

**SUPREME COURT OF INDIA**

Mahender Pal

Vs.

State of Haryana

C.A.No.3604 of 2009

(S.B. Sinha and Asok Kumar Ganguly JJ.)

15.05.2009

**JUDGEMENT**

**S.B. Sinha, J:**

1. Leave granted.
2. This appeal is directed against a judgment and order dated 10.05.2007 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 7008 of 2007.
3. On or about 6.01.2006, a notification under Section 4 read with Section 17(4) of the *Land Acquisition Act, 1894* (for short "the Act") was issued for acquisition of the land in question for an alleged public purpose, viz., for the development and utilization of land for residential/commercial purpose. A declaration under Section 6 of the Act was issued on 9.08.2006.
4. A writ petition was filed by the appellants challenging these notifications which was dismissed as withdrawn with liberty to file a fresh one on the same cause of action.
5. On 14.11.2006, the government issued a notification under Section 4 read with Section 17(4) of the Act and on 15.11.2006 as also a declaration under Section 6 of the Act, for acquiring the land for public purpose, viz., for the development and utilization of land for outer ring road, green belt on both side, Pataudi Road to Jhajjar Road in the area of village Gokalgarh, District Rewari.
6. Appellants' land was being used for residential purposes and which also has the Samadhis of the ancestors of the appellants and a Shiva temple. The revenue records confirm the existence of these pucca constructions.
7. On 14.03.2007, notices were issued to the appellants under Section 9 of the Act. Appellants filed objections thereto on 29.03.2007.

8. A writ petition was filed by the appellants, which was dismissed in limine by reason of the impugned judgment.

9. Appellants are, thus, before us.

10. The principal question which arises for consideration in this appeal is as to whether in the facts and circumstances of this case the emergency powers in terms of Section 17 of the Act could have been resorted to by the State.

11. The Act has been enacted for the acquisition of land for public purposes and for Companies. Having regard to the provisions contained in Article 300A of the Constitution of India as also the provisions of Act, the State in exercise of its power of 'eminent domain' may deprive a person of his right to a property only when there exists a public purpose and a reasonable amount by way of compensation is offered for acquisition of his land. The Act fulfills the aforementioned criteria. It, however, lays down the details procedures therefor. It is also of some significance to notice that the Parliament, by reason of the Act, has imposed further restrictions/ conditions for acquisition of land for the benefit of the land-owner.

12. Right to file objection and hearing thereof to a notification issued by the appropriate government expressing its intention to acquire a property is a valuable right. Such a valuable right of hearing and particularly in a case of this nature could have been taken away only if conditions precedent for exercise of this emergency power stood satisfied. Sub-section (4) of Section 17 of the Act is an exception to Section 5A of the Act.

“An opinion of the government in this behalf is required to be formed if there exists an emergency. Existence of the foundational fact for invoking the aforementioned provision is, therefore, a sine qua non for formation of opinion. Such a subjective satisfaction must be based on an objective criteria. Ipse dixit on the part of the State would not serve the purpose.

Appellants, in our opinion, had made out a case for examination of their cases in details. The nature of constructions and other features of the land sought to be acquired have been noticed by us hereinbefore.”

13. The purported public purpose for which the land is to be acquired is for laying down a road.

“We are not unmindful of the fact that the road connection is one of the purposes mentioned in Sub-section (2) of Section 17 of the Act in respect whereof Sub-section (4) thereof would apply. But the same would not mean that for the purpose of road connection irrespective of the nature of cases and/ or irrespective of the nature of the road to be constructed; Sub-section (4) of Section 17 of the Act could be invoked.”

14. As an extraordinary power has been conferred upon the Appropriate Government in terms whereof the normal procedure laid down under Section 5A of the Act could be

dispensed with, the High Court, in our opinion, should have entered into the merit of the matter. [See *Mahadevappa Lachappa Kinagi and Others v. State of Karnataka and Others*<sup>1</sup>] In *Union of India and Others v. Mukesh Hans*<sup>2</sup>, this Court held:

“32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in each and every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with Section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act.”

15. In *Union of India and Others v. Krishan Lal Arneja and Others*<sup>3</sup>, this Court held:

“16. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a land owner of his right in relation to immoveable property to file objections for the proposed acquisition and it also

dispenses with the inquiry under Section 5A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under Section 5A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration.”

16. It is a well-settled principle of law that an exception carved out from the main provision as a result whereof a citizen of India may be deprived of his property particularly having regard to the fact that if it is considered to be a human right, procedural safeguards laid down therefor must be scrupulously complied with. It being an expropriatory legislation deserves strict construction. {See *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai and Others*<sup>4</sup>}; *Devinder Singh and Others v. State of Punjab and Others*<sup>5</sup>}; and *City Montessori School v. State of Uttar Pradesh & Ors.*<sup>6</sup> }.

17. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly and the matter is remitted to the High Court for consideration of the matter afresh on merit.

18. Mr. T.V. George, learned counsel appearing on behalf of the State, submits that counter-affidavit before the High Court shall be filed within four weeks. The State may also produce the records before the High Court so as to enable it to arrive at a satisfaction that, in the facts and circumstances of this case, the emergency power of the appropriate government could be resorted to. We request the High Court to consider the desirability of disposing of the matter expeditiously.

19. The appeal is allowed with the aforementioned directions with costs. Counsel's fee assessed at Rs.10,000/-.

<sup>1</sup>(2008) 12 SCC 418  
<sup>5</sup>(2008) 1 SCC 728

<sup>2</sup>(2004) 8 SCC 14  
<sup>6</sup>2009 (2) SCALE 740

<sup>3</sup>(2004) 8 SCC 453

<sup>4</sup>(2005) 7 SCC 627