

*Before Jashir Singh & Augustine George Masih, JJ.*

**KARTAR KAUR THOUGH L.Rs,—Petitioners**

*versus*

**STATE OF HARYANA & ANOTHER,—Respondents**

**CWP No. 2462 of 1983**

3rd August, 2010

*Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4, 6 & 17 (1)(c)—Land sought to be acquired by invoking urgency provisions for construction of building for Sub-Tehsil and other offices—Challenge thereto after about 2-½ years of issuance of notification u/s 4—State failing to take possession even after passing of award—Invoking of urgency clause—Failure to take timely action for acquisition by authorities—No occasion for State to invoke urgency clause while issuing notification u/s 4, thus, notification invoking Section 17 quashed while granting liberty to State to proceed to acquire land afresh in accordance with law.*

*Held.* that notification under Section 4 read with Section 17 (4) of the Act was issued on 10th September, 1981 but thereafter award was passed only on 7th May, 1983. Strangely enough, possession of the land was not taken despite invoking the provisions of Section 17 of the Act. Not only this, after passing of the Award, possession was still not taken. The petitioner approached this Court on 17th May, 1983 when dispossession of the petitioner was stayed by this Court. It has not been disputed by the respondents that till the date of passing of the stay order by this Court, possession was not taken by them. That speaks for itself and no further explanation or justification is required. The only explanation given for the delay in finalizing the acquisition proceedings is that the sub-tehsil, Ganaur was raised to the status of full Tehsil level which resulted in reconsideration of the proposal for acquiring more and it was ultimately decided that they would continue with the earlier notification for acquisition and issue fresh notifications under Sections 4 and 6 of the Act for additional land which would be acquired. It has not come on record nor could the counsel for the respondents inform the Court as to whether further land has been

acquired by the respondents or notification to that effect has been issued or not. However, the subsequent inaction on the part of the respondents further fortifies the non-application of mind by the Authorities with regard to invoking the provisions of Section 17 of the Act. The exercise of powers as conferred under the Statute under Section 17 of the Act has not been made by the respondents *bona fide*ly but has been invoked in a most casual and irresponsible manner. While applying the urgency clause, the State should indeed act with due care and responsibility. The invoking of urgency clause cannot be a substitute or support for the laxity or lethargy or lack of care on the part of the State Administration. Failure to take timely action for acquisition by the authorities or to complete the acquisition proceedings reflects upon the need and urgency which was the reason for invoking the provisions under Section 17 of the Act.

(Para 8)

*Further held*, that the invoking of urgency provisions under Section 17(1)(c) of the Act was not warranted in the facts and circumstances of the case. All consequential proceedings arising after the issuance of the notification under section 4 of the Act, therefore, cannot be said to be in accordance with law and accordingly deserve to be quashed *qua* the petitioner.

(Para 9)

*Further held*, that the need to acquire the land for construction of the sub-tehsil building and the building for the other offices at Ganaur, Tehsil and District Sonapat, was for public purpose and that purpose is still in existence and, therefore, not inclined to quash the notification under Section 4 of the Act. We, however, hold that there was no occasion for the State to invoke the urgency clause while issuing notification under Section 4 of the Act and, thus, notification invoking Section 17 of the Act is hereby quashed *qua* the petitioner. The State shall be at liberty to call for fresh objection from the petitioner and consider the same by following proper procedure as provided under the Act and proceed to acquire the land in accordance with law, if it so decides.

(Para 10)

V.K. Jain, Sr. Advocate with J.K. Bhatti, Advocate, *for the petitioner*;

Kamal Sehgal, Addl. A.G., Haryana, *for the respondents*.

### AUGUSTINE GEORGE MASIH, J.

(1) Through this writ petition, the petitioner has posed challenge to notification dated 10th September, 1981 (Annexure P-1) issued under section 4 read with Section 7 of the Land Acquisition Act (hereinafter referred to as 'the Act') as also notification dated 11th September, 1981 (Annexure P-3) issued under Section 6 of the Act,—*vide* which it was proposed to acquire land of the petitioner falling in rectangle No. 39, Khasra Nos. 4/2 and 4/3 situated at village Ganaur, tehsil and district Sonapat.

(2) Counsel for the petitioner contends that the notification issued under Section 4 of the Act by invoking the provisions of clause (c) of sub-section (2) & sub-section (4) of Section 17 of the Act is with a *mala fide* intention to deprive the petitioner of her right of hearing as provided under Section 5-A of the Act under which she was entitled to submit her objections to the proposed acquisition. By invoking the urgency provisions, the respondents have taken away her valuable right as conferred on her under Article 300-A of the Constitution of India which is akin to a fundamental right and the said right can be curtailed only in exceptional circumstances and cases of urgency where no delay can be brooked. In the present case, the land was acquired for construction of sub-tehsil building and the buildings for other offices at Ganaur, Tehsil and District Sonapat, which was not of such a nature that it could not wait for a delay of 30 days where the objections as provided under section 5-A of the Act of the petitioner could not have been considered and decided. As a matter of fact, after the issuance of notification under Section 6 on 11th September, 1981 notice under Section 9 of the Act was issued after a lapse of one and a half year which itself speaks that there was no urgency to invoke the provisions of Section 17(2)(c) of the Act. The Award was passed on 7th May, 1983. This proves the illegal exercise of powers by the respondents by invoking the urgency clause. It appears that the notification under Section 4 of the Act was motivated and was issued simply to peg up the prices and there was no expeditious execution for the purpose for which the land was acquired. Unexplained delay in finalizing the acquisition proceedings shows that the purpose for which the land was being acquired, would not fall within the ambit of sub-section (2) of Section 17 of the Act. Referring to the replication, he submits that as a matter of fact, the foundation stone was laid on 20th January, 1990 by the then Chief Minister of Haryana and the

inauguration ceremony was held on 29th March, 1991. He, on this basis, submits that invoking of the provisions under Section 17 (2)(c) and (4) of the Act is not in accordance with law. He further contends that notification under Section 4 of the Act was issued on 10th September, 1981 which was published in the Haryana Government Gazette dated 14th September, 1981 and the public notice was caused in the locality on 12th October, 1981 and as such there was delay of 29 days in publishing the substance of the notification which itself shows the callous attitude of the respondents. In any case, he submits that the publication of notification and the public notice was required to be caused in the locality simultaneously and on this score alone, this notification deserves to be quashed. According to Section 5-A of the Act, objections could be filed within 30 days from the date of issuance of notification. The petitioner had submitted the objections under Section 5-A of the Act on 10th November, 1981 which were not considered by the respondents. As possession was not taken from the petitioner, therefore, the petitioner had proceeded on the assumption that the objections had been accepted by the respondents and, therefore, under this *bona fide* belief, did not challenge the notifications under Sections 4 and 6 of the Act. He submits that the Award was passed on 7th May, 1983 and the present writ petition was immediately filed by the petitioner on 16th May, 1983 which came up for hearing before this Court on 17th May, 1983 when dispossession of the petitioner was stayed by this Court. He therefore, contends that the notifications under Sections 4 and 6 as also all the subsequent proceedings arising therefrom be quashed. In support of his contention, he has relied upon the judgments of the Hon'ble Supreme Court in the case of **Om Parkash and another versus State of U.P. and others (1) Union of India and others versus Krishan Lal Arneja and others (2) Union of India and others versus Mukesh Hans etc. (3) Gurcharan Singh and others versus State of Punjab and others (4) Murari Lal Gupta versus State of Punjab and another (5) and Rattan Singh and another versus The State of Punjab and others (6).**

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- (1) (1998) 6 S.C.C. 1
  - (2) AIR 2004 S.C. 3582
  - (3) AIR 2004 S.C. 4307
  - (4) 2006 (2) P.L.J. 279
  - (5) AIR 1964 Punjab 477
  - (6) 1976 P.L.J. 356

(3) On the other hand, counsel for the respondent-State contends that the present writ petition has been filed by the petitioner at a belated stage. He submits that notifications under Sections 4 and 6 were issued on 10th September, 1981 and 11th September, 1981 respectively. The petitioner waited till the passing of the Award and filed the writ petition only on 16th May, 1983. If she had any grouse against the notifications, she should have immediately challenged them by filing writ petition in this Court. He contends that after the passing of the Award on 7th May, 1983, the acquisition proceedings stood completed and, therefore, the writ petition could not be entertained by this Court. In support of this contention, he relies upon the judgments of the Hon'ble Supreme Court in the case of **Hari Singh and others versus State of U.P. and others, (7)** and **Swaran Lata etc. versus State of Haryana and others, (8)**. He further submits that the mandate under Section 4 of the Land Acquisition Act is not that the notification has to be published and the contents thereof to be caused to be made public in the locality simultaneously. However, it is not disputed by the petitioner that such publication was done, and, therefore, the requirement of law stood fully complied with. As regards the invoking of the provisions of Section 17(2)(c)(4) of the Act, he contends that the acquisition for construction of the building of the sub-tehsil was urgently required for public purposes. The land of the petitioner along with land of other land-owners was considered suitable and hence selected for the said purpose after due consideration. As regards the delay in finalizing the acquisition proceedings, he contends that the status of the sub-tehsil, Ganaur was raised upto the level of full tehsil on 1st April, 1982 when the acquisition proceedings were in progress because of which more land was required for the construction of the building and the matter was reconsidered which resulted in delay. However, it was decided that acquisition proceedings in respect of land for constructing sub-tehsil, Ganaur, be continued and completed and for additional land, fresh notifications be issued. Counsel could not give any explanation with regard to the delay in the process of starting the construction as it has been stated in the replication to the averments made by the respondents, an averment was made by the petitioner

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(7) AIR 1984 S.C. 1020

(8) AIR 2010 S.C. 1664

that the foundation stone was laid on 20th January, 1990 i.e. after a delay of 8 years after passing of the Award on 7th May, 1983. He further contends that no prejudice has been caused to the petitioner by issuance of the notification and public notice as caused in the locality for the reason that by invoking the provisions of Section 17(2)(c) and (4) of the Act, the petitioner was not entitled to file any objections under section 5-A of the Act as the same has been dispensed with by the Government in accordance with law. Accordingly, he prays that the present writ petition does not have any merit and deserves to be dismissed.

(4) We have heard counsel for the parties and have gone through the records of the case.

(5) The first question which needs to be answered at this stage is whether the present petition is maintainable in the light of the objections raised by the counsel for the respondents that the petitioner has approached this Court after a delay of about two and a half years after issuance of notification under Section 4 of the Act and also after passing of the award. Admittedly notifications under Sections 4 and 6 of the Act were issued on 10th September, 1981 and substance thereof was made public in the locality on 18th September, 1981 and 11th September, 1981 and substance thereof was made public in the locality on 12th October, 1981 respectively. The petitioner submitted her objections on 10th November, 1981. No decision thereon was conveyed to her nor was the possession of the land taken. Under the *bona fide* belief that her objections have been accepted by the respondents, the petitioner did not challenge the acquisition proceedings. Only after the passing of the Award on 7th May, 1983, she came to know that the respondents are proceeding with the acquisition. She immediately approached this Court and filed the present writ petition on 16th May, 1983 which came up for hearing on 17th May, 1983 when order staying her dispossession was passed by this Court. The judgment which has been relied upon by the counsel for the respondents for pressing his argument with regard to delay in approaching this Court in **Hari Singh's case** (*supra*). The distinguishing feature is that on invoking the provisions of Section 17 of the Act by the State, the possession of the land was immediately taken by the acquiring Authorities. Under those

circumstances, the Hon'ble Supreme Court held that the proceedings having been challenged after a delay of two and a half years from the date of issuance of notification under Section 4 and Section 17 of the Act, the writ petition is liable to be dismissed. In the case in hand, possession had not been taken even after the passing of the Award till the date when the dispossession of the petitioner was stayed. The factum of not taking the possession by the respondents before passing of the order by this Court is not in dispute. In **Swaran Lata's case** (*supra*) again, it was a case where the writ petition was filed for quashing of the notification after the Award had been passed and the possession taken. There the Hon'ble Supreme Court proceeded to hold that on taking of the possession after the passing of the award, the land vested under Section 16 of the Act in the Government, free from all encumbrances and, therefore, notification under Sections 4 and 6 could not be challenged at that belated stage. These judgments, therefore, are not applicable to the facts of the present case where possession has not been taken by the respondents despite passing of the award and even 10 days thereafter. Accordingly, the present writ petition is held to be maintainable.

(6) The contention of the counsel for the petitioner that the publication of the notification as also the public notice in the locality has to be simultaneous, cannot be accepted. There is no such mandate under Section 4 of the Act. It only provides for publication in the official gazette and mandates the Collector to cause public notice of the substance of such notification to be given at convenient places in the said locality as provided under the unamended provisions applicable then. The judgment relied upon by the counsel for the petitioner in **Rattan Singh's case** (*supra*) does not hold the same in absolute terms. Since both the conditions as mentioned in Section 4(1) of the Act have been complied with, the said notification under Section 4 of the Act cannot be said to be in accordance with law.

(7) It is now well settled that Section 5-A of the Act confers a valuable right in favour of a person whose land is sought to be acquired as he is being deprived of his property by the State in exercise of its power of 'eminent domain' to object to such exercise of power and when considered

in the context of and having regard to the provisions as contained under Article 300-A of the Constitution of India which is akin to the fundamental right, denial of a fundamental right by the State without any justification and proper consideration by invoking the provisions of Section 17 of the Act is totally uncalled for. In every acquisition where Section 17 of the Act is invoked, there has to be a pressing need to acquire the land where delay cannot be brooked at all. But where such a situation does not exist, denial of the right under Section 5-A of the Act would result in injustice to the land owners. Section 17 of the Act confers an extraordinary power on the Authority under which it can dispense with the normal procedure laid down under Section 5-A of the Act. Such power cannot be lightly resorted to—except in case of real emergency which enables the Government to take immediate possession of the land which is proposed to be acquired for the public purpose. The Authority has to subjectively satisfy itself of the need for invoking the urgency clause under Section 17 of the Act, keeping in mind the nature of public purpose, real urgency that the situation demands and obviously the time factor is the essence. This obviously means that the taking of possession of the property cannot wait for a minimum period within which objections could be received from the land owners and the enquiry under Section 5-A of the Act could be completed. The touchstone, therefore, has to be that the very purpose of acquiring the land for public purpose would be set at naught or frustrated or rendered infructuous in case there is delay in taking possession. It is under these exceptional and extraordinary circumstances that the urgency clause of Section 17 of the Act is required to be invoked. It cannot be resorted to merely for circumventing the process and the procedure as provided under the Statute. Section 5-A of the Act certainly confers on a person right to file objections to the proposed acquisition. Right of representation as contemplated under Section 5-A of the Act is with the purpose that a person whose property is sought to be acquired, should have appropriate and reasonable opportunity of persuading the Authorities concerned that the acquisition of property belonging to him should not be made. If the appropriate Government, however, decides to take away this valuable right, then its decisions to do so must be based on material reasons which should justify the invoking of the provisions of



section 17 of the Act. The Authority is also required to keep in mind the object and purpose of Section 5-A of the Act. Mere issuance of the notification by invoking section 17 of the Act, would not suffice but the action taken thereafter should also proceed in the same directions to justify and support the urgency of the cause and the decision of the Authority.

(8) In the case in hand, notification under section 4 read with Section 17(4) of the Act was issued on 10th September, 1981 and Section 6 notification was issued on 11th September, 1981 but thereafter award was passed only on 7th May, 1983 Strangely enough, possession of the land was not taken despite invoking the provisions of section 17 of the Act. Not only this, after passing of the Award, possession was still not taken. The petitioner approached this Court on 17th May, 1983 when dispossession of the petitioner was stayed by this Court. It has not been disputed by the respondents that till the date of passing of the stay order by this Court, possession was not taken by them. That speaks for itself and no further explanation or justification is required. The only explanation given for the delay in finalizing the acquisition proceedings is that the sub tehsil, Ganaur was raised to the status of full tehsil level which resulted in reconsideration of the proposal for acquiring more land and it was ultimately decided that they would continue with the earlier notification for acquisition and issue fresh notifications under Sections 4 and 6 of the Act for additional land which would be acquired. It has not come on record nor could the counsel for the respondents inform the Court as to whether further land has been acquired by the respondents or notification to that effect has been issued or not. However, the subsequent inaction on the part of the respondents further fortifies the non-application of mind by the Authorities with regard to invoking the provisions of Section 17 of the Act. As has been brought on record through the replication that after the announcement of the award on 7th May, 1983, the foundation stone of the building was laid on 20th January, 1990 and the building was completed and inaugurated on 29th March, 1991 which is almost nine and a half years from the date of issuance of notification under section 4 of the Act. The exercise of power as conferred under the Statute under Section 17 of the Act, has not been made by the respondents *bonafidely* but has been invoked in a most casual and

irresponsible manner. While applying the urgency clause, the State should indeed act with due care and responsibility. The invoking of urgency clause cannot be a substitute or support for the laxity or lethargy or lack of care on the part of the State Administration. Failure to take timely action for acquisition by the Authorities or to complete the acquisition proceedings reflects upon the need and urgency which was the reason for invoking the provisions under Section 17 of the Act. In **Om Parkash's case** (*supra*), the Hon'ble Supreme Court held that where there was a delay of more than one year in issuing notification under Section 6 of the Act after the issuance of the notification under Section 4 read with Section 17 (4) of the Act and there was no explanation given for the conduct of the respondents, the same falsifies their claim of urgency of acquisition and accordingly invoking of the provisions of section 17 of the Act was held to be illegal by the State.

(9) In view of the above, we are of the opinion that the invoking of urgency provisions under Section 17(1)(c) of the Act was not warranted in the facts and circumstances of the case. All consequential proceedings arising after the issuance of the notification under section 4 of the Act, therefore, cannot be said to be in accordance with law and accordingly deserve to be quashed *qua* the petitioner.

(10) We are satisfied that the need to acquire the land for construction of the sub-tehsil building and the building for the other offices at Ganaur, Tehsil and District Sonapat, was for public purpose and that purpose is still in existence and, therefore, are not inclined to quash the notification under Section 4 of the Act. We, however, hold that there was no occasion for the State to invoke the urgency clause while issuing notification under Section 4 of the Act and, thus, notification invoking Section 17 of the Act is hereby quashed *qua* the petitioner. The State shall be at liberty to call for fresh objection from the petitioner and consider the same by following proper procedure as provided under the Act and proceed to acquire the land in accordance with law, if it so decides.

(11) The present writ petition is allowed in above terms.