CIVIL WRIT.

Before Bhandari, C. J. & Khosla, J.

KUNDAN AND NINE OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 252 of 1954

1955

August, 23rd

East Punjab Utilization of Lands Act (XXXVIII of 1949)—Section 3—Constitution of India—Articles 31 and 226—Object and validity of the East Punjab Utilization of Lands Act—Notice under section 3—Requirements of—Constitution of India, Article 31—Whether necessary to state public purpose in explicit terms—Delay in moving High Court under Article 226—Effect of.

Held, that it is not necessary for the State to say in explicit terms that the purpose for which private property is being acquired or requisitioned is a public purpose as long as the provisions of the Act make this clear. If a reading of the Act makes it manifest that the sole object of enacting it was to achieve a public purpose, then even though the words "public purpose" are not used in the Act, the Act will be within the competence of the Legislature and will not be repugnant to the Constitution. The East Punjab Utilization of Lands Act being enacted for the growing of more food for the country and thus for a public purpose is valid.

Held also, that the notice under section 3 of the East Punjab Utilization of Lands Act must be a written notice specifying the *khasra* numbers of which it is proposed to deprive the owner and that this notice must be delivered to him or sent to him by post. It does not contemplate an oral notice or an oral proclamation made in the village by beat of drum Indeed, it will be iniquitous to hold that an oral notice will be sufficient because only the land which is lying fallow for a certain period can be taken possession of by the Collector and the proprietor must know which of his land it is proposed to acquire and he should be in a position to show cause against the notice.

Held further, that where a person challenges the validity of an order on the ground that the authority passing the order had exceeded its powers, the challenge must be made immediately or at any rate as soon as the aggrieved person has exhausted all other lawful remedies. If a person chooses to allow time to pass this Court will not interfere in the exercise of its extraordinary powers under Article 226 of the Constitution.

Pt. Shyam Krishen, v. *The State of Punjab and others* (1), *State of Bombay*, v. *Bhanji Munji and another* (2), *State of Bihar* v. *Kameshwar Singh* (3), *Gandhinagar Motor Transport Society* v. *State of Bombay* (4), *and Sayeed Mohd. Khan* v. *State of Bhopal and others* (5), referred to.

(1) 1951 P.L.R. 391.
(2) A.I.R. 1955 S. C. 41
(3) A.I.R. 1952 S.C. 252.
(4) A.I.R. 1954 Bom. 202
(5) A.I.R. 1954 Bhopal 1

Petition under Article 226 of the Constitution of India praying that—

(1) This Hon'ble Court may be pleased to issue a Writ of *mandamus* or prohibition or pass such other order and give such other direction as in the circumstances of this case it may deem suitable requiring the respondent not to disturb or in any other manner interfere with the rights, title, possession, use or enjoyment of the lands of the petitioner, and if the possession has been taken over, the same should be ordered to be restored forthwith.

(2) That pending the final disposal of this petition the respondent may be directed not to disturb the petitioners' actual possession.

(3) That this Hon'ble Court may be pleased to grant such other relief as in the circumstances of the case it may deem proper.

TEK CHAND, for Petitioners.

S. M. SIKRI, Advocate-General, for Respondents.

JUDGMENT

KHOSLA, J. This matter has been referred to us by Dulat, J., on account of the importance of the question involved. The matter came before him in the original instance as a petition for writ on behalf of ten persons under Article 226 of the Constitution. Khosla, J.

The petitioners challenge the action of Government in seeking to obtain possession of 3,400 *bighas* of their land in village Lalain Pangala, District Karnal, under the provisions of the East Punjab Utilization of Lands Act, 1949 (East Punjab Act No. XXXVIII of 1949). Two points were raised before us by Mr. Tek Chand who appeared on behalf of the petitioners. He contended in the first place that the provisions of the Act

which empowered the Collector to take possession of land under section 3 were *ultra-vires*. In the second place, he argued that the notice required by section 3 had not been given to the petitioners and that, therefore, the subsequent steps taken by the Collector to obtain possession of their land were unwarranted by law and illegal.

Khosla, J.

I shall deal first with the question of the *vires* of the Act. The contention of Mr. Tek Chand is that the expressed purpose of the Act is not public and that, therefore, inasmuch as it seeks to deprive private individuals of their property it is against the provisions of Article 31 of the Constitution. He contended that nowhere in the Act was the expression "public purpose" used and even the Collector in the notices which he issued to two of the petitioners did not use this expression. (It was found on examination that two of the petitioners, namely Nandu No. 2 and Abba No. 3 had in fact been served with notices under section 3 although in the petition it is stated that none of the ten petitioners had been given the necessary notice).

Now, it is not necessary for the statute to say in explicit terms that the purpose for which private property is being acquired or requisitioned is a public purpose as long as the provisions of the Act make this clear. If a reading of the Act makes it manifest that the sole object of enacting it was to achieve a public purpose, then even though the words "public purpose" are not used in the Act, the Act will be within the competence of the Legislature and will not be repugnant to the Constitution. In the present case we find that the object of the Act is to utilize lands which are lying fallow so that more food and grains can be grown. The heading of the Act says, "An Act to provide for the utilization of lands in East Punjab." Section 3

provides that if any land has been lying uncultivated for six or more harvests then the Collector may after serving a notice upon the owner take possession of it with the object of giving it on lease to some other suitable person. The lease may be given under section 5 and section 4 provides for the payment of compensation to the original owner. Section 8 deals with the failure of the tenant or the second occupier to grow food or fodder crops.

It is, therefore, clear that the Act was framed with the object of providing more food for the people. It authorised the Collector to take suitable steps for the cultivation of lands which were lying fallow owing to the neglect of the owners. The Collector could take possession of land which had not been cultivated for six harvests but he could only use that land for giving it to someone who would grow crops on it, and if this someone failed to do so he could be penalized for it. It will not be denied that to grow more food is a public purpose, and that having regard to the economy of the country it is eminently desirable that some such power should be given to the appropriate authority so that land which can provide food does not remain unused.

Mr. Tek Chand has, however, contended that the words "public purpose" should have been mentioned in the Act itself and he relied on a decision of this Court in *Pt. Shyam Krishen* v. *The State of Punjab and others* (1). In this case a Division Bench of this Court considered the *vires* of the Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1947, and held that since the Act did not say that the powers to requisition immovable property were to be exercised

(1) 1951 P.L.R. 391

...d only for a public purpose the Act was bad. ...lers Falshaw, J., observed—

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Khosla, J.

> "I am of the opinion that the words used in section 3 of both the Acts are defective as they stand, and that after the words ".....necessary or expedient....." it should be necessary to insert either 'for a public purpose' or 'in the public interest', or some such phrase, before either the Act of 1947, could be held to be *intra-vires* under the Government of India Act of 1935, or the Act of 1948, could be held to be *intra-vires* under Article 31 of the Constitution."

The matter is now concluded by a decision of the Supreme Court in *State of Bombay* v. *Bhanji Munji and another* (1). Their Lordships were considering the validity of the Bombay Land Requisition Act and Bose, J., adopted the following observations of Mahajan, J., in *State of Bihar* v. *Kameshwar Singh* (2):—

> "It is unnecessary to state in express terms in the statute itself the precise purpose for which property is being taken, provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for purposes of the State or for purposes of the public and that the intention was to benefit the community at large".

Bose, J., observed that it was not necessary to set out the purpose of the requisition even in the order. He said—

> "The desirability of such a course is obvious because when it is not done proof of

(1) A.I.R. 1955 S.C. 41
(2) A.I.R. 1952 S.C. 252

the purpose must be given in other ways and that exposes the authorities to the kind of charges we find here and to the danger that the Courts will consider them well founded. But in itself an omission to set out the purpose in the order is not fatal so long as the facts are established to the satisfaction of the court in some other way."

It is, therefore, clear that the absence of the words "public purpose" from the statute do not detract from its validity. It is sufficiently clear from the wording of the various sections to which I have referred that the Act was enacted for a public purpose, namely the growing of more food for the country, and that being so the Act must be held to be valid.

Coming now to the question of notice, it is alleged by the petitioners that the Government decided in 1951 to take possession of the petitioner's land on the ground that it had been lying fallow for a certain period. They had, however, remained in possession of the land up till now and had been cultivating it. The Government had leased it out to certain individuals in 1951. These individuals had tried to take possession of the land but had not so far succeeded. They were again making efforts and the possession of the petitioners was in danger. They, therefore, moved this Court for an order declaring that the Collector had not given any notice to them and, therefore, the subsequent proceedings taken by the Collector were against law.

It transpired during the arguments that two of the petitioners, namely, Nandu and Abba had in fact been served with notices. The notices issued to them were on the file of the Department. The contention of the learned Advocate-General was

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Khosla, J.

that notices must have issued to the other petitioners also although he had not been able to trace them on the file. We cannot assume that because notices were issued to two of the petitioners and many of the other proprietors in the village, notices must also have issued to the remaining eight petitioners. It may well be that owing to inadvertence the necessary notices were not issued. The learned Advocate-General stated that there was evidence of a public proclamation having been made in the village. It seems to me, however, that such a proclamation does not comply with the requirements of section 3 which is in the following terms:—

> "3. Power to take possession of any vacant land. (1) Notwithstanding any law to the contrary, the Collector may at any time take possession of any land which has not been cultivated for the last six or more harvests after serving on the owner a notice that, if he does not cultivate the land within such reasonable period as may be specified in the notice, the Collector may take possession of such land for the purposes of this Act. (2). The notice required by subsection (1) shall be deemed to be duly served if delivered at, or sent by post to, the usual or last known place of residence of the owner.
>
> Provided that no notice shall be deemed to be invalid on the ground of any defect, vagueness or insufficiency."

It is clear that this section contemplates a written notice specifying the *khasra* numbers of which it is proposed to deprive the owner and that this notice must be delivered to him or sent to him

by post. It does not contemplate an oral notice or an oral proclamation made in the village by beat of drum. Indeed, it will be iniquitous to hold that an oral notice will be sufficient because only the land which is lying fallow for a certain period can be taken possession of by the Collector and the proprietor must know which of his land it is proposed to acquire and he should be in a position to show cause against the notice. He should, for instance, be able to prove that the land has not lain fallow for six or more harvests. He can only do this if a written notice specifying the exact *khasra* numbers is delivered to him. I must, therefore, hold that in this case no notice as required by law was served upon eight of the petitioners.

This, however, does not conclude the matter. The proposal to acquire land was set afoot as long ago as 1951. Notices to some of the proprietors in the village and to two of the petitioners were sent in 1951. The petitioners themselves came to know that the Collector proposed to take possession of their land because they tried to enter into a compromise with the lessees chosen by the Collector, and they asked the Collector to give his sanction to the compromise. This compromise provided that the petitioners should continue to remain in possession of the land. The Collector, however, declined to give his consent to the compromise and he passed this order in September, 1952. He made it quite clear that the persons whom he had chosen were to be given leases of the land and were to be given possession. Constructive possession was indeed delivered to them in November, 1952, although the petitioners continued to resist the delivery of actual possession. Therefore, it is clear that for a period of more than two years the petitioners did nothing in the matter except to remain in possession of the lands in defiance of orders passed by the Collector. The absence of notice cannot, therefore,

be pleaded as a good ground for moving this Court under Article 226 of the Constitution because the petitioners have been guilty of an inordinately long delay. They knew of an order passed against them in 1952, and they should have moved this Court then and not after a lapse of two years.

Mr. Tek Chand has argued that delay should not be considered fatal to the petitioners because their failure to come to this Court has not affected any one adversely. No one, he said, had acquired any rights during the interval and, therefore, it could not be said that the petitioners' inactivity had brought about a state of affairs which would justify the Court in invoking the doctrine of estoppel. In a case where the extraordinary powers of this Court are sought to be moved the question of delay is in my view a very important matter. Where a person challenges the validity of an order on the ground that the authority passing the order had exceeded its powers, the challenge must be made immediately or at any rate as soon as the aggrieved person has exhausted all other lawful remedies. If a person chooses to allow time to pass this Court will not interfere. The importance of promptness in moving the High Court under Article 226 of the Constitution has been emphasised more than once and a reference may be made to *Gandhinagar Motor Transport Society* v. *State of Bombay* (1), and *Sayeed Mohd. Khan* v. *State of Bhopal and others* (2). In the first case the petitioners delayed going to the High Court because they approached the Minister of the Transport Department with a mercy petition. In that case there was no question of applying the doctrine of estoppel and the High Court declined to interfere merely on the ground that the petitioners had

(1) A.I.R. 1954 Bom. 202
(2) A.I.R. 1954 Bhopal. 1

been guilty of delay. In the present case the petitioners remained wholly inactive for a period of two years in spite of the fact that their attempt to compromise with the lessees had failed.

There is one other aspect of the matter which may be noticed. It cannot be said that the petitioners were wholly without any notice and that they were taken by surprise when an attempt was recently made to dispossess them of their land. All that they can say is that notice in the exact terms contemplated by section 3 was not sent to them. They did, however, come to know of the proceedings started against them and took steps to have the Collector's order set aside. It may, therefore, be said that they did have an opportunity of representing their case before the Collector and did in fact move him and asked him to allow them to compromise with the lessees. The Collector heard them and declined to accede to their request. For two years after this the petitioners did nothing. In a sense, therefore, it may be said that they had notice of the proceedings.

In my view we must decline to interfere in this case because of the inordinate delay after which this petition has been presented to this Court. I would accordingly dismiss it, but in the circumstances of the case make no orders as to costs.

Bhandari, C.J.,—I agree.

Bhandari, C.J.

2790 HC—600—19-5-56—CP & S., Pb., Chandigarh