bad in law. He seeks to place reliance on the decision of this Court in *Narayan Govind Gavate v. State of Maharashtra*, (1977) 1 SCR 763 : (AIR 1977 SC 183). In a recent decision in *Chemeli Singh v. State of U. P.*, (1996) 1 SCALE 101, this Court considered the entire case law and held that providing house sites to the poor is an urgent necessity and exercise of the power under Section 17 (4) to dispense with the enquiry under Section 5-A would be justified. The reasoning of this Court in *Gavate's* case also was considered and it was held that exercising the power under Section 17 (4) cannot be struck down when the Government was of the opinion that it urgently required the possession of the land for providing house sites to the poor.

4. It is seen that the entire gamut of the acquisition proceedings stood completed by April 17, 1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchanama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

5. Under these circumstances, merely because the appellant retained possession of the acquired land, the acquisition cannot be said to be bad in law. It is then contended by Shri Parekh that the appellant-Institution is running an educational institution and intends to establish a public school and that since other land was available, the Government would have acquired some other land leaving the acquired land for the appellant. In the counter-affidavit filed in the High Court, it was stated that apart from the acquired land, the appellant also owned 482 canals 19 marlas of land. Thereby, it is seen that the appellant is not disabled to proceed with the continuation of the educational institution which it seeks to establish. It is then contended that an opportunity may be given to the appellant to make a representation to the State Government. We find that it is not State Government. We find that it is not necessary for us to give any such liberty since acquisition process has already been completed.

6. Pursuant to the directions issued by this Court, the Chief Secretary himself has conducted an enquiry and identified the officer who was responsible for the lapses in omitting to instruct the counsel and for not producing the record as part of the record of the Court. We accept the report submitted by the Chief Secretary. It would be open to him to pursue further action to reach a logical conclusion.

7. The appeal is dismissed accordingly. No costs. Appeal dismissed.