

(8) In view of the above discussion, I allow this writ petition with costs and direct respondent No. 1 to grant to the petitioner pension under regulation 8(3) of the Regulations with effect from 10th August, 1972 at the rate of Rs. 400 per month and at such revised rates which were sanctioned from time to time. The arrears of pension from 10th August, 1972 till today should be paid to the petitioner along with interest at the rate of 12 per cent per annum within two months from today. The costs are assessed at Rs. 500.

S.C.K.

Before M. M. Punchhi and M. R. Agnihotri, JJ.

DALJIT KAUR AND ANOTHER,—*Petitioners.*

versus

MUNICIPAL CORPORATION OF AMRITSAR AND ANOTHER,—
Respondents.

Civil Writ Petition No. 5134 of 1988

June 10, 1988.

Land Acquisition Act (I of 1894)—S. 4 and 17(1)—Punjab,

*Municipal Corporation Act (XLII of 1976)—S. 170 and 171—
Notification under Section 4 invoking urgency provisions—Ground
for invoking urgency provisions—Sufficiency of such grounds—
No attempt made under Section 170 of the Municipal Act—Right of
State to act under Section 171.*

Held, that the widening of streets and providing of parking places, beautification and redevelopment of the area around the Golden Temple Complex is one facet of the acquisition. Besides, it has been viewed that it would be serving the purpose of preserving and improving peace, law and order and safety of the public. This purpose i.e., for preserving and improving peace, law and order and safety of public would be dear to every citizen of the country and the public at large. 'Individual good' must make way to 'public good' and all sentimentality and all the cry for commercial convenience etc. must drown before the larger cry for improvement of peace, law and order and safety of the public. The contention of the petitioner that purposes of acquisition are hardly covered under the urgency provisions of Section 17 of the Land Acquisition Act, 1894, is rejected. (Para 5)

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Held, that even if no attempt was made under Section 170 of the Punjab Municipal Corporation Act, 1976 to acquire the land by agreement, it was open to the Commissioner and then the State of Punjab to act under Section 171 of the Corporation Act to take steps under the Act to acquire the land. (Para 4)

Petition under Article 226 of the Constitution of India praying as under :—

- (i) *That the records of the case may kindly be called for;*
- (ii) *That after perusal of the record and hearing upon the counsel for the parties, this Hon'ble Court may be pleased to grant the following reliefs :—*
 - (a) *Issue an appropriate writ quashing the notification No. 1(B)/Steno-USLG-II-88/Spl. 73, dated 6th June, 1988, issued under Section 4 of the Land Acquisition Act, 1894, read with Section 7(1) of the said Act;*
 - (b) *Issue an appropriate writ, restraining the respondents from proceeding further in compliance and in pursuance of the said notification (Annexure P-1);*
- (iii) *That any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be issued by this Hon'ble Court;*
- (iv) *That any other relief to which the petitioners may be found entitled in the facts and circumstances of the case may kindly be granted by this Hon'ble Court;*
- (v) *That the requirement of filing the certified copy of the notification Annexure P-1, the true copy whereof has been annexed, may kindly be dispensed with in view of the urgency of the matter as any initiative to procure the certified copy thereof firstly, would unnecessarily delay the filing of the petition in this Hon'ble Court;*
- (vi) *That the requirement of serving the advance notices of this petition on the respondents herein may kindly be dispensed with in view of the urgency of the matter as any initiative to serve them at this stage would unnecessarily delay the filing of the petition in this Hon'ble Court.*
- (vii) *That the costs of this writ petition may kindly be awarded in favour of the petitioners and against the respondents as they have been put to avoidable expense at the hands of the respondents herein;*

(viii) *That it is further prayed that during the pendency of the petition in this Hon'ble Court, any action or proceedings in pursuance of the impugned notification Annexure P-1 be stayed as also dispossession of the petitioners and demolition of the premises may kindly be stayed.*

CIVIL MISC. NO. 7838 of 1988:—Application under Section 151 CPC praying that the requirement of filing the petition on judicial papers may kindly be dispensed with.

CIVIL MISC. NO. 7839 of 1988:—Application under Section 151 CPC praying that any action or proceedings in pursuance of the impugned notification Annexure P-1 be stayed as also dispossession of the petitioners as also demolition of the premises may kindly be stayed.

Bhagirath Dass, Sr. Advocate with Romesh Kumar, Advocate, for the Petitioners.

K. P. Bhandari, A.G., Punjab and H. S. Bedi, Addl. A.G., Pb. (Harminder Lal, Advocate with them), for the Caveators.

JUDGMENT

M. M. Punchhi, J.—(Oral)

(1) 'Individual good' versus 'Public good' is the bout in the instant litigation.

(2) The State of Punjab has issued notification under section 4 of the Land Acquisition Act, 1894 (for short, the Act) on June 6, 1988, Annexure P-1 to the petition, wherein the avowed purpose disclosed is to acquire land at the instance of the Municipal Corporation of Amritsar, for the purpose of laying new public streets and for providing public parking places by the Municipal Corporation at the expense of the said Corporation. Besides, the other avowed purpose is that it would lead to beautification and redevelopment of the area around Golden Temple Complex as also serve the purpose of preserving and improving peace, law and order and safety of the public. In the notification itself, the urgency provisions of section 17(1) of the Act have been invoked, thereby taking away the right under section 5-A of the Act of raising objections. That the acquisition is to involve large built-up area, is noticeable from the description of the 91 properties given in the schedule to the notification. And the property of the petitioners is at serial No. 68 thereof, being property No. 1971/VI in bazar Papranwala.

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(3) The petitioners herein are the landlord of the said property and its tenants. They claim that this property has been in their possession for ages and being in close proximity of the Golden Temple Complex had high commercial value, besides sentimental value which was personal to them. They want the notification quashed.

(4) The foremost attack against the notification is that the Corporation did not take resort to section 170 of the Punjab Municipal Corporation Act, 1976 (for short, the Corporation Act) whereunder the Corporation on decision to acquire any immovable property for the purposes of the Act, enjoins its Commissioner to acquire property on its behalf by agreement on such terms and at such price as may be approved by the Corporation. The following provision i.e., section 171 provides that whenever the Commissioner is unable to acquire any immovable property under section 170 by agreement the Government may, at the request of the Commissioner, acquire the same under the provisions of the Land Acquisition Act, 1894. Safeguard has been made therein regarding payment and charges to be borne by the Corporation in that event. It is submitted that in the notification itself the Government had avowedly exercised power under section 171 of the Corporation Act presumably on the Commissioner's inability to acquire the properties involved by agreement under section 170. A dispute of fact has been raised that there was no resort to acquisition by agreement under section 170 of the Corporation Act and, therefore, the foundation for the employment of section 171 stands knocked off. The Advocate-General, Punjab, is here as a caveator and he has stated before us at the Bar that such effort was made. Be that apart, whether the effort was made or not, identical provisions came to be interpreted by the Supreme Court in *Kanaiyalal Maneklal Chinai and another v. State of Gujarat and others*, (1) where their Lordships, repelling an identical contention, observed as follows:—

“9. Exercise of power to move the State under Section 78 of the Provincial Municipal Corporations Act, to acquire land is not conditioned by any such limitation as suggested by counsel for the appellant. The opening clause of Section 78(1) merely indicates an alternative and not a

(1) A.I.R. 1970 S.C. 1188.

condition. Even if no attempt is made under Section 77 to acquire the land by agreement, it is open to the Commissioner of the Municipal Corporation, with the approval of the Standing Committee and subject to the other provisions of the Act, to move the Provincial Government to take steps for acquisition of the land”.

Even if the question of fact remains asserted by the petitioners and not controverted on affidavit by the respondents (though the Advocate-General, Punjab was willing to do so), the fact remains that even if no attempt was made under section 170 of the Corporation Act, to acquire the land by agreement, it was open to the Commissioner and then the State of Punjab to act under Section 171 of the Corporation Act to take steps under the Act to acquire the land.

(5) The next attack thereto is that the primary object of the notification is 'beautification of the area' by laying new public streets and by providing public parking places around the Golden Temple Complex, and these purposes are hardly covered under the urgency provisions of section 17 of the Act, for they are time-consuming and could well be taken care of without resort to the urgency provisions. It has been suggested that we can unfold the purpose and find out that something else is sought to be achieved. Besides, it has been urged that it will put the petitioners and many other persons, similarly situated, to lot of inconvenience and the mere suggestion that adequate compensation would be provided and rehabilitatory schemes put into effect would be of no use. We have pondered over the matter, but we are not impressed by the argument. The project on the face of it is variegated in nature and multifarious in content. What may seem to one eye may not seem to another. The widening of streets and providing of parking places, beautification and redevelopment of the area around Golden Temple Complex, is one facet of the acquisition. Besides, it has been viewed that it would be serving the purpose of preserving and improving peace, law and order and safety of the public. Now this aspect of the purpose cannot be undermined. We can take judicial notice of the fact what Amritsar has been experiencing in the last few years and in particular, in the last couple of months. This purpose i.e. of preserving and improving peace, law and order and safety of the public would be dear to every citizen of the country and the public at large. So, in this situation, as has been indicated in the opening part of this order, 'individual good' must make way

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to 'public good' and all sentimentality and all the cry for commercial convenience etc. must drown before the larger cry for improvement of peace, law and order and safety of the public. This contention accordingly of the learned counsel for the petitioners we reject unhesitatingly.

(6) It has then been contended that the petitioners would be uprooted and thrown away to distant places where rehabilitation would not be possible to the same extent and limit as if of living in the complex from which they are sought to be uprooted. When land is acquired under the Land Acquisition Act it is impossible to rehabilitate the oustees at identical places from the point of view of commerce or otherwise. The Legislature in its wisdom, cognizant of the inherent sentimentality involved in it, evolved payment of 30 per cent as solatium, that is to say, money compensation as solace for the injury inflicted. Nothing more could be done for an individual by the State and indirectly by the people in a democracy governed by the Rule of Law living in a Welfare State.

(7) Besides, the Advocate General, Punjab, has made a statement before us that rehabilitation schemes have already been put in vogue and many more are in the pipeline to see that the trickling tears which are inevitable are wiped out as quickly as possible in the circumstances. We trust him in that regard.

(8) For the foregoing reasons, we find no merit in the petition and dismiss the same.

S.C.K.