

Rajinderjit and others v. State of Punjab and others
(M. M. PUNCHHI, J.)

(2) It has been contended by Mr. Manoj Swaroop, learned counsel for the petitioner, that the releasing authority under section 3(1)(c) of the aforesaid Act was the State Government alone and the case of the convict could not have been disposed of unfavourably by the Inspector-General of Prisons, Haryana (respondent No. 1). Though in the return, the stance taken is that he is the releasing authority for the purposes of the said section, yet the learned counsel for the State has not been able to point out any provision of law whereunder the power of the State Government could be seen having been delegated to the Inspector-General of Prisons. On the contrary, a delegation has been shown to that effect, but with regard to the powers under section 3(1)(a) and section 4 of the said Act. There is no delegation of power under section 3(1)(c) of the Act. In this view of the matter, learned counsel for the State concedes that the impugned order of the Inspector-General of Prisons, Haryana shall be taken to have been withdrawn and an undertaking has been given that the State Government shall consider the case of the petitioner for parole by itself.

(3) For what has been said above, this petition would merit acceptance. While allowing it, it is ordered that the case of the petitioner for release on parole be considered and decided within a period of two weeks from today. Ordered accordingly. No costs.

H.S.B.

Before: M. M. PUNCHHI, J.

RAJINDERJIT AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 5922 of 1985.

May 8, 1986.

Land Acquisition Act (I of 1894)—Section 9(3)—Award made by the Land Acquisition Collector—No notice served on the occupier as envisaged by Section 9(3) before making the award—Service of such notice—Whether mandatory—Award rendered without notice—Whether liable to be quashed.

Held, that a very valuable right is conferred by law when it comes to the statute demanding specific observance of the mandatory provisions of Section 9(3) of the Land Acquisition Act, 1894, of the additional service of notice on the occupier. As such the award rendered without issuance of notice under Section 9(3) of the Act is liable to be quashed.

(Para 6)

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to summon the records of the case and after a kind perusal of the same, may be pleased to issue:—

- (a) *a Writ in the nature of certiorari quashing the notification No. 12(4)-4T(1)/79/1612, dated 22nd February, 1983 under Section 4 of the Land Acquisition Act (annexure P-2); notification No. 12(4)-4T(1)/79-3580, dated 24th February, 1983 under section 6 and 17(2) of the Land Acquisition Act (annexure P-3); and the award dated 27th March, 1984 (annexure P-4) and the entire acquisition proceedings taken in pursuance of notifications under Sections 4, 6 and 17(2) of the Act;*
- (b) *any other Writ Order or Direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and for such relief to which the petitioners may be found entitled to by this Hon'ble Court in the circumstances of the case;*
- (c) *service of advance notices on the respondents may kindly be dispensed with;*
- (d) *filing of certified copies of annexures P-1 to P-4 may kindly be dispensed with;*
- (e) *costs of this writ petition may also be awarded to the petitioners;*

It is further prayed that this Hon'ble Court may be pleased to issue an ad-interim order staying the implementation of the award dated 27th March, 1984 (Annexure P-4);

It is further prayed that this Hon'ble Court may be pleased to issue a direction to the respondents that the petitioners should not be dispossessed from the land/site in dispute, during the pendency of this writ petition.

R. C. Setia, Advocate, for the Petitioner.

S. S. Bajwa, Advocate, for (A.G. Punjab, Gurbachan Singh, Advocate, for respondent No. 4.

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JUDGMENT

M. M. PUNCHHI, J. (oral)—

(1) A strip of land adjoining bus stand of Punjab Roadways, Ludhiana is the bone of contention between the parties for nearly a decade. This writ petition has been filed to challenge the acquisition thereof under the provisions of Land Acquisition Act (for short 'the Act'). By award dated March 27th 1984, the land is said to have vested in the State of Punjab, respondent No. 1 for the benefit of the Punjab Roadways respondent No. 2. The same has been done on the premises that the land belonged to Keshab Chander, respondent No. 4.

(2) The case precisely of the petitioners is that the land in dispute bearing Khasra No. 132/2 was initially an evacuee property but was in their possession for nearly three decades. The said land was transferred by the Rehabilitation Department in favour of Keshab Chander, respondent No. 4. Apprehensive that they would be dispossessed from the land in dispute, they took recourse to law and thus on March 19, 1977 instituted a civil suit in the Court of Shri S. K. Chopra, Sub-Judge, 1st Class, Ludhiana, against the Punjab Roadways, respondent No. 2 and Keshab Chander, respondent No. 4. That suit was decided on September 27, 1977 on the Statements of the parties. The defendants therein conceded that the then plaintiffs (the present petitioners) were in possession of the land in dispute and they would not be dispossessed otherwise than in due course of law. The Court then dismissed the suit as having become infructuous refusing the discretionary relief of injunction.

(3) It appears that at that time the petitioners had temporary structures in the form of *khokhas*, etc., at the site. These were, on or about September 26, 1980, demolished by the Punjab Roadways with the aid and help of Senior Officers of the District by means of buses crushing them down under their wheels. The petitioners filed in this Court Civil Original Contempt Petition No. 186 of 1980 against the General Manager, Punjab Roadways, Ludhiana, the Deputy Commissioner, Ludhiana, the Senior Superintendent of Police, Ludhiana and against the Commissioner of Municipal Corporation, Ludhiana. Rule was issued against the respondents. The

file was flooded with averments and counter-averments supported by judgment of Civil Court referred to above and other documents. At one stage, the Hon'ble Single Judge dealing with the matter on August 27, 1981, ordered presence of the contemnners so that the case could be decided in their presence. Then on September 4, 1981, on the application of the Government Pleader, the order was recalled with regard to the Deputy Commissioner, Ludhiana; and the Senior Superintendent of Police, Ludhiana, but it remained intact regarding the other two contemnners. Finally, on October 14, 1981, the following order was passed by the Hon'ble Single Judge seemingly in the presence of two contemnners:—

“Since the petitioners have been restored the possession and the order dated 27th August, 1981, of this Court also stands obeyed, this petition is, therefore, not pressed and the same stands dismissed accordingly. The rule issued against the respondents is discharged.

October 14, 1981.

Sd. . . .
D. S. Tewatia,
Judge.

(4) It is thus explicit from the above that some official agency put the petitioners back in possession. That order was passed specifically in the presence of the Additional Advocate General Punjab. Thus, any doubt over petitioners possession over the land was cleared and that state of affairs must be presumed to have continued thenceforth.

(5) Later the Punjab Government,—*vide* two notifications published in the Government Gazette (Extraordinary) under section 4, 6 and 17(2) of the Act on February 22, 1983 and February 24, 1983, Annexures P. 2 and P. 3 respectively decided to acquire some land inclusive of the land in dispute. In pursuance thereof, nearly a year later an award was passed on March 27, 1984, Annexure P. 4 acquiring the land in dispute besides other land. In pursuance thereof, the petitioners on August 31, 1985, were sought to be dispossessed and this gave occasion to the petitioners to approach this Court by means of this writ petition.

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(6) Though a number of grounds have been taken by Mr. Setia, learned counsel for the petitioners, yet he has confined himself mainly to one. That is on the strength of the conceded position that the petitioners were recognised to be in possession of the land in dispute on October 14, 1981 when orders were passed in C.O.C.P. No. 186 of 1980, which state of affairs must be presumed to continue, and on the admitted position of the State that no notice was issued to the petitioners under section 9(3) of the Act which provision makes it incumbent on the Collector, besides taking other steps, to serve notice for filing claims to compensation on the occupier. The claim as made by the petitioners is irrefutable. Shelter has been taken by the State to the suggested compliance of section 9(1) of the Act, but that by itself is nothing when it comes to the statute demanding specific observance of the mandatory provisions of section 9(3) of the additional service of notice on the occupier. This is a very valuable right conferred by law. The petitioners' stand is undisputably firm. This by itself is enough to quash the award dated March 27, 1984. Annexure P. 4 so far as it relates to the petitioners.

(7) In passing it was sought to be raised that there was non-compliance of section 4 of the Act inasmuch as no publication was made in terms thereof, but this part has been disputed by the respondents in their return. Still another ground feebly urged was that section 17(2) of the Act had mechanically been employed but that too pales into insignificance when notice under section 9(1) was publicised as averred by the respondents and the petitioners did not at that stage approach the Court making grievance thereof. Since they have approached this Court delayedly vis-a-vis that aspect of the case, learned counsel for the petitioners when confronted with this position abandoned the ground.

(8) The end result is that this petition succeeds quashing award Annexure P. 4 so far as it relates to the petitioners. If the Land Acquisition Collector chooses to proceed with the acquisition, he may now issue a notice in terms of section 9(3) of the Land Acquisition Act to the petitioners, enabling them to file claims for compensation and then decide in accordance with law. In the circumstances, there shall be no order as to costs.

H.S.B.