CIVIL MISCELLANEOUS

Before Inder Dev Dua, J.

ANANT RAM,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 419 of 1961.

1961

Sept. 26th

*Land Acquisition Act (I of 1894)—Section 6(1) Proviso—"Unless the compensation to be awarded for such property is to be paid * * * wholly or partly out of public revenues"—Scope and meaning of—Rs. 100 out of lakhs of rupees paid out of public revenues—Whether sufficient compliance—Constitution of India (1950)—Article 226—Petition under—Delay and conduct of the petitioner—how far relevant.*

Held, that to achieve the object of benefit of the public the words "wholly or partly" must be construed according to their ordinary plain meaning, and even if a very small fraction of the compensation is contributed by the Government out of public revenue, it would satisfy the statutory requirement. It would, of course, be so only on the assumption that there are no *mala fides* and the Government acts honestly in the promotion of the public purpose; in other words on the assumption that it is not a fraud on the statute and the action in question is not motivated by a collateral purpose, for example, by a dominant desire principally to benefit a private party wihout intending any substantial benefit to the public, though ostensibly described to before a public purpose. To sustain the contention of the petitioner and to hold that the word 'partly' means substantially, would really amount to legislation in the garb of interpretation.

Held, that as far as the petitioner is concerned, he is being paid compensation for the acquisition in accordance with law; and the existence of public purpose for the acquisition also admits of no doubt; further he obviously stood by and saw the construction of the factory at a huge cost as pleaded by the respondent-company. In view of these

circumstances, the petitioner cannot be considered to be entitled to claim discretionary relief from this Court under its writ jurisdiction, even if he were otherwise to be held to have successfully assailed the acquisition. The high prerogative writs are meant to promote the cause of justice, and if the claimant is guilty of undue delay and laches and if to grant him such relief would result in unproportionate and unreasonable injury to the public cause, then this Court would be fully justified, and, indeed duty-bound, to withhold its assistance.

Petition under Article 226 of the Constitution of India, praying that an appropriate writ, direction or order, be issued quashing the notification No. 185-41-B(1)-59/426, dated 8th January, 1960, and the order of Respondent No. 2, dated 13th January, 1960.

H. L. SARIN, AND K. K. CUCCRIA, ADVOCATES, for the Petitioner.

S. M. SIKRI, ADVOCATE-GENERAL, AND D. S. TEWATIA, ADVOCATE, for the Respondents.

ORDER

DUA, J.—Anant Ram, petitioner, claiming to be the owner of agricultural land measuring about 6 Kanals and 7 Marlas situated in village Ballabgarh, district Gurgaon, has approached this Court under Article 226 of the Constitution praying for a writ to quash the notification No. 185-41-B(1)-59/426, dated 8th January, 1960, issued by the Governor, Punjab, purporting to act under sections 4 and 17 of the Land Acquisition Act, and the order of the Collector, dated 13th January, 1960 authorising taking into possession of the land mentioned above. The impugned notification and order have been described to be illegal, without jurisdiction, *ultra vires* and outside the scope of the Act and, therefore, ineffectual and unconstitutional. Dua, J.

The principal, and indeed the only, attack against the notification and the order mentioned above is that the land in question has been acquired for the Good Year Tyre and Rubber Company Limited (respondent

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No. 3) which is a company and which wants to set up a factory for the manufacture of rubber tyres on the land in question. It is asserted that the entire compensation for the acquired land is to be paid by the said company and no portion thereof is to be paid out of the public revenue or a fund controlled or managed by a local authority. The mandatory provisions of sections 39 to 41 of the Land Acquisition Act have not been complied with and the acquisition, being meant for a company *simpliciter*, is wholly unauthorised and unconstitutional.

This petition was filed in March, 1961, but on 22nd April, 1961, a supplementary affidavit was filed in which it was elaborated that the land which is the subject-matter of the impugned notification, has not been acquired for a public purpose not at public expense as wrongly stated in the notification. The land, according to the petitioner, has been acquired illegally for a private purpose, namely, for the purposes of the respondent company who has borne the entire expense for the acquisition. It is further stated in this affidavit that in pursuance of the award given by the Land Acquisition Collector, Palwal, it is the respondent-company which has deposited a sum of Rs. 3,34,369.11 nP. on account of compensation on Monday, the 23rd January, 1961, in the sub-treasury, Ballabgarh, as is clear from a copy of letter No. 20500, dated 25th January, 1961, from the Regional Manager, Northern India Good Year Tyre and Rubber Company of India, Private Limited, to the Deputy Commissioner, Gurgaon. In this affidavit a reference has also been made to letter No. 903, dated 25th January, 1960, from the Deputy Commissioner, Gurgaon, to the Secretary to Government, Punjab, Industries Department, wherein it is stated that as the land is to be acquired for a private company necessary action under section 17(1) of the Land Acquisition Act would be taken only after the provisions of sections 40 and 41 of the said Act are complied with. It is then averred that in spite of the above letter, the provisions of sections 39 to 43 of the Act were not complied with before acquiring the land in question. Justification for this supplementary affidavit has been sought from the assertion that this information was received by

the petitioner after inspecting the acquisition files. In support of his case the petitioner has in this affidavit made a reference to a decision of the Supreme Court in *Pandit Jhandu Lal and others* v. *The State of Punjab and another* (1).

In the written statement filed on behalf of the State of Punjab, it has been expressly asserted that a part of the compensation for the acquired land amounting to Rs. 100 has been paid by the Government out of public revenues. This, according to the reply, has been done in pursuance of a decision taken before the issue of the notification under section 4(1) of the Land Acquisition Act. Part VII of the Land Acquisition Act thus, according to the written statement does not apply to the facts of the present case and the acquisition is not assailable on the ground mentioned in the petition. The Good Year India Limited (respondent No. 3) has also put in a reply and it is asserted that the land has been acquired for a public purpose, namely, for setting up a factory for manufacture of rubber tyres. The factory, according to the Company's reply, has since been set up and is being operated by it. A licence to expand the Company's tyre production operation has also been issued by the Government of India, as per Ministry of Commerce and Industry Manufacturing Licence No. L/30-(1)/(8)-SE/CH(1)/61, dated 8th June, 1961. It has also been asserted that the parent Company of respondent No. 3, namely, The Goodyear Tyre and Rubber Company, Akron, U.S.A., has invested in foreign exchange, i.e., in U. S. dollars, the equivalent of Rs. 1,60,00,000 with which capital equipment and machinery has been purchased for the tyre plant. This investment has thus resulted in a considerable saving of foreign exchange to the country. The increased production would also result in a substantial saving in foreign exchange hitherto utilised for import of tyres from abroad. A reference is also made to the Third Five-Year Plan and emphasis has been laid on the vital part which road transport would play in that period. Manufacture of tyres would on this ground also be of great help in the success of this plan. In this reply also it has been averred that a part of

(1) A.I.R. 1961 S.C. 343.

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the compensation for the acquired land amounting to Rs. 100 has been paid by the Government out of public revenue. It is pleaded that the acquisition is thus not for a company *simpliciter* and sections 39 to 41 of the Land Acquisition Act are inapplicable to this case. It is lastly emphasised that the petition has been filed after great delay because the notification was issued as early as 8th January, 1960, and the Collector also made his award on 9th November, 1960. The erection of the factory and the installation of the plant and machinery at a huge cost has been completed to the knowledge of the petitioner who must be deemed to have acquiesced in the acquisition. On these two grounds, namely, laches and acquiescence, the petition is also said to merit dismissal.

The learned counsel for the petitioner has very frankly submitted that it was only when the decision in *Pandit Jhandu Lal's* case stated the law in clear terms that the petitioner came to know of the legal defect in the acquisition. On this ground it is prayed that the delay in filising this writ petition should be condoned and the petitioner should not be thrown out on account of laches. The plea of acquiescence has also been sought to be met on the ground that it was on learning of the Supreme Court decision referred to above that the petitioner realised the strength of his case. It is contended that neither delay nor acquiescence by itself constitutes a conclusive ground for rejecting the writ petition in the preliminary stages, and that if a reasonable or plausible explanation is offered, the petitioner should be heard on the merits, particularly when the grievance relates to his fundamental right.

On the merits the petitioner has confined his attack to the law as laid down in the Supreme Court decision in *Pandit Jhandu Lal's case* (1). The counsel has particularly relied on the following portion occurring at page 347 of the report:—

> "It is, thus, clear that the provisions of section 39—41 lay down conditions precedent to the application of the machinery of the Land Acquisition Act, if the acquisition

(1) A.I.R. 1961 S.C. 343.

is meant for a company. Now, section 6 itself contains the prohibition to the making of the necessary declaration under that section in these terms:—

"Provided 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 .'

Section 6 is, in terms, made subect to the provisions of Part VII of the Act. The Provisions of Part VII, read with section 6 of the Act, lead to this result that the declaration for the acquisition for a Company shall not be made unless the compensation to be awarded for the property "is to be paid by a company. The declaration for the acquisition for a public purpose, similarly, cannot be made unless the compensation, wholly or partly, is to be paid out of public funds. Therefore, in the case of an acquisition for a company *simpliciter* the declaration cannot be made without satisfying the requirements of Part VII. But, that does not necessarily mean that an acquisition for a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds."

It is contended that in the present case the compensation has been met exclusively by the Company and no portion of the cost of the acquisition is to come out of the public funds.

On behalf of the respondents also reliance has been placed primerily on this Supreme Court decision, and Mr. Sikri has referred me to para 5 of the

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Judgment at page 345 of the report. The Supreme Court there disagreed with the process of reasoning of the Letters Patent Bench (G.D. Khosla, Ag. C.J., and Dulat, J.) whose judgment was the subject-matter of appeal to the Supreme Court. Said Sinha, C.J., who spoke for the Court:—

> "It is equally clear that the Letters Patent Bench of the High Court was misled in its conclusions, because all the provisions of Article 31 of the Constitution had not been brought to their notice. It is not correct to say that part VII of the Act had become redundant or null and void, as suggested by the High Court because that Part provided for acquisition for a private purpose."

A little lower down again:—

> "As will presently appear, the conclusion of the High Court is entirely correct, but the process of reasoning by which it has reached that conclusion is erroneous. That process suffers from the initial error arising from the fact that the provisions of Article 31(5) of the Constitution had not been brought to the notice of that Bench. If the Bench were cognisant of the true legal position that the Land Acquisition Act, in its entirety, including Part II dealing with the acquisition of land for companies, was not subject to any attack under Article 31(2) of the Constitution, it would not have based that conclusion on that ratio. Otherwise, there would be no answer to the contention in which the appellants had persisted throughout the long course of litigation in which they have indulged in their vain effort to save the land from being used for the public purpose aforesaid."

The learned Chief Justice then considered the facts and concluded that the assumption of the High Court was not well founded.

The learned Advocate-General, basing himself on these observations, submitted that it is erroneous to assume that acquisition of land for a company is always for a private purpose. In the instant case the counsel has contended that the acquisition being for a public purpose and the Government having contributed a sum of Rs. 100, the acquisition proceedings are immune from attack on the ground urged by the petitioner.

I may here notice an argument which was urged on behalf of the petitioner. It has been contended that in the supplementary affidavit it has been asserted that the Government had not contributed anything towards the cost of compensation and this assertion having not been denied or controverted in the written statement, it must be assumed to be correct. The learned Advocate-General on the contrary, has submitted that, according to the practice of this Court, copies of supplementary affidavits are not sent to the respondent with the result that the State was unaware of this assertion in the supplementary affidavit and no detailed reply was given to this assertion. The learned Advocate-General, however, after reference to the record in his custody, stated that the note of the Legislative Department, dated 4th January, 1960, clearly showed that the acquisition being beneficial to the public at large, the land could be acquired as for a public purpose, notwithstanding the fact that the acquisition incidentally benefitted the company also. After taking the advice of the Legal Remembrancer, it was resolved to take necessary steps to issue a notification under section 4, read with section 17(1) of the Land Acquisition Act, but before this was actually done it was decided to take the concurrence of the Finance Department to the payment of token compensation of Rs. 100 out of the State revenue. The Finance Department agreed to this suggestion on the 8th January, 1960, and it was thereafter that the necessary steps were taken for issuing the necessary notification. I am thus disinclined to draw any inference against the respondent, as suggested by the learned counsel for the petitioner. The record clearly shows that it was after the Government had decided to contribute a sum of Rs. 100 towards the cost of

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compensation that the necessary notification was issued.

On behalf of the respondents, reference has also been made to a decision of the Full Bench of the Madras High Court in *Suryanarayana* v. *Madras Province* (1), where, overruling an earlier decision of the same Court in *Ponnaia* v. *Secretary of State* (2), it was held that it was sufficient compliance with the proviso to section 6(1) of the Land Acquisition Act if any part of the compensation is paid out of public funds. The contribution of one anna by the Government towards the compensation was held in that case to be sufficient compliance with the proviso to section 6(1). Counsel has also referred to *Rajendra Kumar* v. *Government of West Bengal* (3), where a Single Judge of the Calcutta Court approved of the decision of the Madras High Court mentioned above. At page 576 of this decision, the learned Judge expressed himself in these words:—

> "It is no doubt true that if there are sufficient materials before the Court to show that a particular act of acquisition is not a *bona fide* exercise of the power but is a fraud on the Land Acquisition Act or is an evasion of the Act, the Courts will be astute to scan such act with disfavour and will set it aside if necessary. But to hold a particular act of acquisition as an evasion of the Statute merely because it has not drained the public exchequer to a substantial extent is to state the proposition too widely and is not a proper interpretation of section 6(1) of the Land Acquisition Act. If public purpose is served by spending as little as possible out of the public revenue, I fail to see why the act of acquisition should not be held as good."

The Madras decision was also approved by Chandra Reddy, J. in *S. Jagannadha Rao* v. *State of Andhra* (4). Although reference was made by the learned

(1) A.I.R. 1945 Mad. 394.
(2) A.I.R. 1926 Mad. 1099.
(3) A.I.R. 1952 Cal. 573.
(4) A.I.R. 1960 A.P. 343.

Advocate-General to another decision of a Division Bench of this Court in *Bhagwat Dayal* v. *Union of India* (1), but I do not think it is necessary to rely on that decision in view of what the Supreme Court has held in *Pandit Jhandu Lal's case* (2). On behalf of the respondents reference was also made to a Division Bench decision of the Gujarat High Court in *Motibai* v. *State of Gujarat* (3), for the proposition that it cannot be insisted that a public purpose and purpose of a company are matters wholly distinct and so mutually exclusive that they cannot overlap. In my opinion, the proposition canvassed *is prima facie* so convincing that no authority is needed in support of it. Lastly, the State relied on an unreported decision of the Grover, J. in *Shri Jaishi Ram Goel and others* v. *The State of Punjab and others* (Civil writ 426 of 1961) decided on 26th May, 1961, a Letters Patent appeal against which is said to have been dismissed *in limine*. That was a case in which a factory was sought to be set up for the purpose of manufacturing sanitary wares near Bahadurgarh. The acquisition was upheld and the challenge to its legality repelled because in the written statement there was a definite assertion that the cost of acquisition was to be borne out of the public funds. In view of the said assertion, according to the learned Judge, it could not be said that the acquisition was for a company *simpliciter*, thereby necessitating going through the procedure prescribed by Part VII of the Land Acquisition Act.

In my view the decision of the Full Bench of the Madras High Court is *Suryanarayana's* (4) case clearly supports the validity of the acquisition in question, and indeed on behalf of the petitioner the legal proposition laid down in that decision has not been even attempted to be controverted. The petitioner's case is confined only to the assertion of fact that the Government has not decided to contribute or has not contributed towards the cost of compensation. This plea I find myself wholly unable to uphold. Even if the sum of Rs. 100 has not been paid by the Government, that did not very much matter, because under the Land

(1) A.I.R. 1959 Punj. 544.
(2) A.I.R. 1961 S.C. 343.
(3) A.I.R. 1961 Gujrat 93.
(4) A.I.R. 1945 Mad. 394.

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Acquisition Act no time is fixed for the payment of the compensation and if a sum of Rs. 100 is actually contributed by the Government out of public funds towards the cost of acquisition, that would clearly save the acquisition from any attack on the ground that the acquisition being for a company, it should be struck down as contrary to law unless the procedure prescribed in Part VII of the Land Acquisition Act is complied with.

It is true that, according to our Constitution, every citizen has been guaranteed the right to acquire, hold and dispose of his property and this right has been described to be a fundamental right and the Courts are also duty bound to jealously safeguard such rights. The Courts have also to ensure that the rights guaranteed are not lightly invaded even by means which are sometimes described as fraud on the Constitution. In the case in hand it is not disputed that the provisions of Article 31(2) are not attracted; the constitutionality of section 6(1) proviso, Land Acquisition Act, is also not questioned. As a matter of fact, the Supreme Court decision in *Pandit Jhandu Lal's* (1), case is clear on this point. The only question, which thus falls for consideration is, the scope and meaning of the expression "unless the compensation to be awarded for such property is to be paid * * * wholly or partly out of public revenues" occurring in the proviso to section 6(1) of the Acquisition Act. Would the law be satisfied if out of lakhs of rupees only Rs. 100 is paid out of public revenues etc ?

There being no question of constitutional infirmity in the impugned provision of the Land Acquisition Act, the question of the interpretation of the expression "wholly or partly" in the proviso to section 6(1) of the Act does not present much difficulty. To achieve the object of benefit of the public the words "wholly or partly" must, in my view, be construed according to their ordinary plain meaning, and even if a very small fraction of the compensation is contributed by the Government out of public revenue it would satisfy the statutory requirement. It would of course, be so only on the assumption that there are no *mala fides* and the Government acts honestly in the

(1) A.I.R. 1961 S.C. 343.

promotion of the public purpose; in other words on the assumption that it is not a fraud on the statute and the action in question is not motivated by a collateral purpose, for example, by a dominant desire principally to benefit a private party without intending any substantial benefit to the public, though ostensibly described to before a public purpose. To sustain the contention of the petitioner and to hold that the word 'partly' means substantially, would really amount to legislation in the garb of interpretation.

In our Republican form of democracy the usual method of checks and balances constitutes a healthy and wise restraint on the activities of the various wings of the Governmental machinery, thereby reducing the chances of undue arbitrary action. The contribution from the State Exchequer or the public revenue etc. towards the compensation for compulsory acquisitions is thus intended to reduce to a considerable extent the chances of abuse or misuse of the power of such acquisition conferred on the Government by section 6 of the Act, for, such a contribution—however insignificant—is to have the sanction of the Finance Department and is finally liable to comment, discussion, and scrutiny in the Legislature, if need be. But, as there has been no challenge to the impugned acquisition on the ground of *mala fides* in the instant case, it is unfruitful to pursue the matter any further. In view, however, of the foregoing discussion, I am inclined, as at present advised, to lean in favour of the view of law adopted by the Madras High Court in *Suryanarayana's case* (1) and by the Calcutta High Court in *Rajendra Kumar's case* (2).

But this apart, even otherwise the petitioner seems to me clearly guilty of delay and laches. The explanation that the petitioner thought of approaching this Court under Article 226 of the Constitution only when the Supreme Court clarified the legal position, does not appear to me, on the facts and circumstances of this case, to be a sufficiently cogent explanation justifying interference after such delay. It is noteworthy that so far as the petitioner is concerned, he is being paid compensation for the acquisition in

(1) A.I.R. 1945 Mad. 394.
(2) A.I.R. 1952 Cal. 573.

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accordance with law; and the existence of public purpose for the acquisition also admits of no doubt; further he obviously stood by and saw the construction of the factory at a huge cost as pleaded by the respondent-Company. In view of these circumstances, I also feel that the petitioner cannot be considered to be entitled to claim discretionary relief from this Court under its writ jurisdiction, even if he were otherwise to be held to have successfully assailed the acquisition. As has frequently been observed, the high prerogative writs are meant to promote the cause of justice, and if the claimant is guilty of undue delay and laches and if to grant him such relief would result in unproportionate and unreasonable injury to the public cause, then this Court would be fully justified, and, indeed duty-bound, to withhold its assistance.

For the reasons given above this petition fails and is hereby dismissed with costs.

B.R.T.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

SIBHAT ULLAH,—*Petitioner.*

versus

SAHIB RAM,—*Respondent.*

Civil Revision No. 348-D of 1961.

1961

Sept. 27th

Slum Areas (Improvement and Clearance) Act (LXXXXVI of 1956)—Sections 19 and 36—Competent Authority delegating its powers to other officers—Orders passed by the delegate—Whether to be confirmed by the Competent Authority.

Held, that section 36 of the Slum Areas (Improvement and Clearance) Act, 1956, authorises the Competent Authority to delegate its powers under the Act to any officer or local authority to be exercised by them in such cases and subject to such conditions as specified in the notification. Once the Competent Authority delegates its