

Phuman Singh, etc. v. State of Punjab, etc. (Gurdev Singh, J.)

I am afraid, the Supperintending Canal Officer has passed an order which was beyond his jurisdiction to do so and I would accordingly quash the same. The petition will be allowed with costs.

R. N. M.

CIVIL MISCELLANEOUS

Before Gurdev Singh, J.

PHUMAN SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB, AND OTHERS,—*Respondents.*

Civil Writ No. 595 of 1966

Civil Misc. No. 210 of 1968

March 3rd, 1968.

Land Acquisition Act (I of 1894)—Ss. 5-A and 6—Objections filed under section 5-A—Objections not decided—Notification under section 6 issued—Such notification—Whether valid and conclusive.

Held, that the provisions of section 5-A of Land Acquisition Act with regard to the necessity of notice to the persons interested and affording them an opportunity to be heard are mandatory and their non-compliance vitiates the proceedings. If the objections filed under section 5-A are not considered by the authorities, the acquisition proceedings subsequent to the filing of the objections are not in order. In view of the non-compliance with the provisions of section 5-A, the notification issued under section 6 of the Act is without jurisdiction and the conclusiveness which attaches to such a notification vanishes.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued, quashing the declarations No. C-47(25) -W-1/7646-A and No. C-47(24)-W-1/7646, dated the 14th March, 1966 under section 6 of the Land Acquisition Act, published in the Punjab Government Gazette (Extraordinary), dated March 14, 1966, acquiring 110.07 acres and 111.098 acres of land, respectively.

J. S. WASU AND S. S. DEWAN, ADVOCATES, for the Petitioners.

R. S. MONGLA, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents.

JUDGMENT

GURDEV SINGH, J.—This order will dispose of two petitions under Articles 226 and 227 of the Constitution of India (Civil Writs 595 and 596 of 1966) in which the legality of the proceedings taken for the acquisition of land situated within the revenue estate of village Burail, tehsil Kharar, in connection with the extension of the Capital Project, Chandigarh, has been assailed. The questions for consideration in both the petitions are identical and the facts are the same.

On 23rd March, 1948, the East Punjab Government issued a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter called the 'Act'), declaring its intention to acquire land measuring 371 square miles within all the revenue estates then forming part of Kharar Tehsil in the district of Ambala for the purpose of setting up the Capital for the State of East Punjab. The Notification further said that the provisions of Section 5-A would not apply in regard to this acquisition. As a result of representation made to the authorities by the petitioners and others, who held land that had been notified for acquisition, a compromise was arrived at on the 20th December, 1950. The terms thereof were set down in a document signed among others by the Officer on Special Duty, Ambala. According to clause 7 of that agreement, the State Government agreed not to go beyond 17 villages that had already been declared as Capital site. The petitioners' village Burail was, however, not among those 17 villages.

Consequent upon that compromise, land in those 17 villages mentioned in the deed, copy of which formed Annexure 'B' to the petition, was acquired.

Subsequently, after nearly 14 years, in the year 1964, the State Government acquired some further land for setting up a Defence Colony, as a part of the Capital Project of Chandigarh. Major portion of this land was taken from the revenue estate of Kanthala and only a minor part was acquired from the petitioner's village. Later on, on 11th of February, 1966, a fresh notification under Section 4 of the Act was published in the Punjab Government Gazette (Extraordinary), dated 12th February, 1966, declaring that 280 Acres of land in the revenue estate of village Burail, Hadbast No. 222, in the Tehsil of Kharar, to which the petitioners belonged, was needed by the Government at public expense for a public purpose, namely, for extension and development of the Capital of Punjab at Chandigarh (Sector 32) and objections were invited from interested persons within 30 days of the

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date of the publication of this Notification. This affected the land owned by the petitioners and other residents of their village.

According to the petitioner's allegations, notice under section 5-A, of the Act was served upon Phuman Singh, petitioner No. 1 alone on the 8th of March, 1966, calling upon him to prefer objections to the said acquisition as required by that provision of law, by the 10th of March, 1966. The remaining petitioners were not served with any such notice under Section 5-A and the petitioners' case further is that there was material non-compliance with the provisions of Section 5-A, as there was no due publication of the notice under Section 5-A, to them and the petitioners 2 to 7 learnt about it only from Petitioner No. 1, Phuman Singh, after he had received a notice on 8th March, 1966. It may be mentioned here that this objection with regard to improper publication of notice requiring the petitioners to prefer objections in writing to the Collector within 30 days of the publication does not appear to be sustainable as in the Notification dated 11th February, 1966, which was issued under Section 4 of the Act, it was specifically stated:—

“Any person interested in, and having any objection to the acquisition of any land in the said locality may, within thirty days of the publication of this Notification, file an objection in writing before the Collector at Chandigarh in the Estate Office Building, Sector 17.”

The petitioners further complain that despite the fact that the notice served upon Phuman Singh, which had also come to their notice through him, did not allow the prescribed period for preferring objections as it was served upon Phuman Singh on the 8th March, 1966, requiring him to put in objections by the 10th of March, they all the same put in such objections as they could think of in hurry on 10th March, 1966, before the Collector of Land Acquisition, but they were neither heard in support of those objections nor were afforded any opportunity to satisfy the authorities that their objections were valid. Thus, without disposing of the petitioners' objections, on 14th March, 1966, the two Notifications under Section 6, marked Annexures E and E-I, were issued by the authorities for acquisition of 119.07 and 111.098 Acres, respectively, situated in the petitioners' village Burail. These two Notifications form the subject matter of Civil Writ Petition No. 595 of 1966. Similarly in the other case (Civil Writ Petition No. 596 of 1966) two other Notifications under Section 6 were

issued, which are also marked Annexure E and E-I, for acquisition of 121.44 Acres and 109.77 Acres of land in the same village. Thereafter on 25th and 26th of March, 1966, notice under Section 9 of the Act was served upon the petitioners calling upon them to prefer their claims for compensation on the 29th of March, 1966. Before the latter date, the petitioners, however, approached this Court under Articles 226 and 227 of the Constitution with these petitions challenging the legality of the proceedings so far taken by the authorities for acquisition of their lands. The writ petitions were, however, admitted on the 29th March, 1966, and the operation of the impugned orders was stayed by the Motion Bench, with the result that no objections in response to the notice under Section 9 of the Act have been preferred by the petitioners and the acquisition proceedings have remained in suspense all this time.

In assailing the proceedings for acquisition of their land, the petitioners, however, have complained of violation of and non-compliance with the provisions of Section 5-A and 9 of the Act. To appreciate the contention, it is necessary to advert to these provisions. Section 5-A, provides:—

- “(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the Notification, object to the acquisition of the land or of any land in the locality, as the case may be.
- (2) Every objection under sub-section (1), shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary submit the case for the decision of the appropriate Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the appropriate Government on the objections shall be final.
- (3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.”

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This provision in the Act gives right to a person interested in any land which has been notified under Section 4, sub-section (1) of the Act to object to the acquisition within 30 days after the issue of the Notification. As has been observed earlier, the Notification under Section 4 was published on the 11th of February, 1966, and thus the petitioners were required to file their objections under Section 5-A within 30 days after such publication, that is, on or before the 13th of March, 1966 and if 13th happened to be a holiday then in accordance with the provisions of General Clauses Act, they were entitled to put in their objections on the next working day.

In this case, the notice alleged to have been served upon Phuman Singh, petitioner called upon him to put in his objections by the 10th of March, 1966, and did not give him the full 30 days' period allowed to him under the law. The original or the copy of the notice has not been placed on the record by the petitioners and in these circumstances, when the allegation of improper notice issued by the respondent has been denied, I am reluctant to accept their assertion that the notice was not for the prescribed period. In fact, this objection of the notice being improper must be repelled in view of the fact that in the Notification, dated 11th of February, 1966, copy Annexure 'C', issued under section 4 of the Act, it is clearly stated that the objections be preferred within 30 days of the publication of that Notification. In any case, the petitioners on their own showing had availed of the opportunity to put in objections and if they are to be believed, the petitioners 1 to 7 had in fact filed their objections on the 10th of March, 1966.

It is, however, the other ground regarding non-compliance of section 5-A of the Act, of which the petitioners can take benefit. It is asserted that the objections alleged to have been preferred by petitioners 1 to 7 under section 5-A of the Act on the 10th of March, 1966, were entirely ignored and the subsequent Notification under Section 6 of the Act was published without affording them an opportunity of being heard as required by law. The specific allegations on this point are contained in paragraph 9 of both the petitions, which is reproduced below:—

“That to the great surprise and disappointment of the petitioners, without giving them any opportunity of being heard in person as desired by them, two Declarations No. *C-47(25)-W-1/7646-A and No. C-47(24)-W-1/7646, dated

the 14th March, 1966, under section 6 of the Act were published in the Punjab Government Gazette (Extraordinary), dated March 14, 1966, acquiring 119.07 Acres and 111.098 Acres of land, respectively. Copies of the two declarations are annexed as Annexures 'E' and E-1 to this petition."

In reply, this is what Mr. Guldip Singh, Collector, Land Acquisition, who furnished additional affidavit on behalf of the respondents, had to say in the corresponding paragraph 9 of his additional affidavit dated 5th of December, 1967:—

"I admit contents of para No. 9 to the extent that Notifications under section 6 were published, but it is denied that no opportunity was given to the affected right-holders."

Earlier, while replying to the petitioners' allegation in paragraph 8 of their petition that petitioners 1 to 7 had filed objections under section 5-A on the 10th March, 1968, this is what Mr. Guldip Singh, stated:—

"In accordance with the relevant record file of the objection received, no objection as such was received by the Department under section 5-A, within the stipulated period and even thereafter."

The petitioners joined issue on this point and in paragraph 3 of his affidavit filed by Phuman Singh by way of replication, he asserted *inter alia* :—

"The objections were preferred by the petitioners 1 to 7, a copy whereof has already been appended as Annexure 'D' to the main petition. The petitioners even obtained the signatures of the diarist in token of the receipt of the objections on a copy of the objections itself. The copy of the objections bearing the signatures of the diarist is appended as Annexure D/1 to this replication."

The respondent-authorities thereupon sought permission to put in counter-affidavit of Mr. Guldip Singh, dated 19th January, 1968.

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While replying to this paragraph 3 of the replication quoted above, this is what he had to say:—

“Regarding contents of para No. 3, I submit that the same are denied. No objections under section 5-A were made to and received by the Land Acquisition Collector.”

Curiously enough, nothing was said about the petitioner's allegation in paragraph 3 of his replication that the objection application, a copy of which is placed on the record in this case as Annexure 'D', was handed over to the diarist and his initials obtained on Annexure D-1, which has been produced in this case. The general denial made by Shri Guldip Singh in his affidavit is of no avail to the respondents, especially when it is not even asserted that the initials appearing on the copy of the objections marked D-1 were not of the respondents' diarist. In these circumstances, the assertions contained in paragraphs 8 and 9 of the writ petition and in paragraph 3 of the replication of Phuman Singh referred to above must be accepted as correct and I hold that the objections were preferred by petitioners 1 to 7 under section 5-A within the time allowed under the Notification.

Since the respondents have denied the receipt of these objections, it is obvious that they had not considered the same before issuing the Notifications under section 6, nor could they have done so when according to them the objections were not before them. The provisions of section 5-A with regard to the necessity of notice to the persons interested and affording them an opportunity to be heard are mandatory and their non-compliance vitiates the proceedings. Since in this case I found that the objections preferred by the petitioners 1 to 7 were never considered, the acquisition proceedings subsequent to the filing of objections were not in order. The petitioners' learned counsel has cited *Ram Charan Lal v. The State of Uttar Pradesh* (1) and *Lonappan v. Sub-Collector, Palghat* (2). In the former authority, a Division Bench of the Allahabad High Court, held that where the provisions of section 5-A had not been complied with, in that no opportunity was given to the objector to be heard, the

(1) A.I.R. 1952 All. 752.

(2) A.I.R. 1959 Kerala 343.

declaration made by the State Government under section 6 was without jurisdiction and the conclusiveness provided for in section 6(3) did not attach to it. In *Lonappan v. Sub-Collector, Palghat* (2) (Supra), the Division Bench ruled that where the provisions of section 5-A have not been complied with, the declaration made by the State Government under section 6 is without jurisdiction and even if the act of the Collector and the State Government is an administrative act, if it was made in violation of the mandatory provisions of section 5-A, it is without jurisdiction and the High Court has power under Article 226 of the Constitution to interfere even in the case of administrative orders which are made in defiance of mandatory provisions of law and without any jurisdiction. No authority to the contrary has been cited by the learned counsel for the State. In fact, he has not been able to controvert any of the arguments or contentions put-forward by the petitioners' learned counsel.

In the view that I have taken of the non-compliance with the provisions of section 5-A, it is unnecessary to deal with the subsequent proceedings or their validity as the conclusiveness which attaches to a Notification under section 6 vanishes.

As a result of the above discussion, I allow both the petitions and direct the necessary writs to issue. The petitioners shall have the costs in both the cases against the respondents.

R.N.M.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

M/S HUKAM CHAND-JAGAN NATH,—Petitioner.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ No. 2848 of 1967

March 5, 1968

Essential Commodities Act (X of 1955)—Ss. 3, 6A, 6B, 6C, 6D—The Northern Inter-Zonal Maize (Movement Control) Order, 1967—Clause 3—Policy declaration by Chief Minister—Whether amounts to general authorisation to export—Section 3(2)(d)—Whether encompasses total prohibition of export—Section 6A