

Prem Singh and ors. Vs. Union Territory Through Its Administrator and ors.

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Court : Punjab and Haryana

Decided On : Jan-20-1992

Reported in : (1992)102PLR370

Judge : H.S. Bedi, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 4(1) and 6(1); [Constitution of India](#) - Articles 226 and 227

Appeal No. : Civil Writ Petition No. 12936 of 1991

Appellant : Prem Singh and ors.

Respondent : Union Territory Through Its Administrator and ors.

Advocate for Def. : Anand Swaroop, Sr. Adv. and; Alok Jain, Adv.

Advocate for Pet/Ap. : V. Ram Sarup, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Harjit Singh Bedi, J.

1. By the present judgment, I propose to dispose of C.W.P. Nos. 12936, 13958 and 14898 of 1991. The facts have been taken from C.W.P. No. 12936 of 1991.

2. The petitioners are owners of land, details whereof have been given in Annexure P-.1 to the petition, situated within the Notified Area Committee, (in short 'NAC') Manimajra, Union Territory Chandigarh. It has been averred that Manimajra was declared a notified area vide Notification dated 12th April, 1976, and certain Sections of the Punjab Municipal Act. 1971, (hereinafter called the 'Municipal Act') which include Sections 3, 53, 58 and 192 etc. were extended to this area with effect from 11th June, 1976. It has also been averred that by virtue of Sections 242 and 243 of the Municipal Act, a NAC is deemed to be a Municipal Committee and the area, thereof to be a Municipality. It has been averred in the writ petition that respondent No. 1 i.e. the Union Territory Administration issued a Notification under Section 4 of the [Land Acquisition Act, 1894](#), (hereinafter called the 'Act') for acquisition of the land mentioned in Annexure P-]. The Notification was published in the Chandigarh Administration Gazette on 28th June, 1990 and a copy, thereof has been appended with the petition as Annexure P-2. Respondent No. 1 thereafter issued another Notification dated 24th June, 1991, purporting to be under Section 6 of the Act and the same was published in the Chandigarh Administration Gazette on 24th June, 1991, a copy having been appended as Annexure P-3 with the petition. In para No. 7 of the petition it has been alleged that the Notifications aforesaid had not been published in the manner provided by the Act inasmuch as that in addition to the Notifications in the Gazette, they were required to be published in two daily news papers, out of which, one was required to be published in the regional language and also that public notice of the substance of the notifications was to be given at convenient places in the locality. The writ petition, further, goes on to say that the acquisition of land for the purposes of providing residential accommodation to citizens was not a public purpose as defined in Section 3(f) of the Act; that the NAC could not acquire this land before the sanction of the Scheme for the land was being acquired; that about 8 acres of land which had been proposed to be acquired under Section 4 of the Act was exempted at the time when the declaration under Section 6 thereof was made and this amounted to discrimination; and that the public notice of the substance of the notification in the locality had been given at the instance of the NAC and not the Union Territory Administration.

3. In reply to the petition the stand of the respondents is that the Notification under Sections 4 and 6 of the Act had been duly published as provided by the mandatory provisions of the law. The acquisition of land for the development of residential-cum-Commercial Complex Scheme was a public purpose; that there was no requirement of law that before the land was acquired for being utilized under the Municipal Act, a Scheme regarding utilization of the land had to be prepared and that exemption had been made qua a small parcel of land that was proposed to be acquired after due deliberation.

4. At the time of initial argument, it appeared to me that the reply filed was rather vague and required to be supplemented. The case was adjourned to enable the respondents' counsel Mr. Anand Swaroop, learned Senior Advocate, to produce the record. The record has been perused by me and I find on consideration of the written reply and also of the record that there is no merit in these writ petitions.

5. As already indicated, the Notification under Section 4 of the Act was published in the Chandigarh Administration Gazette on 28th June, 1980, and as per the record produced, it was notified in the locality on 10th July, 1990, and published in the Punjabi and English Tribune on 15th July, 1990. It is also apparent from the record that the date of declaration of the notification under Section 6 of the Act was 24th June, 1991 and it was published in the Gazette on the same day. The substance of the declaration was published in the locality on 26th July, 1991 and in the English, Hindi and Punjabi versions of the daily Tribune on 9th August, 1991, 4th August, 1991 and 6th August, 1991, respectively. It will be apparent from the resume of facts given above that the notification have been published in terms of the mandatory provisions of Sections 4 and 6 of the Act. Faced with this situation, Mr. V. Ramsarup, learned counsel for the petitioners, has contended that as per Section 4 of the Act, the date of publication of the notification under that Section was to be taken as 15th July, 1990, and a reading of Section 6(1)(ii) alongwith Section 6(2) of the Act would show that the declaration under Section 6 having been published on 9th August, 1991, being beyond a period of one year from the date of the notification under Section 4 of the Act, was liable to be struck down.

6. After hearing the counsel for the parties, I am of the view that this argument is not tenable. Section 6(1) insofar as is relevant is reproduced below : -

6. Declaration that land is required for a public purpose: -- (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some Officer duly authorized to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, Sub-section (J), irrespective of whether one report or different reports has or have been made wherever required under Section 5A, Sub-section (2) :--

Provided that no declaration in respect of any particular land covered by a notification under Section 4, Sub-Section (1),

(i) Published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) Published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification.

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

The proviso to Section 6(1) of the Act requires that no declaration in respect of any particular land covered by the notification under Section 4 sub-section (1) shall be made after the expiry of one year from the date of the publication of the notification. It is significant that the Act itself makes a distinction between a declaration per se and the publication thereof, and as would be clear from the

proviso itself, the embargo placed is on the declaration which cannot be made after the expiry of one year, although there is no mandate against the publication thereof beyond that period. Mr. Anand Swaroop appears to be right in urging that sub section (2) of Section 6 of the Act which provides for determining the date on which the declaration would be deemed to have been made is for the limited purpose of Section 11A of the Act which stipulates that the Collector will make an award within a period of two years from the date of publication of the declaration, failing which the entire proceedings for the acquisition of the land are required to lapse. Viewed in the light of what has been stated above, it is clear that the date of notification under Section 4 of the Act was required to be taken as 15th July, 1990 and the date of the declaration under Section 6 being 24th June, 1991. The acquisition proceedings thereof being within time, cannot be struck down as urged by Mr. V. Ram Sarup. A supplementary argument, which can also be disposed of at this stage, was raised by Mr. Ram Sarup to the effect that certain persons had been singled out for favoured treatment as the administration had exempted their land from the acquisition proceedings at the time of the declaration under Section 6 of the Act. Mr. Anand Swaroop learned counsel has produced the record before me which shows that a Committee had been constituted by the Administration which went into the entire matter and exempted certain pieces of land after recording good reasons. What appears to have weighed very strongly with the Committee was that certain built up portion needed to be exempted and that principle was applied uniformly in favour of those covered by the policy. Moreover, the allegations of discrimination are totally vague and, as such, cannot really be gone into the writ jurisdiction.

7. Mr. V. Ram Swaroop had additionally argued that the purpose for which the land was acquired was not really a public purpose which could justify the acquisition. He has also urged that the public purpose if at all, which has been mentioned in the notifications Annexures P-2 and P-3, is vague and as a result whereof the petitioners could not file proper objections. I have considered this argument as well and find no substance in it. It has been clearly mentioned in the notification Annexures P-2 that the land was required for the development of a residential-cum-Commercial Complex Scheme No. 3 by the NAC and this, in my view, constitutes sufficient compliance with the (provisions of Section 4 of the Act.)

8. An additional point has been raised by the counsel for the petitioners that as no scheme had been framed for the utilization of the land, as provided by Section 192 of the Municipal Act, it was not open to the respondent-Union Territory Administration to acquire the land in question. In support of his argument, learned counsel has cited *State of Tamil Nadu v. A. Mohammed Yusef*, J.T. 1991(3) S.C. 347. After considering the matter, I find that the ratio of the aforesaid case cannot be applied to the one before me. In this case the Supreme Court considered the scope of Sections 35 to 69, 70 and 147 of the Madras State Housing Board Act, 1961, which specifically provided that a Scheme had first to be framed in which amongst other matters the details of the land, which was proposed to be acquired were to be set out. On a consideration of the wording of the sections impugned, the Supreme Court held that as there was no Scheme in existence, the notification under Section 4 of the Act was premature and liable to be struck down on that score. As already mentioned above, the facts of the Supreme Court judgment cannot be applied to the present one. Learned counsel has not been able to show any provision in the Municipal Act corresponding to the provision of the Madras Act. I am of the view that the preparation of a scheme under the provisions of the Municipal Act and the acquisition of land for the purpose of implementing the scheme can go on simultaneously.

9. Mr. V. Ram Swaroop has urged two additional points which also have no merit. He has urged that by virtue of the provisions of Section 52L of the Act, the NAC could not release funds, for the acquisition and, as such, the acquisition is to be struck down on that score. It is to be noted that a person whose property is acquired is entitled to claim his compensation and it does not matter whether the funds are being taken from one head or the other. The final argument raised by Mr. V. Ram Swaroop is that the notifications under Sections 4 and 6 of the Act were published in the locality by the employees of the NAC Manimajra and not of the Union Territory Administration. This again is an argument of despair. Mr. Anand Swaroop has shown the record to me and I find that the factual assertion of the petitioners is wrong, but even if it is presumed to be correct, it makes not the slightest difference as far as the publication of the notifications in the locality is concerned as the action is a ministerial act which could not determine the validity or otherwise of an acquisition.

10. For the reasons recorded above, the writ petition is dismissed) but with no order as to costs The dates of Publication of various notifications in the other two connected cases are slightly different, but on the analogy of the reasoning given in this case, the aforesaid writ petitions are also without merit and liable to be dismissed, again without any order as to costs.

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