

Devi Singh and ors. Vs. Haryana State and ors.

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Court : Punjab and Haryana

Decided On : Sep-09-1974

Reported in : AIR1975P& H125

Judge : Munilal Verma, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1) 5A, 5A(1) and 5A(3);
[Constitution of India](#) - Article 226; [Northern India Canal and Drainage Act, 1873](#)

Appeal No. : Civil Writ No. 2647 of 1973

Appellant : Devi Singh and ors.

Respondent : Haryana State and ors.

Advocate for Def. : V.M. Jain, Adv.

Advocate for Pet/Ap. : K.L. Sachdev, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Munilal Verma, J.

1. This writ petition arises out of matter relating to acquisition of land comprised in khasra No. 117. which is a thoroughfare connecting village-Chitana with village-

Karawri, situate within the limits of village Chitana (hereinafter called the land). The brief facts, as averred by the petitioners in the writ petition, are as under:

2. They being landowners of vil-lage-Chitana. were co-owners with other persons in the land and they along with other residents of the said village and other villages had been using the same as thoroughfare. In or about the year 1972, the Public Works Department (Drainage Division), Haryana, planned to dig a drain through the land from village-Karawri to village-Chitana. Thereupon, Gram Sabha and Gram Panchayat brought suit for perpetual injunction restraining the Public Works Department (Drainage Division). Haryana, from digging the said drain. The respondents gave written undertaking in that suit that they would not dig the drain except in due course of law and the suit was, therefore, withdrawn on that undertaking.

In the month of July, 1973, the Collector. Land Acquisition, Public Works Department (Irrigation Branch), Ambala, served notices under Section 9 of the Land Acquisition Act (hereinafter called the Act) on the petitioners, requiring them to appear before him on July 28, 1973. at Karawri to represent their respective interests in the land. Despite their representing that no notice under Section 4(1) of the Act had been published, the Collector (Respondent 2) made the award (Annexure D). Therefore, the petitioners filed this writ petition for an appropriate writ, direction or order prohibiting the respondents from digging the drain. They challenged the acquisition of the land on the grounds that no public notice of the substance of the notification published in the official Gazette (hereinafter called the gazette) was given at convenient places in village-Chitana. that the land had not been acquired for a public purpose, and while acquiring the land the provisions contained in the Northern India Canal and Drainage Act had not been complied with. It was averred that there is pond of sacred temple of Bhagwati Devi in village-Chitana, which is venerated by the residents of that village and the neighbouring villages, and the drain, when dug, would flow the dirty water of the pond of village-Karawri into the aforesaid pond of the temple and thereby contaminate its water and this would pose a major hazard to the peace and danger of communal riots and result into trouble and widespread unrest. It was further averred that digging of the drain, which would be along the land, would narrow down the thoroughfare

from 6 Karams to 2 Karams in width, leaving insufficient passage for carts or vehicles.

3. The respondents put in written statement resisting the writ petition. Their pleas were that the width of the land was 33 feet out of which 11 feet only would be consumed by the drain, that the drain was being dug for public purpose as it would save about 150 acres of land and crops standing thereon from inundation during rainy season, and that notification under Section 4 of the Act was duly published in the gazette on January 23, 1973, and public notice of the substance of that notification was given in village-Chitana on February 23, 1973. It was admitted that no compliance with the provisions of the Northern India Canal and Drainage Act was made. It was, however, added that it was not necessary since the land had been acquired under the provisions of the Act, The existence of temple of Bhagwati Devi was denied. It was, however, admitted that the drain would flow the water of the pond of village-Karawri into the pond of village-Chitana, but it was stated that it would not lead to any contamination of water in the pond of village-Chitana. The respondents had filed the affidavit of Hawa Singh Patwari, to the effect that public notice had been proclaimed in village-Chitana through Sikander Chowkidar. The petitioners have produced affidavits of Sikander Chowkidar, Dev Singh and 11 other residents of village-Chitana, indicating that no public notice under Section 4 had been given.

4. The contentions raised by Shri K.L. Sachdev. learned counsel for the petitioners against the validity of the acquisition of the land may be formulated as under:--

1. That notification under Section 4(1) of the Act has not been issued in accordance with law, because-

(a) the public notice of substance of the notification published in the gazette alleged to have been given in village-Chitana was invalid as the same had been given after the expiry of 30 days from the date of the notification. Otherwise too, the said public notice was not given in village-Chitana, and

(b) the notification published in the Gazette as well as public notice of its substance, given in the village, were vague and were insufficient to convey the

information about the identity of the land being acquired, to the petitioners or other persons interested in it.

2. That construction of Karawri link drain, for which the land was acquired, was not a public purpose.

3. That dirty water would flow from the pond of village-Karawri through the drain into the pond of Bhagwati Devi temple in village-Chitana and would pollute its water, which would result into injuring the religious feelings of the community, which venerated the said pond as well as the Bhagwati Devi temple.

4. That provisions of Northern India Canal and Drainage Act were not complied with in acquiring the land.

5. It is now, well settled that provisions of Section 4(1) of the Act are mandatory and the same prescribe two conditions, viz., (i) that a notification of the intention of the appropriate Government to acquire land should be published in the gazette, and (ii) that the Collector shall cause public notice of the substance of that notification to be given at convenient places in the locality (to be referred to hereunder as such, i.e., locality), where the land proposed to be acquired is situate. The aim of the said publication of notification in the gazette and also of the public notice in the locality is to give information to the persons concerned -- to be precise to the persons interested in the land including the owners thereof that it (land) is proposed to be acquired. Publication of both the notification in the gazette and of public notice referred to above in the locality, is essential. The publication of notification in the gazette itself is not sufficient. In order to ensure effective publicity in regard to the proposed acquisition of the property, public notice has to be given in the locality. Section 5A of the Act prescribes a period of 30 days for making objections against the acquisition of the property from the date of issue of the notification. As is indicated above, there are two requirements of Section 4(1) of the Act. firstly, that the notification must be published in the gazette, and, secondly, that public notice of the substance of that notification must be given in the locality. The said notification is separate from the public notice and Section 4(1) of the Act contains the word 'notification' and the expression 'public notice' specifically. The expression 'within 30 days after the issue of the notification'.

occurring in Section 5A gives an unmistakable indication that the period of 30 days, during which the persons interested in any land are to make objections against acquisition of the same, would be counted from the date of publication of the notification in the gazette. The notification referred to in Section 5A is undoubtedly the one which is required to be published in the gazette by Section 4(1) of the Act. It is, therefore, essential that public notice should be given in the locality along with the publication of the notification in the gazette or immediately without any loss of time after its publication. It is, however, clear to me that public notice has to be given in the locality within 30 days of the date of publication of the notification in the gazette. If public notice is not given within the period of 30 days, it would certainly deprive the persons interested in the land of their vested right to make objections under Section 5A of the Act. as they would not be competent to make the same after the expiry of period of 30 days as provided by Section 5A. I am supported in this view by *State of Mysore v. Abdul Razak Sahib*, AIR 1973 SC 2361. In the said case, their Lordships of the Supreme Court were entirely in agreement with the rule laid down by the High Court of Mysore in *H.K. Gangadhariah v. State of Mysore*, ILR (1960) Mys 636. In *H. K. Gangadhariah's* case, notification under Section 4(1) of the Act was published in the gazette on January 9, 1958. Public notice of the substance of that notification was given in the locality on February 28, 1958, i.e., about fifty days after publication of the notification in the gazette. It was observed that giving of public notice in the locality after expiry of 30 days from the date of publication of the notification in the gazette constituted contravention of Section 4(1) of the Act, and that the said violation was considered so grave that it had prejudiced the entire acquisition proceedings and the same were annulled on that account. The ratio of *H. K. Ganga-dhariah's* case is that public notice has to be given within 30 days from the date of publication of notification in the gazette. Since the said decision of Mysore High Court has been accepted to be correct by the Supreme Court in *Abdul Razak Sahib's* case (*supra*), which was followed in *Narinderjit Singh v. State of U.P.*, AIR 1973 SC 552, I would find that public notice has to be given in the locality within 30 days of the publication of the notification in the gazette, otherwise the validity of the notice under Section 4(1) would be questionable and would vitiate the acquisition proceedings.

In the case in hand, notification was published on January 23, 1973, in the gazette and it contained that objections to the acquisition of the land could be made within 30 days of the publication of the same. According to report in Roz-namcha (Annexure B), public notice of the substance of the said notification was given in the locality on February 23, 1973, i.e.. after expiry of the period of 30 days, referred to in the said notification. The number and date of the said notification are given in the said report. It is, therefore, clear that the public notice given in the locality required the persons interested in the land to make objections under Section 5A of the Act within a period of 30 days with effect from January 23, 1973, which had already expired on February 23, 1973, when the public notice was given in the locality. Compliance of the provisions of Section 4(1) of the Act was complete on February 23, 1973, when the public notice was given in the locality. By that time, as pointed out above, the period of 30 days, given to the persons interested in the land for making objections to acquisition of the same, had expired and, as such, they or the petitioners could not make objections under Section 5A. So, they were deprived of their statutory right of making objections available to them under the said section (Section 5A of the Act). On the said state of law and things, the conclusion is inescapable that there had been contravention of the provisions of Section 4(1) of the Act and that goes to the root of the case and renders the entire proceedings of acquisition invalid.

Report in Roznamcha (Annexure B) contains that public notice had been given in village-Chitana by oral proclamation by Sikander Chowkidar. It is pertinent to note that there is no mention in the said report that the said proclamation had been made by Sikander Chowkidar in the presence of Hawa Singh Patwari, although the said report had been written by him (Hawa Singh). Sikander Chowkidar has sworn affidavit to the effect that he did not make any proclamation, referred to above, at any time in the village. Hawa Singh Patwari has, no doubt, sworn affidavit that Sikander Chowkidar did make the said proclamation, in the village in his presence, but, as indicated above, the fact that Hawa Singh Patwari was present when Sinkander Chowkidar made the proclamation is not mentioned in the report. There are affidavits of 12 other persons, including Devi Singh petitioner to the effect that no such proclamation was made in the village. On the aforesaid material, it is difficult to say on the basis of the report in the Roznamcha (Annexure

B) or the affidavit of Hawa Singh Patwari that public notice, referred to above, had been given in the locality. But even otherwise, if the said fact cannot be Cone into in these proceedings end public notice is assumed to have been given in the locality, as mentioned in the report of Roznamcha (Annexure B), it would render no assistance for the obvious reason that, as discussed in the preceding para, the public notice, alleged to have been given, was bad for the reason that it had been given after expiry of 30 days from the date of publication of the notification in the gazette.

6. The land is of Khasra No. 117. In the notification published in the gazette (Annexure A to the written statement) the land was specified- as 'a strip of land 475 feet in length of varying widths'. In the column relating to its area, the land has been shown to be of whole area situate within the limits of villages-Chitana and Karawri. Similar specification of the land was given in the public notice referred to in the report of Roznamcha (Annexure B). Khasra Number (117) of the land was not stated in the notificationpublished in the gazette or in the public notice given in the locality. The specification of the land, as given in the notification (Annexure A), was, in my opinion, insufficient to supply information to the persons interested with regard to its identity. The easiest way to describe it was by giving its Khasra number. But this was not done. Therefore. I feel that the notification as well as public notice lacked information and were too vague to establish the identity of the land. I am supported in this view by *Tulsa Singh v. The State of Haryana*, (1973) 75 Pun LR 227 = (AIR 1973 Punj 263). So. there is force in the contention that the notification as well as public notice were bad on account of having vagueness respecting the identity of the land.

7. The land was acquired for construction of Karawri link drain in order to save the land, measuring about 150 acres, and the crops sown thereon of village-Karawri from inundation during the rainy season. So. the purpose for acquisition of the land can reasonably be said to be public purpose. The contention of the learned Counsel for the petitioners that since construction of the drain would not serve any benefit to the residents of village-Chitana, it cannot be said that the land was acquired for a public purpose, has not impressed me. Further, I do not think that the scope of the proceedings in writ petition is so wide as to permit de-termination

of the question as to whether the purpose for which the land was acquired was a public purpose.

8. The facts that there is temple of Bhagwati Devi in village-Chitana, that the water of the pond of village-Karawri is dirty or that flow of the same through the drain into the pond of Karawri would pollute the pond of village-Chitana, were controverted by the respondents in the written statement. There is no material before me, which can lend support to the averments of the petitioners that there is temple of Bhagwati Devi in village-Chitana or that the water of the pond of Karawri is unhealthy or dirty because of throwing of bones of animals in it, or that the flow of water from the said pond into the pond of village-Chitana would pollute the same. It is pertinent to note that this is not the case of the petitioners that the alleged temple of Bhagwati Devi was acquired for construction of Karawri link drain. Therefore, the contentions of the learned Counsel for the petitioners, that there is temple of Bhagwati Devi, that the pond of village-Chitana is venerated or that the said water would be polluted by flow of water through the drain from the pond of village-Karawri, are beside the point and do not affect the acquisition of the land.

9. The provisions of the Northern India Canal and Drainage Act would apply when the Government wishes to execute some drainage works and the entire cost or at least part of it is to be recovered from the owners of the land, who would be benefited by the said works. But when any such works are executed by the Government at public expense and no landowner, who is to be benefited, is to contribute any amount towards the cost of the works, the acquisition of the land can be effected under the provisions of the Act. The object and purpose and even the procedure provided by both these Acts are different. I am fortified in this view by *Bawa Singh v. Executive Engineer (Drainage) Jullundur*, 1969 Pun LJ 482. Since in the case in hand, the land was acquired at public expense and no landowner was required to contribute towards the cost of construction of the drain, the provisions of the Northern India Canal and Drainage Act were not applicable. Therefore, the contention of the learned Counsel for the petitioners, that the acquisition of land was invalid because no scheme for construction of the drain had been prepared under the Northern India Canal and Drainage Act before taking steps to acquire the same, has no merit and the same is repelled.

10. The learned Counsel for the respondents argued that since the petitioners were not owners of the land, they had no right to maintain the writ petition and they had no right to make objections against the acquisition of the land under Section 5A of the Act and, therefore, the circumstance that public notice had been given more than 30 days after publication of the notification in the gazette was of no effect. True, the petitioners are not owners of the land. It is Gram Panchayat of village-Chitana which is its owner (vide Annexure-A). It is equally true that foundation of a petition under Article 226 of the Constitution is a personal or individual right. Such a right must be one recognised by law. The petitioners being landowners and residents of village-Chitana had a legal right to use the land as thoroughfare, since the same was a public path and vested in the Gram Panchayat. By acquisition of the land, even according to the respondents, the width of the said thoroughfare would be reduced from 33 feet to 22 feet. So, it would narrow down the passage and would affect the rights of the petitioners to use the land to its width of 33 feet as thoroughfare. Therefore, I am of the opinion that the petitioners had a legal and existing right and acquisition of the land being not in accordance with law constituted breach of that right and, as such, the petitioners had a right to maintain the writ petition.

11. Section 5A of the Act provides that any person interested in any land notified under Section 4(1) of the Act may object to the acquisition of the land or of any land in the locality. Its Sub-section (3) lays down that a person shall be deemed to be interested in land if he would be entitled to claim an interest in compensation. It is pertinent to note that the said person may not be entitled to claim compensation of the land. It is sufficient if he is entitled to claim an interest in such compensation. The land is a path which goes from village-Chitana to village-Karawri and Gram Panchayat is its owner. So, it is vested in the Gram Panchayat. Section 5 of the Punjab Village Common Lands (Regulation) Act, 1961, provides that all lands vested or deemed to have been vested in a Panchayat shall be utilised for the benefit of the inhabitants of the village concerned. The petitioners are landowners and inhabitants of village-Chitana. Devi Singh and Sukhbir Singh are Sarpanch and Panch, respectively, of the village Panchayat. Therefore, the Panchayat was to utilise the land for their benefit and also for the benefit of other inhabitants of village-Chitana. So, in view of the said provision of law, I think that the petitioners

were entitled to claim an interest in compensation, though they may not be entitled to compensation. As such, they would be deemed to be persons interested in the land, vide Sub-section (3) of Section 5A of the Act.

It has been observed in head note (b) of *Laxmibai Radhakisan v. State of Bombay*, 1960 Nag LJ Notes 5. that the right conferred under Sub-section (1) of Section 5A of the Act is not only on the landowners but on all persons residing in the locality to object to the proposed public purpose being brought within the locality. So. I find no justification for the argument raised by the learned Counsel for the respondents and overrule the same.

12. It, thus, follows that for the reasons recorded in para. 5 above, there had been contravention of the provisions of Section 4(1) of the Act and the public notice is invalid. When the said notice, which goes to the root of the jurisdiction, is invalid, it renders the proceedings taken thereafter a nullity, because when the foundation falls the superstructure must fall with it. So, I have no hesitation in finding that the entire acquisition proceedings are nullified.

Consequently, I allow this petition and quash the notification published in the gazette and the public notice given under Section 4(1) of the Act and also quash the acquisition proceedings taken thereafter i.e., publication of notice under Section 6 of the Act and the award given by the Collector. In view of the peculiar circumstances of the case. I leave the parties to bear their own costs.

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