

## CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

YADAVINDERA PUBLIC SCHOOL, PATIALA,—Petitioner.

Versus

THE PUNJAB STATE AND OTHERS,—Respondents.

Civil Writ No. 154 of 1969

May 30, 1969

*Land Acquisition Act (I of 1894)—Sections 4 and 6—Land acquired for a school notified as public purpose—Construction of school not abandoned—Such land—Whether can be acquired for another public purpose subsequently—State Government acquiring land for school declaring it as public purpose—Whether can withdraw from that position and acquire land for another public purpose from the school.*

Held, that if the land is acquired for one public purpose, it cannot be acquired second time for another public purpose if the first public purpose of compulsory acquisition has not been abandoned nor has ceased to exist. If the State Government is of the opinion that the construction of a school is a public purpose and acquires the land for it, it is not open to the Government to back out from that notification of public purpose. Having led the school authorities to believe that the land has been acquired for it and it should go on with the construction of the school and development of the land for its campus, it is not open to the State Government to withdraw from that position and take the land back from the school for another public purpose. The land no doubt vests in the State Government after acquisition under section 16 of the Act, but it is vested in the Government for the purpose of the school. (Para 7)

*Petition under Articles 226/227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other appropriate Writ, order or direction be issued quashing the two notifications No. 5332-2-HG-68/27436, dated October 4, 1968 and No. 7343-2-HG-68/36651, dated 29th November, 1968 issued under Sections 4 and 6 of the Land Acquisition Act, 1894, by respondent No. 1, and Respondent No. 2, be restrained from proceeding any further with the acquisition of the petitioner's land and be restrained from giving any 'award' of compensation relating to petitioner's land.*

ATMA RAM, ADVOCATE, for the Petitioner.

MR. D. C. AHLUWALIA, ADVOCATE FOR ADVOCATE-GENERAL (PUNJAB), for the Respondents.

## JUDGMENT.

TULI, J.—The petitioner in this case is Yadavindera Public School, Patiala, for whom land measuring 587 bighas 9 biswas was acquired, by

notification, dated 11th September, 1956, issued by the Patiala and East Punjab States Union Government under section 4 of the Land Acquisition Act, 1894, (hereinafter called the Act). The notification under section 6 of the Act was published in Pepsu Government Gazette, dated 31st October, 1956. The award was made by respondent No. 3 on December 31, 1958, in the sum of Rs. 84,644.45 Paise which was deposited by the petitioner. In the writ petition it was stated that the amount had been paid by the Government but at the hearing before the Motion Bench the learned counsel submitted that the payment of the amount had been made by the petitioner. The learned counsel has now filed an application supported by an affidavit stating that the amount was paid by the petitioner and not by the Punjab Government. The petitioner thereafter began to raise funds for the construction of the school and the improvement of the land and it is stated that Rs. 16,000 have been spent on getting the plans prepared.

(2) The Punjab Government has issued a notification No. 5332-HG-68/27436, dated September 28, 1968, in the Punjab Government Gazette, dated October 4, 1968, under section 4 of the Act stating that the land specified in the notification is needed by the Punjab Government, at public expense for a public purpose, namely for the setting up of an Urban Estate in the area of Tehsil and District Patiala, under section 17(4) of the Act. The hearing of the objections under section 5-A of the Act has also been dispensed with in pursuance of section 17(4) of the Act. A notification under sections 6 and 17(1) of the Act was published in the Punjab Government Gazette, dated November, 29, 1968. These notifications cover the land which was acquired in 1956 for the petitioner. Notice under section 9 of the Act was issued to the petitioner by respondent No. 2 for filing its claim to which the petitioner submitted a reply on December 27, 1968, stating that the land had been acquired for it and that the matter might be referred to the Punjab Government for reconsideration. Respondent No. 2 did not pay any heed to this request and fixed January 7, 1969, for evidence in support of the compensation to be fixed for the acquisition of the land. January 17, 1969, was fixed for pronouncement of the award. The petitioner filed the present writ petition on January 14, 1969, which was admitted on January 16, 1969, and further proceedings were stayed by the Motion Bench. The award has, therefore, not been pronounced.

(3) In the petition it has been stated that other public schools in the country have also been constructed on equally large areas and the petitioner-school is one of the premier institutions in Northern India

and requires the land acquired for its campus. 15 instances have been cited with regard to the public schools having large areas of land. The facts have not been denied by the respondents in their written statements.

(4) The learned counsel for the petitioner has argued that in 1956 the Pepsu Government declared the construction of Yadavindera Public School at Patiala, as a public purpose and acquired the land for it. The compensation of the land was paid by the petitioner who was given possession of the land. The petitioner has been taking steps for raising funds for the necessary construction of the building and the improvement of the land for the purposes of the school and has got the plans prepared by spending about Rs. 16,000. It is thus not open to the Government to acquire the same land for another public purpose when the public purpose of construction of the petitioner-school has neither ceased to exist nor has been abandoned. The management of the school in fact is actively engaged in the construction of the school and its campus. In reply, the learned counsel for the respondents has submitted that there is no bar in the Act to the Government acquiring the land once acquired for one public purpose, for another public purpose at a later date. He has relied upon the Full Bench judgment in *State of Bihar v. Dr. G. H. Grant and another* (1), on the basis of which it is submitted that the land on acquisition in 1956 vested in the Government and the petitioner has no *locus standi* to file the present petition. He has relied upon the following observation in that case.

"I am unable to agree with this contention. The payment or deposit of the compensation money, as required by section 31 of the Act, has nothing to do with the question of vesting of title in the Government. Even if the compensation money is not paid or deposited, as required by the above section, there is no alteration in the situation or the position of the parties, except with regard to the payment of interest, which the Collector has to pay to the owner of the land acquired, not from the date on which the amount should have been made or deposited, as required by that section, but from the date on which the Collector has taken possession of the land. This also strengthens the case of the State Government that title really vests only on taking of possession of the land acquired."

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(1) A.I.R. 1960 Patna 382.

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This observation of the learned Judges does not help the learned counsel for the respondents in the instant case. All that it states is that after possession of the acquired land is taken by the Collector, the land vests absolutely in the Government, free from all encumbrances as is provided for in section 16 of the Act.

(5) There is admittedly no reported judgment on the point of law involved in this writ petition, namely, whether the land acquired for one public purpose can be acquired for another public purpose later when the first public purpose has not been abandoned and is actively being carried out. In my view, the answer to the question is that it cannot be acquired second time for another public purpose if the first public purpose of compulsory acquisition has not been abandoned nor has ceased to exist. The State Government in 1956 was of the opinion that the construction of the petitioner-school was a public purpose and acquired the land for it. The payment of compensation was made by the petitioner-school which was given possession of the land after the Collector had taken possession of the same. It is not open to the Government to back out from that notification of public purpose. Having led the petitioner-school to believe that the land has been acquired for it and it should go on with the construction of the school and development of the land for its campus, it is not open to the State Government to withdraw from that position and take the land back from the school for another public purpose. The land no doubt vested in the State Government after acquisition under section 16 of the Act, but it vested in the Government for the purpose of the petitioner-school to whom its possession was handed over. The principle enunciated by their Lordships of the Supreme Court in *Union of India and others v. M/s Anglo Afghan Agencies, etc.*, (2), applies very aptly to the facts of the present case. In that case the Textile Commissioner had published an Export Promotion Scheme providing incentives to exporters of woollen goods and it was represented that the exporters would be entitled to import raw materials of the total amount equal to 100 per cent of the f. o. b. value of the exports. In the case of Indo-Afghan Agencies, (wrongly stated as Anglo-Afghan Agencies in the title of the case as reported), the value of the goods exported was Rs. 5,03, 471.73 P., but the Textile Commissioner, Bombay, issued an Import Entitlement Certificate for Rs. 1,99,459 only. The firm filed a petition under Article 226 of the Constitution which was allowed by this Court. The Union of India and others filed an

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(2) A.I.R. 1968 S.C. 718.

appeal in the Supreme Court and it was held by their Lordships as under (as per the head note):—

“Where a person has acted upon representations made in an Export Promotion Scheme that import licences up to the value of the goods exported will be issued, and had exported goods his claim for import licence for the maximum value permissible by the Scheme could not be arbitrarily rejected. Reduction in the amount of import certificate may be justified on the ground of misconduct of the exporter in relation to the goods exported, or on special considerations such as difficult foreign exchange position, or other matters which have a bearing on the general interests of the State. The Scheme provided for grant of import entitlement of the value and not up to the value of the goods exported. The Textile Commissioner was, therefore, in the ordinary course required to grant import certificate for the full value of the goods exported; he could only reduce that amount after enquiry contemplated by clause 10 of the Scheme. The authority vested in the Textile Commissioner by the rules even though executive in character was from its nature an authority to deal with the matter in manner consonant with the basic concept of justice and fairplay: if he made an order which was not consonant with the basic concepts of justice and fairplay his proceeding was open to scrutiny and rectification by the Courts.

Held further that even though the case did not fall within the terms of S. 115 of the Evidence Act, it was still open to a party who had acted on a representation made by the Government to claim that the Government shall be bound to carry out the promise made by it, even though the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution.”

(6) On the strength of this judgment, I hold that it was not open to the Government to notify the land, acquired for the petitioner, for acquisition in the notification dated 28th September, 1968, under section 4 of the Act or notification dated 28th November, 1968, under section 6 of the Act.

(7) It was not stated expressly in the return but it was implied and was argued at the hearing that the compensation amount was

paid by the Punjab Government when the land was originally acquired for the petitioner-school in 1956, after the award was made and that the possession of the land is also with the Government. The petitioner's learned counsel had stated at the time the petition was admitted, that the petitioner-school had paid the compensation under the award and an affidavit to that effect has also been filed by way of replicaion which has not been controverted. It is, therefore, apparent that the amount of compensation was paid by the petitioner-school. That the petitioner-school is in possession of the land, admits of no doubt because in the notification under section 4 of the Act dispensing with the hearing of the objections and in the notification under section 6 of the Act, directions were given to take possession under section 17(1) of the Act. This notification clearly shows that the possession of the land is with the petitioner-school. If it had not been so and the land vested in the State Government and was its property, there was no occasion for issuing notifications under sections 4 and 6 with regard to this land for its acquisition, for no one acquires its own land. The petitioner-school was also given a notice under section 9 of the Act to file its claim for compensation which clearly shows that the petitioner-school is in possession of the land and is interested in opposing the acquisition proceedings now being taken. I, therefore, hold that the petitioners school has the *locus standi* to file the present petition.

(8) For the reasons given above, this petition is accepted with costs and the impugned notifications under sections 4 and 6 of the Act, in so far as they relate to the land measuring 587 bighas 9 biswas acquired in 1956 for the petitioner-school, are hereby quashed. Counsel's fee Rs. 100.

R.N.M.

REVISIONAL CRIMINAL

Before R. S. Narula, J.

THE PUNJAB STATE,—Petitioner.

Versus

RAMJI DASS AND OTHERS,—Respondents.

Criminal Revision No. 502 of 1969

June 27, 1969

*Code of Criminal Procedure (V of 1898)—Section 173(4)—Evidence Act (I of 1872)—Section 145—Whether subject to section 173(4)—Previous statement of an Investigating Officer of a criminal case made in some'*