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down in Rule 10 framed under section 85 of the Punjab Tenancy Act, the proceedings before the Revenue Officer would be governed by the Code of Civil Procedure, and he would have ample power to make an order for restoring possession." In view of this, the order of the learned Senior Subordinate Judge cannot be allowed to prevail as the learned Assistant Collector and so also the learned Commissioner in the exercise of their powers under section 144 of the Code of Civil Procedure were competent to pass the order to which the plaintiff had taken objection in this suit.

For the aforesaid reasons, the appeal is accepted and the judgment and decree of the first appellate Court are set aside and those of the trial Court restored. The plaintiff's suit stands dismissed with costs throughout.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

BUDHI AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS;—*Respondents.*

Civil Writ No. 1936 of 1962.

1963
May 13th.

Land Acquisition Act (I of 1894)—Ss. 4, 17 and 48—Appropriate Government—Whether competent to alter the object of acquisition from one public purpose to the other.

Held, that the appropriate Government is competent to divert the purpose of acquisition from one public purpose to another so long as it remains in the nature of a "public purpose". No limitation has been placed on the power of the appropriate Government to acquire land for a public purpose and there is nothing in the provisions of the Land Acquisition Act prohibiting such diversion. The argument that in case of diversion of land from one public purpose to another, the compensation should be allowed to the

owners of the land as on the date of second notification as against the date of the first notification has no merit.

Petition under Article 226 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the notification No. 6134-40B(1)-60/17967/17974, dated 2nd September, 1960, and 6134-41B(1)-60/17974, dated 2nd September, 1960 and order dated the 3rd October, 1962, issued by respondent No. 1, to respondent No. 2.

H. L. SARIN and K. K. CUCCRIA, ADVOCATES, for the Petitioners.

S. M. SIKRI, ADVOCATE-GENERAL, and HARBANS LAL, ADVOCATE; for the Respondents.

Order

SHAMSHER BAHADUR, J.—The question which arises for determination in this petition under Article 226 of the constitution relates to the competence of the appropriate Government under the Land Acquisition Act to alter the object of the acquisition from public purpose to the other?

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Land belonging jointly to the petitioners, Budhi and five others, measuring 53 acres 6 *kanals* and 3 *marlas* in village Majesar of Ballabgarh tehsil in Gurgaon District was acquired in pursuance of notification of the Punjab Government of 2nd of September, 1960 (Annexure A) under sections 4 and 17 of the Land Acquisition Act for "setting up a factory to manufacture electric motors." As the land was required urgently action for acquisition was taken under section 17 (2)(c) of the Act under which land required "for a public purpose which in the opinion of the appropriate Government is of urgent importance" can be entered upon and taken possession of by the Collector thereafter to "vest absolutely in the Government free from all encumbrances". From the endorsement

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made in the notification it appears that the land was acquired for the Indian Electrician Tools Corporation, Post Office Box No. 3025 New Delhi-5, to whom its copy was sent for information. The notification was followed by the usual declaration under the provisions of section 6 of the Land Acquisition Act and under section 7 the Sub-Divisional Officer, Palwal was directed to take over the acquisition of the said land. This notification was also made on the same day and it was further mentioned that the Governor of Punjab in exercise of the powers under section 17 (2) (c) of the said Act was pleased to direct that the Sub-Divisional Officer and Land Acquisition Officer, Palwal, shall proceed to take possession of the land *herein specified in accordance therewith*. A copy of this notice also was forwarded to the Indian Electrician Tools Corporation, New Delhi, for information. According to the assertions made in the petition, the land so acquired was not transferred to the company for whose benefit the notification purports to be. By another notification of 3rd of October, 1962, Annexure C) an area of land measuring 20 acres 1 *kanal* and 19 *marlas* out of the area of 53 acres 6 *kanals* and 3 *marlas* acquired by notification of 2nd of September, 1960, was transferred to Northern India Iron and Steel Co., Limited, New Delhi and Messrs. Manco Bevel Gear of India Limited, Faridabad for installation of Steel Foundry Forge and C.I. casting unit and establishment of a factory to manufacture automobile gear etc. respectively. In the notification it was mentioned that the orders regarding the remaining area of 33 acres 4 *kanals* and 4 *marlas* would follow in the course.

According to the written statement of the Punjab State, the land acquired by the notification of 2nd of September, 1960, was not actually taken possession of till November, 1962 and the petitioners had been permitted to remain in possession of it. The contention

of the petitioner is that the notification of 2nd of September, 1960 had lapsed and the acquisition should now be deemed to be subsisting only under the notification of 3rd of October, 1962. The object of the Petitioner is to get advantage of the rise in land prices during this interregnum. The case of the respondent-State is that the original notification is still operative and the appropriate Government is competent to divert the purpose of acquisition so long as it remained in the nature of a "public purpose". There is no direct authority on the point and the learned Advocate-General relies on some observations made by a Division Bench of B. B. Ghose and Roy JJ. of the Calcutta High Court in *Secretary of State v. Anulya Charan Banerjee and others* (1), in which land had been acquired at the instance of the Calcutta Corporation. It had been urged on behalf of the claimants in that case that "the corporation having acquired land on the south for widening the Kalighat 1st lane, are not entitled to use any portion for some other purpose." This contention is set out at page 877 and after examining the validity of the contention it was observed that "a municipality is justified in using the land for any purpose for which the statute authorised it to use land although not for which it was professedly taken". What happened in that case was that the land which was acquired for a public *ghat* by the municipality was used only partially for this purpose and was used partly for a market. In the opinion of the Court, "after acquisition the new owners have the ordinary rights of proprietors and may use their lands as they think fit for any purpose which does not infringe the rights of others and is not inconsistent with the purposes sanctioned by the statute under which lands have been taken." The Bench relied also on the observations of their Lordships of the privy Council in *Luchmeswar Singh v. Chairman, Darbhanga Municipality* (2), to

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(1) A.I.R. 1927 Cal. 847.

(2) I.L.R. (1891) 18 Cal. 99.

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justify the conclusion reached by it. Mr. Sikri relying on this authority further contends that no limitation has been placed on the power of the appropriate Government to acquire land for a public purpose and there is nothing in the provisions of the Land Acquisition Act to prohibit the appropriate Government to divert the land acquired for one public purpose for utilisation of another.

Reference may also be made to a Bench decision of three Judges of the Calcutta High Court (Chief Justice Sir Francis Maclean, Banerjee and Harington JJ.) in *Guru Das Kundu Chowdhry and others v. The Secretary State for India in council* (3). In this case the land was originally acquired for the purpose of a sewage depot but as a result of a claim for compensation on account of injurious affection it was suggested on behalf of the municipality that "it would not use the land which they had thus acquired for a sewage discharge depot, that they have abandoned this intention, and that they are willing to have this expression of their present intention inserted in the decree." It was observed by Chief Justice Maclean at page 249 that "it is unnecessary to express any opinion as to whether a public body which has acquired land under the Land Acquisition Act in this country, for one specific purpose, can subsequently abandon that purpose, and use the land so acquired for some other purpose for which they have not acquired it. For my own part I should have thought it very questionable. "Apart from doubting the proposition that diversion was possible no definite opinion was given by the learned Chief Justice and the other two Judges constituting the Bench did not specially give their views on this question. This authority therefore, cannot be pressed into service for the proposition which is stated

in its head-note that "a public body which has acquired land in this country for one specific purpose, may not subsequently abandon that purpose and use the land so acquired for some other purpose for which they have not acquired it". It is also to be observed that the primary question before the Bench in *Guru Das Kundu's* (3) case was concerned with the quantum of compensation and the question of the intended user of the land so acquired assumed importance in this context.

It has not been seriously contended that the object of the second notification does not fulfil the requirements of the statute that the acquisition should be made for a public purpose. Mr. Sarin frankly conceded that the objection has been taken to avail of the maximum compensation as the prices of the property have been on the increase in the area where the land has been acquired and if the second notification is taken to be the date of acquisition the compensation would be fixed in accordance with the prices prevalent in 1962 and not in 1960 when the first notification was made. I see nothing in reason or principle to justify the contention of Mr. Sarin that the acquisition originally made on 2nd of September, 1960, must be deemed to have lapsed and for purposes of compensation the acquisition should be taken to have been made on 3rd of October, 1962. It would be useful to make reference to section 48 which provides that the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. If the Government had been minded to withdraw from the acquisition of the land notified for acquisition on 2nd of September, 1960, there was nothing to preclude it from doing so. In such cases compensation has to be paid under sub-section (2) of section 48 and is to take account of the damage suffered by the owner in consequence of the notice of any other proceedings thereunder. When there was no withdrawal from acquisition it must be deemed to have

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Budhi and others continued though the purpose of the acquisition may
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I need not linger long over the remaining two contentions which have been raised on behalf of the petitioner. It is argued, in the first place, that a portion of the land in Rectangle No. 51 consists of constructions which cannot be the subject-matter of proceedings under section 17, being neither waste nor arable land. Sub-section (1) of section 17 authorises the Collector in cases of urgency to "take possession of any waste or arable land needed for public purposes or for a Company". Sub-section (2) is independent of sub-section (1) and in clause (c) as inserted by Punjab Act No. 47 of 1956, it is provided that "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. 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 (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.

Finally, it is urged by Mr. Sarin that the declaration that land is required for public purpose can be made under section 6 of the Land Acquisition Act only if, as stated in the proviso to sub-section (1), the compensation is partly to be paid out of public revenues. It is argued that no evidence has been adduced to show that the Government is making any contribution of its

own from Public Exchequer. On the contrary, the acquisition being for a limited company it must be presumed that the compensation is to be paid by the company for whose benefit the acquisition has been made. The preamble of the notification of 2nd of September, 1960, mentions that the land "is likely to be needed by Government at public expense for a public purpose." This is sufficient for the purpose of this Court to show that the land is being acquired for a public purpose and compensation is to be paid out of public revenues.

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In my opinion, there is no force in this petition which fails and is dismissed. In the circumstances of the case, I would leave the parties to bear their own costs.

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REVISIONAL CRIMINAL

Before H. R. Khanna, J.

THE STATE.—Petitioner.

versus

MOHINDER SINGH AND OTHERS.—Respondents.

Criminal Revision No. 1517 of 1962.

Code of Criminal Procedure (Act V of 1898)—S. 17—Sessions Judge—Whether can assign a bail application filed in his Court to an Additional Sessions Judge for disposal—S. 498(1)—Sessions Judge—Whether includes Additional Sessions Judge.

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Held, that section 17 of the Code of Criminal Procedure gives wide powers to the Sessions Judge for assignment of a bail application or any other urgent application to the Additional Sessions Judge for disposal. The expression "incapable of acting" does not necessarily imply that the person rendered incapable is suffering from physical incapacity. It would also cover the case where the incapacity is caused by other causes including the pressure of other work. It is for the Sessions Judge to decide whether, on