The Indian Law Report

CIVIL MISCELLANEOUS.

Before S. S. Sandhawalia and M. R. Sharma, JJ.

GULZAR SINGH,—*Petitioner*

versus

STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 243 of 1972.

April 6, 1972

Land Acquisition Act (1 *of* 1894 *as amended by Punjab Act II of* 1954, *XVII of* 1956 *asd XLVII of* 1956)—*Sections* 5A *and* 17(1) *and* (2)—*Acquisition of land other than waste and arable land'—Urgency provisions of section* 17(2) *as amended in the States of Punjab and Haryana—Whether applicable thereto.*

Held, that the bare language of sub-sections (1) and (2) of section 17 of the Land Acquisition Act, 1894, makes it evident that they provide for distinct and different situations and, therefore, they must stand apart and independent of each other and consequently construed and interpreted as such. Sub-section (1) of section 17 of the Act expressly makes mention of 'waste or arable land'. However, this expression is conspicuous by its absence in all the clauses of sub-section (2). The necessary inference, therefore, is that whereas section 17(i) provides for land which is waste or arable, in contrast thereto sub-section (2) makes no such qualification. The provisions of sub-section (2) of section 17 as amended and introduced in the States of Punjab and Haryana make evident the reasons for incorporating the same in the statute. This sub-section has been expressly inserted in the statute in order to apply to a situation of emergency different from the one envisaged in the earlier sub-section (1) of section 17 of the Act. The analysis of the three clauses of this sub-section shows that they are patently meant to deal with cases of graver emergency. To read these clauses as being related only to "waste and arable land" renders the substantial portions of the statute as nugatory. Sub-section (2) and the various clauses thereof are not related to the "waste and arable" land alone is further high lighted by the proviso which appears at the end of this sub-section. This expressly visualises the existence of buildings on the land and in terms provides that in the presence of such buildings on the acquired land, a period of 48 hours should be given to the occupier to enable him to remove his movable property therefrom in order to avoid unnecessary inconvenience. Hence the urgency provisions of section 17(2) as amended in the States of Punjab and Haryana are not confined to merely "waste and arable land" but are equally applicable to land bearing a forest, an orchard, or buildings thereon. (Paras 5, 6, 8 and 16)

EDITOR'S NOTE.

It was held in this case that the observations in paras 17 *and* 18 *of the report in Satnam Singh* v. *The State of Punjab* 1969 *P.L.R.* 345 *do not lay down the law correctly.*

Petition under Article 226 and 227 of the Constitution of India praying that a writ of mandamus or any other appropriate writ, order or direction, be issued quashing the impugned notifications Nos. 7213-*RDIV*-71/23199 *and* 7213-*RDIV*-23202, *dated* 28*th December*, **1971.**

J. N. Kaushal, Advocate, with H. R. Aggarwal, Advocate, *for the petitioner.*

J. S. Wasu, Advocate-General, Punjab, with R. K. Chhibbar, Advocate; *for the respondents.*

JUDGMENT

SANDHAWALIA, J.—Whether the urgency provisions of sub-section (2) of section 17 of the Land Acquisition Act 1894 (as amended in the State of Punjab and Haryana) can be invoked for the acquisition of land other than 'waste and arable land' is the primary question that falls for determination in these two connected writ petitions. They have been admitted to a hearing by a Division Bench and this judgment will govern both.

(2) It suffices to advert to the facts in Civil Writ No. 243 of 1972 as the issue is primarily legal and identical in both these petitions. Gulzar Singh petitioner owns about 12 *acres* of irrigated land in the revenue estate of Apra, tehsil Phillaur, district Jullundur. It has been averred that the petitioner has installed a tubewell therein and also built a residential house and a *haveli* thereon, the cost whereof is estimated jointly at about Rs. 36,000. Further it is alleged that about 6 acres of the above-said land is under valuable garden having all kinds of fruit-trees thereon. On the 28th of December, 1971, the State of Punjab issued the impugned notification, annexure 'C' stating that land was urgently needed at public expense for the public purpose of setting up a new Mandi at Apra and further describing the locality, area and the *khasra* numbers which were proposed to be acquired. It was stated therein that in exercise of the powers conferred under section 17 of the Land Acquisition Act the land shall be taken possession of on the ground of urgency and the provisions of section 5-A would not apply in regard to this acquisition. It is then specifically averred in paragraph 5 of the petition that simultaneously on the same date another notification, annexure 'D' was issued under section 6 and under section 17(2) of the said Act directing the taking into possession of the land stated above. Apart from the land of the petitioner, the land of other persons also is averred to have been acquired but it is stated that

this land is *barani* and there are no tubewells or houses situated thereon. In the additional grounds placed on record by the petitioner, it is averred that the land of the petitioner was neither waste nor arable land, therefore, the provisions of section 17 of the Land Acquisition Act excluding the provisions of section 5-A of the same could not be made applicable. As Mr. J. N. Kaushal in support of the petition at the final hearing did not press the allegations of *mala fides* which were vaguely averred in the petition, it is unnecessary to advert to the same here.

(3) In the written statement filed on behalf of the respondent-State it is admitted that there exists a tubewell and a residential house consisting of two rooms on the said land. However, the valuation thereof has not been admitted and the alleged existence of the *haveli* has been denied. As regards the orchard it has been stated that there are mango and *ber* trees in approximately 3½ *acres* of land but the allegations of there being any public religious building on the site have been expressly controverted. In replies to paras 4 and 5 it is stated that the purpose of the establishment of the Mandi was one of urgent importance and consequently action has been taken for the acquisition. The vague allegations of *mala fides* both in the original petition and the additional grounds have been specifically denied and it is stated that the site in question has been unanimously selected by the sitting Board duly constituted by the Government and consisting of high ranking Government officials, who have acted *bona fide* in the choice thereof. In reply to the petitioner's additional grounds it has been expressly averred that the Government issued the notification after due consideration of all the relevant facts and applying its mind thereto. The urgency provisions were invoked as there was no market for the agricultural produce in the area and there was wastage of a large quantity of foodgrains occasioned by the absence thereof. The positive position taken up on behalf of the respondent is that under section 17(2)(c) of the Land Acquisition Act irrespective of the nature of the land whether it is arable or waste the same can be acquired and the provisions of section 5-A of the Act be excluded.

(4) Mr. J. N. Kaushal first points out that the residential house of the petitioner as also a substantial area under orchards exist on the land of the petitioner. On these premises counsel contends that the whole of the petitioner's land obviously is not waste and arable

land. It is then forcefully contended that once it is so, then the urgency of provisions of section 17, sub-clause (4) of the Act cannot be made applicable, because the necessary pre-requisite to attract the same is that the land under acquisition must be waste or arable. With vehemence, it was argued that the right to file objections under section 5-A of the Act is a valuable right and it can be taken away under the provisions of section 17(4) only if the land falls within the ambit of waste and arable land. Reliance was placed on the observations of their Lordship of the Supreme Court in *Nandeshwar Prasad and others* v. *U. P. Government and others* (1) and *Sarju Prasad Saha* v. *The State of U.P. and others* (2), where the earlier judgment has been affirmed.

(5) Inevitably it becomes necessary to set down the relevant provisions of the statute around which the argument of learned counsel and the controversy revolves. Section 17(1) and (2) of the Land Acquisition Act, as amended in the States of Punjab and Haryana is in the following terms:—

> "17. (1) In case of urgency whenever, the appropriate Government so directs, the Collector, though no such award has been made may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company.
>
> Such land shall thereupon vest absolutely in the Government free from all encumbrances.
>
> (*Explanation*.—This sub-section shall apply to any waste or arable land, notwithstanding the existence therein of scattered trees or temporary structures such as huts, pandals or sheds).
>
> (2) In the following cases, that is to say,—
>
> (a) Whenever owing to any sudden change in the channel or any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or *ghat*, station or of

(1) A.I.R. 1964 S.C. 1217.
(2) A.I.R. 1965 S.C. 1763.

providing convenient connection with or access to any such station;

(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 the inhabitants of such village, or any godown for any society registered under the Co-operative Societies Act, 1912 (Act II of 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 of drainage channel, or any well, or any public road;

(c) Whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance;

the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided : that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) * * *.

(4) * * *."

Reverting back to the above-noticed contention of Mr. Kaushal, I take the view that it must fail for a six-fold reason. Basically the argument stems from a confusion and the inter-mingling of the provisions of sub-sections (1) and (2) quoted above. It is a fallacy to equate the above-said two sub-sections with each other and either to read them together or to hold that the one controls

the other. As the bare language of these two provisions makes it evident, they provide for distinct and different situations and, therefore, they must stand apart and independent of each other. Consequently they must be construed and interpreted as such. This is first manifest from the fact that sub-section (1) of section 17 of the Act expressly makes mention of "waste or arable land". However, this expression is conspicuous by its absence in all the clauses of sub-section (2). The necessary inference, therefore, that must flow from the plain language of these provisions is that whereas section 17(1) provides for land which is waste or arable, in contrast thereto sub-section (2) makes no such qualification. Therefore, when the legislature had expressly excluded the terminology of "waste and arable land" in sub-section (2) it would be doing violence to the language of the statute to read the same words into this sub-section again in spite of their express exclusion therefrom.

(6) The provisions of sub-section (2) of section 17 as amended and introduced in the States of Punjab and Haryana make evident the reasons for incorporating the same in the statute. This sub-section has been expressly inserted in the statute in order to apply to a situation of emergency different from the one envisaged in the earlier sub-section (1) of section 17 of the Act. A brief reference to the legislative history would make it evident. It was by Punjab Act No. 2 of 1954, that the provisions of sub-section (2)(a) and (b) were placed on the statute book. A minor amendment was introduced in sub-clause (b) of sub-section (2) by Punjab Act 17 of 1956 and subsequently in the same year by Punjab Act 47 of 1956 sub-clause (c) to the above-said sub-section (2) was introduced into the statute book. The examination of the provisions of sub-section (2) would show that under clause (a) thereof the Railway Adminstration; under clause (b) the Collector; and under clause (c) in specified cases the State Government wherever it considers the public purpose to be of urgent importance, may through the Collector acquire immediate possession of the land and after the relevant declaration is made under section 17(4), this can be done without resort to the provisions of section 5-A. The analysis of these three clauses (a), (b) and (c) would, therefore, show that they are patently meant to deal with cases of graver emergency. Taking first sub-clause (a) it would indeed be difficult to hold that under it when owing to any certain sudden change in the channel of any navigable river or other unforeseen emergency the Railway Administration wishes to acquire an area or land for the maintenance of its traffic, even then it

must resort to the cumbrous and the time consuming process of objections and their necessary decision under section 5-A of the Act. It is possible to visualise in such an emergent situation that the Railway Administration may wish to acquire land having fruit-trees or forest on the same and further upon which buildings may be existing and to say that clause (a) must be confined to "waste and arable land" would indeed amount to nullifying the power granted by this clause to acquire the land in such an emergent situation. The very purpose of acquisition in such a case may well be defeated if resort were to become necessary to the provisions of section 5-A, which requires the filing of the objections and the decisions thereon before possession of the land can be taken. What has been said in the context of sub-clause (a) is equally applicable to sub-clauses (b) and (c). Indeed it apears to me that to read these clauses also as being related only to "waste and arable land", would render substantial portions of the statute as nugatory.

(7) The view that sub-section (2) and the three clauses thereof must be construed independently receives authoritative support from the Full Bench judgment in *The Printers House Private Ltd.* v. *Misri Lal and others* (3). The Full Bench indeed goes further to hold that not only that, but each sub-clause thereof is itself an independent provision and forms a separate class. Narula J., in the above-said judgment has observed as follows:—

> "Each of the three clauses of sub-section (2) of section 17 of the Act forms a separate class by itself and the different classes of urgency named in clauses (a), (b) and (c) of section 17(2) form an independent genus by themselves and are not mere species of one common genus."

Equally it is worthy of remembrance that the Full Bench abovesaid had gone on to hold that even clause (c) is not to be read as *ejusdem generis* with the preceding sub-clauses (a) and (b) thereof.

(8) That sub-section (2) and the various clauses thereof are not related to the "waste and arable" land alone is further highlighted by the proviso which appears at the end of this sub-section. This expressly seems to visualise the existence of buildings on the land and in terms provides that in the presence of such buildings on the acquired land, a period of 48 hours should be given to the occupier

(3) I.L.R. 1970(1) Pb. & Hr. 76=1969 Curr. L.J. 594.

to enable him to remove his movable property therefrom in order to avoid unnecessary inconvenience. The intention of the legislature, therefore, was manifest that sub-section (2) would apply to the land having buildings thereon. If this sub-section also was to apply only to "waste and arable land" then the proviso expressly mentioning buildings, the occupier thereof, and the moveable property lying therein would be wholly redundant and meaningless.

It is one of the settled canons of interpretation that no portion of the statute is to be construed as without meaning or to be considered as redundant. Construing the proviso in the light of this dictum it is evident that it would relate the provisions of sub-section (2) obviously to land having buildings thereupon. It is the common case of the parties that land having building thereon is patently not waste or arable land.

(9) Another fact which would repel the contention on behalf of the petitioner is the definition of the expression 'land' under section 3(a) of the Act which is in the following terms:—

> "the expression 'land' includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth."

The language of the above-said definition makes it obvious that the meaning to be attributed to the word 'land', wherever it has to be used in the statute, has been extended by this definition. This definition gives a wider amplitude to the word 'land' including things attached or permanently fixed thereto within the ambit of the word. Consequently when in sub-section (2) the word 'land' appears, it must be construed in the terms of the above-said definition and would, therefore, include within its ambit all kinds of lands including that having building or orchard or forest trees thereupon. No reason was possibly shown as to why in this sub-section (2) the general word 'land' be confined only to "waste and arable land". Any construction of the larger meaning which has been given at the outset to this word by the definition clause, therefore, appears to me to be wholly unwarranted.

(10) Lastly the analysis of the whole of the urgency provisions of section 17 would show that as regards the point of time, it further shows three classifications. Sub-clause (1) authorises the taking of the possession of the acquired land within 15 days. The proviso

to sub-section (2) authorises the taking into possession of land bearing buildings after giving 48 hours notice to the occupiers thereof for removing their movable property therefrom. Even a more urgent power is provided for by sub-section (2) which authorises the immediate acquisition of the land in question. It is hence patent that where power is given to take over possession either immediately or within so short a period as notice of 48 hours, the relevant provisions of filing of objections and the necessary decision thereof can obviously be excluded under the provisions of section 17(4).

(11) Having elaborated the matter on principle as also from the language of the statute, I now advert to the authorities relied upon by Mr. Kaushal in support of his contention. The perusal of both the Supreme Court judgments in *Nandeshwar Prasad and others* v. *U. P. Government and others* (1) and *Sarju Prasad Saha* v. *The State of U.P. and others* (2), would show that therein the power was being exercised expressly under sub-section (1) of section 17 of the Act. It was in those circumstances that their Lordships have said that the urgency provisions invoked in the context of sub-section 17(1) must necessarily be related to "waste and arable land". Both these cases are not at all relevant in a power exercised under section 17(2). More so they are not attracted to the provisions of sub-section (2) as amended and made applicable in the States of Punjab and Haryana. The two decisions, therefore, are clearly distinguishable as being applicable to cases only under sub-section 17(1) and have no bearing in a case like the present one which falls for construction under sub-section (2) of section 17.

(12) Reliance, however, has been placed on the observations made by Sarkaria, J., in *Satnam Singh* v. *The State of Punjab* (4) and particular reference was made to paragraphs 17 and 18 of the report above-said. It stands observed therein as follows:—

> "A reading of section 17 as a whole, reveals that it is an integrated and interdependent provision. Its various sub-sections are interwoven and have to be construed together."

Undoubtedly these observations lend support to the contention raised by Mr. Kaushal. It is, however, with regret that I must hold that the view expressed in the above-quoted lines and in paragraphs 17

(4) 1969 P.L.R. 345.

and 18 of the report above-said does not appear to me to lay down the law correctly. A close analysis of the body of the judgment in *Satnam Singh's case* (4) will show that my learned brother Sarkaria J. was dealing wholly and primarily with the case on the basis that the power had been exercised in relation to section 17(1) of the Act. The whole reasoning and the argument was related to the construction and interpretation of section 17(1). It was, however, only at the end before concluding that the learned Judge briefly adverted to the argument on behalf of the State under section 17(2) and repelled the same with these observations. These observations, therefore, do not appear to be the ratio of the above-said case.

(13) I have in the earlier part of this judgment discussed and held that sub-sections (1) and (2) of section 17 must be construed independently and the obvious connotation is that they deal with different and peculiar circumstances. With great respect I am unable to find anything either in the language or the scheme of the statute to hold that these two sub-sections are so inter-woven as to be construed together. Indeed such a view would be contrary to the binding precedent in *The Printers House Private Ltd.'s case* (3) (supra). Reliance was also placed primarily on one factor in *Satnam Singh's case* (4), in holding that sub-sections (1) and (2) must be read together as controlling each other. This was on the view that the words following sub-clause (c) of sub-section (2) of section 17 of the statute make a reference to a notice mentioned in sub-section (1) and threfrom Sarkaria, J. drew an inference that the whole of sub-section (2) must be co-related and be read subject to sub-section (1). Now a close analysis of the statute would show that the reference in the words following sub-clause (c) of sub-section (2) is to the notice mentioned in section 9(1) thereof. Therefore, if at all the reference in the sub-clause is taken notice of it is related to the notice of sub-section (1) of section 9 and indeed does not in any way co-relate this provision under section 17(1). That was the view earlier expressed by Shamsher Bahadur, J. in *Budhi and others v. The State of Punjab and others* (5), in the following words:—

> "It is important to note that sub-section (2) is dealing with acquisitions which are not of waste or arable land though reference is made to the notice mentioned in sub-section (1). Clause (c) of sub-section (2) is related to sub-section

---

(5) A.I.R. 1964 Pb. 300.

(1) only with regard to the notice and not the nature of the land which can be made subject-matter of acquisition on account of urgency under this sub-section."

The view above-said is directly contrary to that expressed by Sarkaria J. and unfortunately this judgment appears not to have been brought to the notice of the Bench in *Satnam Singh's case* (4). Equally it may be mentioned that the view expressed by Sarkaria J. in *Satnam Singh's case* (4), stands impliedly overruled by a Division Bench to which a reference is made hereafter though in fairness it must be noticed that the attention of the Bench was not drawn to the observations in *Satnam Singh's case* (4).

(14) For the foregoing reasons I am constrained to hold that the observations in paragraphs 17 and 18 of the report *in Satnam Singh's case* (4) are either *obiter dicta* or in any case do not lay down the law correctly.

(15) I may now advert to the Division Bench judgment in *Teja Singh, etc.* v. *The State of Punjab and others* (6), which lends conclusive support to the view I am inclined to take. The facts therein are almost on all fours. Land in that case was also being acquired for the purpose of building a Mandi at Kharar and there existed on the acquired land buildings and structures. The urgency provisions under section 17(2) and 17(4) were made applicable and this was challenged by way of writ petition on behalf of the New Anaj Mandi Association, Kharar. Repelling the contentions on behalf of the petitioner the Bench upheld the applicability of the urgency provisions under sub-section (2) of section 17. Though the observations in *Satnam Singh's case* (4), were not brought to the notice of the Division Bench, it took notice of the earlier view of Shamsher Bahadur, J. in *Budhi and others' case* (5) and referred to it with express approval.

(16) In the light of the foregoing discussion I hold the view, tehrefore, that the urgency provisoins of section 17(2) are not confined to merely "waste and arable land", but would be equally applicable to land bearing a forest, an orchard, or buildings thereon.

(6) C.W. No. 1270 of 1970 decided on 19th May, 1970.

(17) The second contention of Mr. Kaushal was that the respondent State had not placed adequate and enough material on this record in order to enable this Court to hold that there was any adequate urgency to invoke the special provisions of section 17(4) for excluding the filing of the objections, etc., under section 5-A. It was contended that this was a justiciable matter and on the present facts Mr. Kaushal invited us to hold that the powers had not been validly and legally exercised. We regret our inability to agree. It has been in terms averred on behalf of the respondents that in the area there existed no market for agricultural produce which was an urgent requirement of the community. It has been further averred that the absence of such a market leads to much wastage of agricultural produce. In terms it has been stated that the respondent-Government had fully applied its mind to the facts of this case and then arrived at the decision that the matter was of enough urgency to invoke the provisions of section 17(4). In this context we are unable to hold that the grounds for urgency are either non-existent or irrelevant or of such a nature that it would be an impossible conclusion to reach thereon that there was any urgency as required by the ratio of the Full Bench in *the Printers House case above* (3).

(18) The foregoing part of the discussion has proceeded wholly on the premises that the power in the present case has been exercised under sub-section (2) of section 17. However, in fairness to Mr. Kaushal we must notice an argument pressed by him as a last resort in this context. It was contended that both annexures 'C' and 'D' to the petition which stand impugned and which are Government notifications under sections 4 and 6 read with section 17, no express mention of the sub-clause under which the power was being exercised has been mentioned. It was, therefore, contended that in invoking section 17(4), the appropriate Government must arrive at an opinion whether the provisions of sub-section (1) or sub-section (2) are applicable before excluding the valuable rights of the petitioner and other land-owners which accrued to them under section 5-A. Counsel contended that because the relevant sub-section was not expressly mentioned in the two notifications, therefore, they should be quashed as invalid and it be held that the acquisition proceedings are wholly vitiated on this score alone. I am of the view that the contention above-said has hardly any merit other than that of hyper-technicality. What is first worthy of notice is the fact that in the petition itself in para 5

thereof it has been expressly averred on behalf of the petitioner that the power in this case has been exercised under section 6 read with section 17(2) of the Act. Again repeatedly in the written statement filed on behalf of the respondents it has been in categorical terms affirmed that the respondent-State was acting under section 17(2) (c) thereof. It has been repeated in the written statement that because action was being taken under sub-section (2), therefore, the classification of "waste and arable land" would not apply. There is, therefore, no manner of doubt that in the present case the Government after applying its mind was expressly purporting to act under section 17(2) and this is further evident from the language of annexure 'D' which virtually repeats the terminology of sub-clause (c) of sub-section (2). Therefore, what remains is the technical objection that the particular sub-section (2) has not been expressly mentioned in the impugned notification. I am of the view that it is mentioned by necessary implication. Further I do not think that the specification of each sub-section or sub-clause of the statute under which power is exercised is a mandatory requirement either of the statute or of the law generally. Nor is it such matter which would vitiate proceedings on this score alone. The whole obviously includes the part thereof and when section 17 has been expressly and repeatedly mentioned in the notification and the language of sub-section (2) (c) is repeated therein, the intention is manifest that the power is being exercised under section 17(2). I am of the confirmed view that mere omissions of specific sub-sections or sub-clauses in the notification is not a matter which could possibly lead to the vitiation of the whole proceedings.

(19) No other contention was raised by Mr. Kaushal in Civil Writ No. 243/1972. Learned counsel in Civil Writ No. 244 of 1972 had merely contented himself with adopting the arguments raised by Mr. Kaushal. We are, therefore, unable to find any merit in both these petitions which fail and are hereby dismissed. However, in view of the slightly involved question of law, we would not propose any order as to costs.

SHARMA, J.—I agree.

N. K. S.