

Hari Singh & Ors vs State Of U.P. And Ors on 6 April, 1984

Equivalent citations: 1984 AIR 1020, 1984 SCR (3) 417, AIR 1984 SUPREME COURT 1020, 1984 UJ (SC) 648, (1984) 10 ALL LR 652, (1984) 2 CIVLJ 259, (1984) 1 LANDLR 576, 1984 (2) SCC 624

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, A.P. Sen

PETITIONER:
HARI SINGH & ORS.

Vs.

RESPONDENT:
STATE OF U.P. AND ORS.

DATE OF JUDGMENT06/04/1984

BENCH:
VENKATARAMIAH, E.S. (J)
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VENKATARAMIAH, E.S. (J)
SEN, A.P. (J)

CITATION:
1984 AIR 1020 1984 SCR (3) 417
1984 SCC (2) 624 1984 SCALE (1)625
CITATOR INFO :
F 1984 SC1380 (1)

ACT:

Land Acquisition Act, 1894-s. 4 and s.6-Acquisition proceedings (Notification u/s.4 incorporating order u/s. 17 (4) exempting application of s. 5A and notification u/s. 6 containing order u/s. 17 (1) authorising Collector to take possession issued and published in official Gazette)-Validity of acquisition proceedings challenged by way of writ petition after a period of over two years-Whether petition could be dismissed on ground of delay-Whether court could interfere when facts alleged in petition are disputed.

HEADNOTE:

On January 8, 1980 the respondent State issued a notification under Sec. 4 (1) of the Land Acquisition Act of 1894 for acquisition of 60 adjoining plots of land of two

small villages for construction of a market yard. The notification also contained an order of the Government made under Sec. 17(4) of the Act directing that Sec. 5A would not apply to the said proceedings. The notification was published in the Official Gazette dated January 9, 1980. That notification was followed by another notification dated January 9, 1980 issued under Sec. 6 of the Act. This notification contained an order made under Sec. 17 (1) of the Act authorising the Collector to take possession of the plots. The notification was published in the official Gazette dated January 10, 1980. The possession of the plots was taken in course of the acquisition proceedings. In or about June 1982 notices were issued by the Collector to the interested persons for determining the compensation payable to them. By filing a writ petition in the High Court the appellants questioned the validity of the acquisition proceedings in regard to certain plots on the grounds that: (1) they had no knowledge of the acquisition proceedings and were prejudiced by the order made under sec. 17 (4) ; (2) there was no urgency sufficient in law to sustain the order made under Sec. 17 (4); and (3) Sec. 17 (4) would not be applicable because on a part of a plot of land there was a house. The High Court dismissed the writ petition. Hence this appeal.

Dismissing the appeal,

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HELD: In a small place where these plots are situate, the acquisition of these lands would be the talk of the town in a shortwhile and it is difficult to believe that the appellants who are residents of that place would not have known till July 1982 that the impugned notification had

418

been published in 1980. Any interference in this case filed after two and a half years with the acquisition proceedings is likely to cause serious public prejudice. This appeal should, therefore, fail on the ground of delay alone. [420G-H]

Appellant No. 1 claims to be the owner of plot No. 249. On behalf of the respondents it is urged that appellant No. 1 is recorded only as a co-tenure holder alongwith five others and they have not impeached the notifications. With regard to the allegations about the existence of a house on this plot, it is seen that the said fact is denied. The respondents rely upon some statements recorded by the revenue authorities suggesting that there was no house on this plot on the date of the notification. This is a disputed question of fact. Appellant No. 2 who claims to be the owner of plot No. 261 is stated to have purchased it on November 17, 1980 after the impugned notifications were published. The title of appellant No. 3 to plot No. 133 is denied by R.K. Kannaujia, Secretary, Krishi Utpadan Mandi Samiti, Kheragarh. In this State of affairs where there are disputed questions of facts it cannot be said that the

appellants have made out any case for interference under Article 226 of the Constitution. [421B-D]

There is no ground to hold that the order made under section 17 (4) of the Act exempting the operation of section 5-A of the Act is bad in law even though there appears to be some administrative delay in commencing the construction of the Market Yard. [421F-G]

State of Punjab v. Gurdial Singh & Ors., [1980] 1 S.C.R. 1071, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5313 of 1983.

Appeal by Special leave from the Judgment and Order dated the 17th January, 1983 in CMWP. No. 8397 of 1982.

Shanti Bhushan and S. Markandeya for the Appellant. Gopal Subramaniam and Mrs. S. Dikshit for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. About 45 plots of land of Kheragarh village and about 15 adjoining plots of land of Nagala Udaiya village situated in the district of Agra were notified under section 4 (1) of the Land Acquisition Act, 1894 (Act No. 1 of 1894) (hereinafter referred to as 'the Act') for acquisition for a public purpose, namely, for the construction of the Market Yard of the Krishi Utpadan Mandi Samiti, Kheragarh under a notification dated January 8, 1980 issued by the Government of the State of Uttar Pradesh. As the plots of land in question which were agricultural lands were urgently required for the aforesaid purpose and the Government was of the view that it was necessary to direct that section 5-A of the Act should not apply to the said acquisition proceedings, it simultaneously made an order under section 17 (4) of the Act directing that section 5-A would not apply to the said proceedings and incorporated the said order also in the notification issued. under section 4 (1) of the Act. The notification was published in the Official Gazette dated January 9, 1980. This was followed by a notification dated January 9, 1980 under section 6 of the Act published in the Official Gazette dated January 10, 1980. That notification contained an order made under section 17 (1) of the Act authorising the Collector to take possession of the plots on the expiration of fifteen days from the publication of the notice under section 9 (1) of the Act though no award under section 11 of the Act had been made. The above said plots of land which were in all about 60 in number belonged to a number of persons. The total extent of land proposed to be acquired was about 41.46 acres. The possession of all the plots of land was also taken in the course of the said acquisition proceedings. In or about June 1982, notices were issued by the Collector to various persons having interest in the said plots under section 9 (3) of the Act for the purpose of determining the compensation payable to them. After the issue of the said notices, three persons Hari Singh (appellant No. 1), Pooran Chand (appellant No. 2) and Munna Lal (appellant No. 3) filed a writ petition in Civil Misc. Writ Petition No. 8397 of 1982 on the file of the High Court of Allahabad questioning the validity of the

acquisition proceedings as regards 6 plots of land in Kheragarh village out of the total of about 60 plots of land which had been acquired by the State Government in the above said proceedings. Appellant No. 1 claimed to be the owner of plots Nos 249, 250 and 252. Appellant No 2 claimed to be the owner of plot No. 261 and appellant No 3 claimed to be the owner of plots Nos. 133 and 134. Appellant No. 1 pleaded that there was a house situated on plot No. 249 and that he had also installed a flour mill on it. They all pleaded that they had no knowledge of the acquisition proceedings and were prejudiced by the order made under section 17 (4) of the Act exempting the operation of section 5-A of the Act in the case of these proceedings. They further pleaded that there was no urgency sufficient in law to sustain the order made under section 17 (4) of the Act as nothing had been done on the lands for nearly two years. Appellant No. 1 also pleaded that section 17 (4) of the Act would not be applicable because on a part of his land there was a house. They also applied for an interim order restraining the Collector from dispossessing them from the plots in question. On September 9, 1982 the High Court made an interim order restraining the respondents from dispossessing the appellants from the plots until further orders, unless they had already been dispossessed. But on January 17, 1983, the High Court rejected the writ petition at the stage of admission after hearing the advocates for both the parties. This appeal by special leave is filed by the appellants under Article 136 of the Constitution on against the order of the High Court.

The High Court has not given any reasons for its order dismissing the writ petition. The order reads: 'Rejected'.

We have been taken through the writ petition, counter affidavits and other papers filed in the High Court and in this Court.

At the out set we are of the view that the writ petition filed in July, 1982 questioning the notification issued in January, 1980 after a delay of nearly two and a half years is liable to be dismissed on the ground of laches only. It is no doubt true that the appellant have pleaded that they did not know anything about the notifications which had been published in the Gazette till they came to know of the notices issued under section 9 (3) of the Act but they have not pleaded that there was no publication in the locality of the public notice of the substance of the notification as required by section 4 (1) of the Act. It should be presumed that official acts would have been performed duly as required by law. It is significant that a large number of persons who own the remaining plots have not challenged the acquisition proceedings. The only other petition in which these proceedings. are challenged is Civil Misc. Writ Petition No. 11476 of 1982 on the file of the High Court filed subsequently by Amar Singh and four others. Moreover in a small place like Kheragarh where these plots are situate, the acquisition of these lands would be the talk of the town in a shortwhile and it is difficult to believe that the appellant who are residents of that place would not have known till July, 1982 that the impugned notification had been published in 1980. Any interference in this case filed after two and a half years with the acquisition proceedings is likely to cause serious public prejudice. This appeal should, therefore, fail on the ground of delay alone.

Now even on merits there appears to be no substance in the case of the appellants.

At the hearing of this appeal, the appellants have confined their case to plots Nos. 249, 261 and 133 and have given up their case in regard to plots Nos. 250, 252 and

134. Appellant No. 1 claims to be the owner of plot No. 249. On behalf of the respondents it is urged that appellant No. 1 is recorded only as a co-tenure holder alongwith five others and they have not impeached the notifications. With regard to the allegation about the existence of a house on this plot, it is seen that the said fact is denied. The respondents rely upon some statements recorded by the revenue authorities suggesting that there was no house on this plot on the date of the notification. This is a disputed question of fact. Appellant No. 2 who claims to be the owner of plot No. 261 is stated to have purchased it on November 17, 1980 after the impugned notifications were published. The title of appellant No. 3 to plot No. 133 is denied by R. K Kannaujia, Secretary, Krishi Utpadan Mandi Samiti, Kheragarh. In this state of affairs where there are disputed questions of fact it cannot be said that the appellants have made out any case for interference under Article 226 of the Constitution.

On behalf of the appellants reliance is, however, placed on a decision of this Court in *State of Punjab v. Gurdial Singh & Ors.*(I) In that decision the main point made out was that the acquisition proceedings had been engineered mala fide by a State Minister. We do not have any such allegation in the present case. In the circumstances of this case we do not find that there is any ground to hold that the order made-under section 17 (4) of the Act exempting the operation of section 5-A of the Act is bad in law even though there appears to be some administrative delay in commencing the construction of the Market Yard. Some photographs of the land produced before us, however, show that the work of construction has already been commenced.

We do not, therefore, find that there is any ground to interfere with the order of the High Court dismissing the writ petition. The appeal fails and it is dismissed with costs.

H.S.K.

Appeal dismissed.