PUNJAB AND HARYANA HIGH COURT

Satish Kapur

Vs

State of Haryana

Civil Writ Petition No. 371 of 1981

(I.S. Tiwana, J.)

22.01.1982

JUDGMENT

I.S. Tiwana, J.

1. (Oral) - Two notifications issued by the State Government under sections 4 and 6 of the Land Acquisition Act (for short, the Act) on November 4, 1977 and October 24, 1980, respectively, for the acquisition of 174.46 acres of land including the land of the petitioners in these Writ Petitions Nos. 371, 309 and 372 of 1981, situated within the revenue estate of Atmadpur, Tehsil Ballabgarh, District Faridabad, are impugned primarily on the grounds that (i) there has been no compliance of the provisions of sub-section (1) of section 4 of the Act inasmuch as substance of notification has not been published in the locality concerned simultaneously with its publication in the Gazette and (ii) there was no *bona fide* need for acquiring the property in question and the notifications had been issued for a collateral purpose of pegging down the prices to the date of the notification and thus amounted to abuse of power.

2. On behalf of the respondents, it has been explained in their return that the substance of the notification issued under section 4 of the Act was published on November 9, 1977 and this fact is evidenced by the Rapat Roznamcha No. 104 dated November 9, 1977, recorded with the Halqa Patwari; acquisition proceedings are in progress and the petitioners would be paid due compensation in accordance with law before taking over the possession from them.

3. After hearing the learned counsel for the parties I find merit in the above noted two contentions raised by the petitioners. Even if the stand of the respondents to the effect that the substance of the notification was published in the locality concerned is accepted as correct though it is seriously being disputed by the learned counsel for petitioners with the allegation that the entry in the Roznamcha of the Patwari is only a paper transaction-still I find no explanation whatsoever for the delay that has occurred between the dates of the publication of the notification in the Gazette and the alleged publication of its substance in the locality concerned. In the absence of any such explanation, the proceedings emanating from the impugned notification are obviously rendered void. This has been so ruled by a Full Bench of this Court in *Rattan Singh and another v. The State of Punjab and others*[1], Yet in another Division Bench judgment of this

Court in *Murari Lal Bhargava and others v. The State of Haryana and others*[2], the delay of six days between the two dates, i.e., the date of publication in the Gazette and in the locality concerned, in the absence of any explanation on the part of the acquiring authorities for the same, was found to be enough to quash the impugned notifications.

4. In support of his second contention, the learned counsel relies on the following indisputable facts. The impugned notification under section 6 was issued just ten days before the expiry of the statutory period of three years from the issuance of the notification under section 4 of the Act. Earlier to the issuance of the notification under section 4 of the Act on November 4, 1977, a similar notification had been issued on October 1, 1973 but that notification automatically lapsed as it was not followed by a notification under section 6, within the prescribed period of three years. No further action except the publication of the two notifications has been taken by the authorities concerned to complete the acquisition proceedings either till the filing of these petitions or even till today. So much so, even a notice under section 9 of the Act has not been issued to the land-owner-claimants, what to talk of the assessment of compensation payable to them. It is on the basis of these premises that the learned counsel maintains that the sole purpose of issuing these two impugned notifications was to peg down the prices to the ate of notification under section 4 of the Act for future acquisition of this land. This abuse of power of compulsory acquisition, according to the learned counsel, cannot possibly be allowed. The delay or non-action on the part of the respondent-authorities in completing the acquisition proceedings is obviously indicative of the fact that there was no need to acquire the land on the date it was so notified, that is, November 4, 1977. In support of this contention, the learned counsel for the petitioners squarely relies on the following judgments of this Court :-

(1) *Man Singh and others v. State of Punjab and another*[3],

(2) *(Naval Singh v. The State of Haryana*[4]*, etc.) decided on January 11, 1982 (1982 PLJ 82).*

(3) *(Ram Krishan Shroff and others v. The State of Haryana and another*[5]*) decided on August 24, 1981 (1982 PLJ 68).*

5. On behalf of the respondents, however, it is contended in the light of the observations of their Lordships of the Supreme Court in *Gujarat State Transport Corporation etc. v. Valji Mulji Soneji and others*[6], that the delay of about three years that has occurred in the issuance of the notification under section 6 after the publication of the notification under section 4 of the Act, cannot be taken notice of for the reasons that the statute itself confers powers and prescribed time within which this power could be exercised and since the statutory power has been exercised within the prescribed period, the Court cannot examine the question of delay and record a finding that there was unreasonable delay in the exercise of the power by the respondents authorities.

6. Realising the force of the observations of the Supreme Court in the above noted judgment, the learned counsel for the petitioners explains that (i) the same are only based on the facts of that case and their Lordships do not lay down as a general rule that the State authorities are entitled to deliberately delay the issuance of the notification under section 6 of the Act for three years after the publication of the notifications under section 4 of the Act and (ii) the phraseology of the first proviso to sub-section (i) of section 6 of the Act which makes it imperative for the acquiring authorities to publish the declaration under section 6 within a period of three years from the publication of the notification under section 4 of the Act, is in the negative form; thereby

injuncting the acquiring authorities not to delay the publication for more than three years. This, according to the learned counsel, lays down the outer time limit for the publication of the notification under section 6 of the Act and it does not mean that the authorities are entitled to delay this publication for that much period without any justification or any basis. The learned counsel maintains that even if an executive authority has the jurisdiction to acquire the land of a landowner, still the power has to be exercised in a manner which does not render it arbitrary. According to him, the respondent authorities are under an obligation to complete the acquisition proceedings within a reasonable time and without any unjustifiable delay so that the landowner gets a reasonable compensation for his land. He points out that the principle of awarding compensation is based on the right of the owner to the indemnified by the community for whose benefit he is being deprived of the property against his will. Compensation would essentially mean a just equivalent of what the owner has been deprived of. In other words, the owner who is deprived of his property should be enabled by the compensation awarded to him to place himself in substantially the same position in which he has before the acquisition. He further asserts that this principle has to be kept in mind by the respondent-authorities and this is more so in the present-day conditions when the prices of lands around urban areas are witnessing a phenomenal rise and maintain an ever-increasing trend.

7. In support of his first contention, the learned counsel relies on the observations of the Division Bench of this Court in Naval Singh's case (supra). In somewhat similar circumstances, when an argument was raised by the State counsel to the effect that no period of limitation has been prescribed for determining the compensation and giving of an award the learned Judges observed after noticing the above noted judgment of the Supreme Court as follows :-

> "However, the facts in that case were entirely different. In that case, the notification under section 4 of the Act was issued on October 10, 1952, and the following action was taken by the State Government expeditiously within less than a year by issuing notification under section 6 on August 14, 1953. The landowners filed a suit challenging the notifications. They lost in different Courts but continued perusing their remedies and the matter was ultimately decided in the Supreme Court in 1963, whereafter action was taken for determining the compensation. So, it was the landowners who has delayed the proceedings and the State was not at fault. The ratio of this case will not be applicable to the facts of the present case."

The learned Judges of the Division Bench quashed the impugned notification under sections 4 and 6 of the Act on the basis of the earlier judgment in Man Singh's case (supra).

8. After giving my thoughtful consideration to the entire matter, I feel that in view of the observations of their Lordships of the Supreme Court in paragraph 16 of the judgment, though hardly any scope has been left-at-least before me - to examine the above noted first submission of the learned counsel in any great depth, yet I find that the given facts and circumstances preceding and following the two notifications in the case in hand, do justify the learned counsel's submissions to the effect that the omissions and commissions of the respondent-authorities have resulted in arbitrariness and deprivation of a reasonable compensation for the acquired land. As has already been pointed out, there is absolutely no explanation for the non-taking of any steps subsequent to the issuance of the impugned notification under section 6 of the Act. Neither any

notice under section 9 of the Act asking the petitioners to file their claims for compensation payable to them for the land sought to be acquired has been issued nor has any step been taken towards the completion of the acquisition. It is obvious that the impugned notification under section 4 of the Act was issued four years ago and in the light of the provisions of section 23(1) of the Act, compensation payable to the petitioners is the 'market value' of the land on that date. This too has to be paid only after the passing of the award. It is equally true that the possession is to be taken from the petitioners after the passing of the award and till then they are entitled to reap the benefits from the land, yet it cannot possibly be denied that the issuance of this notification did have the effect of freezing the market price of the land. It resulted in two ways; firstly, the market value of the land to be acquired was to be determined on the date of the notification under section 4(1) of the Act and secondly, any outlay or improvements on or disposal of the land acquired commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section 4(1) was to be ignored in determining the compensation (see section 24 seventhly). Not only this, the earlier publication of a similar notification under section 4 of the Act or October 1, 1973, also had a similar effect. Thus it is patent that what is going to be paid to the petitioners ultimately when it is going to be paid is not as yet certain would virtually be the price of the land as it existed on October 1, 1973. It cannot be gainsaid that the scheme and intendment of the Act is that the award should be passed as early as possible in the circumstances of the case. It can hardly be denied that over the last several years there has been a substantial rise in the prices of agricultural land, urban vacant sites and immovable properties. In the case of major towns and cities the increase has been phenomenal. If the land acquisition authorities are allowed to issue a notification under section 4(1) of the Act and then to wait and ultimately pay compensation as and when they please on the basis of the market price of the land as on the date of the notification under section 4 of the Act, the said compensation can hardly represent a reasonable and fair compensation. This attitude of the acquiring authorities cannot possibly be countenanced. Procedure under the Act is very simple in nature. Questions of title or disputed claim can neither be considered nor adjudicated upon by the authorities concerned. The Land Acquisition Collector has only to assess the market price of the acquired land and his award ultimately is only in the nature of an offer made by the State. All that the Land Acquisition Officer is required to do under the Act after the publication of the notification under section 6 of the Act is to prepare a statement of valuation and determine what is the reasonable price payable for the land and then to pass an award on that basis. This should not ordinarily take much of time. It is of course a different matter if the landowners themselves obstruct the proceedings and cause delay by resorting to various remedies in Courts as was the case before the Supreme Court in Valji Mulji Soneji's case (supra). In such a case they cannot be heard to complain. But where the landowners have not contributed to the delay in any manner, the Land Acquisition Officer cannot sleep over the matter and take his owner time in passing the award. The statutory power conferred on the State by the Act, viz. the power to acquire the land compulsorily should be exercised reasonably and fairly which necessarily means that the award must be passed with reasonable expedition. As has already been pointed out in the cases in hand there is absolutely no explanation on behalf of the respondent-authorities for the delay that has taken place in the completion of the acquisition proceedings or the passing of the award. In the absence of any such justifiable reason for the delay that has taken place, the action of the respondent-authorities is undoubtedly rendered unreasonable and arbitrary exercise of power. The impugned notifications could not be issued for the purpose of pegging down or freezing the price as the case is found to be and then wait for a convenient and opportunity time to pass an award such a line of thinking and course of conduct is alien to the scheme and

intendment of the Land Acquisition Act. This is well-supported by the following observations of the Supreme Court in *Ambalal Purshottam etc. v. Ahmedabad Municipal Corporation of the City of Ahmedabad and others*[8],:-

> "We are not hereby to be understood as suggesting that after issue of the notification under sections 4 and 6 the appropriate Government would be justified in allowing the matters to drift and to take in hand the proceedings for assessment of compensation whenever they think it proper to do. It is intended by the scheme of the Act that the notification under section 6 of the Land Acquisition Act must be followed by a proceeding for determination of compensation without any reasonable delay .....".

Keeping the above noted principle in view in Ram Krishan Shroff's case (supra), Dhillon, J. even quashed the award given by the Collector under section 11 of the Act along with the impugned notifications under sections 4 and 6.

9. As a last resort, the learned counsel for the respondents urges that the petitioners be non-suited on the ground of laches. He maintains that considerable delay has occurred in the filing of this petition since the publication of the impugned notifications. In support of this contention of his he relies on certain observations of the Supreme Court in *State of Mysore and others v. V.K. Kangan and others*[8], In view of the facts and circumstances of this case I do not find any merit in this submission. Firstly, it is to be noticed that the delay in approaching the court is not by itself fatal since there is no law of limitation obliging a person to approach a Court within a particular time. Laches is one of the considerations which deserves to be given weight in exercise of the jurisdiction under Article 226 of the Constitution of India and this consideration has primarily to be applied at the motion stage, that is, when the petition is admitted to a hearing. Moreover in the type of cases in hand where the acquisition proceedings have been kept pending for a number of years and there being no end in view, the relief is sought to be granted on the ground of inordinate delay on the part of the Land Acquisition Officer in finalising the proceedings. In such a case I am unable to see as to how the respondents can turn round and accuse the petitioners of laches. Furthermore, I find that the petitioners were well justified in awaiting the fall or lapsing of the impugned notification under section 4 of the Act in view of the fact that the respondent-authorities had allowed their earlier notification dated October 1, 1973 to exhaust itself with the expiry of three years, from the date of its publication.

10. For the reasons recorded above, I allow these petitioners and quash the impugned notifications so far as these relate to the petitioners' land. The petitioners would also be entitled to costs of these petitions which are assessed at the rate of ₹ 300/- per petition.

Petition accepted.

Cases Referred.

11976 PLR 545
21977 PLR 337
3ILR 1980(II) Pun and Hary 403
4Civil Writ No. 4230 of 1981
5Civil Writ No. 1028 of 1981

6AIR 1980 SC 64
7AIR 1968 SC 1223
8AIR 1975 SC 2190