Pandit Jhandu Lal & Ors vs The State Of Punjab & Ors on 16 November, 1960

Equivalent citations: 1961 AIR 343, 1961 SCR (2) 459, AIR 1961 SUPREME COURT 343

Author: Bhuvneshwar P. Sinha

Bench: Bhuvneshwar P. Sinha, J.L. Kapur, P.B. Gajendragadkar, K.N. Wanchoo

PETITIONER:
PANDIT JHANDU LAL & ORS.

Vs.

RESPONDENT:
THE STATE OF PUNJAB & ORS.

DATE OF JUDGMENT:
16/11/1960

BENCH:
SINHA, BHUVNESHWAR P.(CJ)
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SINHA, BHUVNESHWAR P.(CJ)
KAPUR, J.L.
GAJENDRAGADKAR, P.B.
SUBBARAO, K.
WANCHOO, K.N.

CITATION:
1961 AIR 343 1961 SCR (2) 459
CITATOR INFO :
R 1962 SC 764 (5)
RF 1963 SC 151 (34)
R 1965 SC 427 (3)
RF 1965 SC 646 (9,11)
RF 1966 SC1788 (18)
R 1970 SC 984 (6)
F 1977 SC 594 (3)
C 1980 SC 367 (11)

ACT:
Land Acquisition--Constitutional validity of enactment-Construction of labour colony for a company, if a Public purpose--Test-Land Acquisition Act, 1894 (1 of 1894), ss. 4, 6, Part VII--Constitution of India, Arts. 31(2), 31(5)(a).

HEADNOTE:

The Punjab Government issued notification under ss. 4 and 6 of the Land Acquisition Act, 1894, and started proceedings for acquisition of lands for the construction of a labour colony under the Government sponsored Housing Scheme for the workers of the Thapar Industrial Workers' Co-operative Housing Society Ltd. The appellants challenged the acquisition proceedings under Art. 226 of the Constitution on the ground, inter alia, that the procedure prescribed by Part VII of the said Act had not been admittedly complied with. The Division Bench in affirming the order of dismissal passed by the trial judge held that although Art. 31 of the Constitution by prohibiting compulsory acquisition of property except for a public purpose had made Part VII of the Act redundant, the present proceedings were saved since the acquisition was for a public purpose.

Held, that the High Court was in error in holding that the Constitution had rendered Part VII of the Land Acquisition Act, 1894, redundant or null and void, although it was right in dismissing the appeal. That Act, as an existing Act, was saved by Art. 31(5)(a) from being affected by Art. 31(2) of the Constitution.

Acquisition of building sites for residential houses for industrial labour is for a public purpose even apart from s. 17(2)

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(b)of the Act as amended by ':the Land Acquisition (Punjab Amendment) Act of 1953.

Babu Barkava Thakur v. The State of Bombay [1961] 1 S.C.R. 128, referred to.

Although in the case of an acquisition for a company simpliciter, no declaration under s. 6 of the Act can be made without complying with the provisions of Part VII of the Act, it is not correct to say that no acquisition for a company for a public purpose can be made except under Part VII of the Act. If the cost of the acquisition is borne either wholly or partially by the Government, the purpose would be a public purpose within the meaning of the Act. But if the cost is entirely borne by the company it would be an acquisition for the company simpliciter and Part VII would apply.

Since in the instant case a part of the compensation was to be borne by the Government, it was not necessary to comply with the provisions of Part VII of the Act.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4 of 1960. Appeal by special leave from the Judgment and Order dated January 28, 1959 of the Punjab High Court in Letters Patent Appeal No. 52 of 1958 arising out of the Judgment and Order dated February 17, 1958 of the said High Court in Civil Writ Application No. 124 of 1957.

C. B. Aggarwala, Daya Swarup Mehra and R. S. Gheba, for the appellants.

S. M. Sikri, Advocate General for the State of Punjab, N.S. Bindra and D. Gupta, for respondent No. 1. C.K. Daphtary, Solicitor General of India and S. N. Andley, for Respondent No. 2.

C.K. Daphtary, Solicitor General of India and T.M. Sen, for the Attorney-General for India (Intervener). 1960. November 16. The Judgment of the Court was delivered by SINHA, C. J.-This appeal, by special leave granted on May 29, 1959, is directed against the decision of the Letters Patent Bench (G. D. Khosla, C. J., and Dulat, J.) dated January 28, 1959, affirming that of the learned single Judge (Bishan Narain, J.) dated February 17, 1958, whereby he dismissed the appellants' Writ Petition under Art. 226 of the Constitution.

It appears that the appellants are the owners of, what is said to be, agricultural land, measuring about 86 bighas odd, in village Munda Majra, Tehsil Jagadhari, in the district of Ambala. On October 27, 1954, the Additional District Magistrate of Ambala ordered the land aforesaid to be requisitioned under the Punjab Requisitioning & Acquisition of Immoveable Property Act (XI of 1953) for the construction of houses by members of the Thapar Industries Co-operative Housing Society Ltd., Yamuna Nagar. Possession of the land was taken on November 5, 1954. The appellants, at once, instituted a suit on November 14, 1954, in the Court of the Subordinate Judge, Jagadhari, challenging the requisition proceedings. The suit was ultimately decreed by the Court on June 21, 1955, and the possession of the property in question was restored to the petitioners. On May 27, 1955, the first respondent, i. e., the State of Punjab, through the Secretary, Labour Department, issued a notification under s. 4 of the Land Acquisition Act (1 of 1894) (which hereinafter will be referred to as the Act). The notification, under s. 4 is in these terms.

> "No. 4850-S-LP-55/14144. Whereas it appears to the Governor of Punjab that land in the locality hereunder specified is likely to be needed by the Government for a public purpose, namely, for the construction of a Labour Colony under the Government sponsored Housing Scheme for the Industrial Workers of the Thapar Industrial Workers' Co-operative Housing Society Limited, Jamna Nagar (District Ambala), it is hereby notified that the land described in the specifi- cations below is likely to be required for the above purpose.
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> This notification is made under the provisions of Section 4 read with section 17 of the Land Acquisition Act, 1894, as amended by the Land Acquisition (Punjab Amendment) Act, 1953, to all to whom it may concern and the Collector shall cause public notice of the substance of this notification to be given at convenient places in the said locality;

> In exercise of the powers conferred by the aforesaid sections, the Governor of the Punjab is pleased to authorise the President of the above said Society with the members and servants to enter upon and survey any land in the locality and do all other acts required or permitted by that section. Further in exercise of the powers conferred by sub-section (4) of Section 17 of the said Act the Governor of Punjab is pleased to direct that, on the grounds of urgency, the provisions of Section 5(a) of the said Act, shall not apply in regard to this Acquisition".

Later, the same day, another notification, under s. 6 of the Act, was issued. This notification, under s. 6, states that it appeared to the Governor of Punjab that the land is required to be taken by Government for a public purpose, namely, for the construction of a Labour Colony under the Government sponsored Housing Scheme for the' Industrial Workers of the Thapar Industrial Workers' Co-operative Housing Society Limited (which is the second respondent in this case). It also says that under the provisions of s. 7 of the Act, the Collector, Ambala, is directed to take order for the acquisition of the land. The Patwari effected delivery of possession of the lands in question to the second respondent on August 21, 1955. Even before the delivery of possession had been effected, the appellants promptly instituted their suit on August 20, 1955, in the Court of the Subordinate Judge Class 1, Jagadhari, for a perpetual injunction restraining the second respondent from entering upon or taking possession of the land in question, or making any construction thereon. The trial Court dismissed the suit on June 25, 1956, on the preliminary ground that the suit was not competent in the absence of a previous notice under s. 59 of the Punjab Co-operative Societies Act, 1955 (XIV of 1955). The appellants appealed to the Senior Sub-Judge, Ambala, who dismissed their appeal, upholding the decision of the trial Court that the notice was a condition precedent to the institution of the suit. Their second appeal was dismissed by the Punjab High Court on February 6,1957. During the pendency of the civil litigation aforesaid, in spite of the fact that the second respondent had obtained delivery of possession through Government agency, by an Order of Injunction issued by the Court, construction had been stayed. As soon as the High Court decided the suit in favour of the respondents, the second respondent "started making huge constructions on the land in dispute in a very speedy manner", as alleged by the appellants in their petition under Art. 226 of the Constitution, which they filed on February 13, 1957. From the High Court also, they obtained similar Stay Orders whereby building operations were stopped. In their Writ Petition, the appellants, as petitioners in the High Court, challenged the acquisition proceedings on a number of grounds, of which it is only necessary to notice the one which has formed the subject matter of decision in the High Court, namely, that the proceedings were void for want of compliance with the procedure laid down in Chapter VII (mistake for Part VII) of the Act. It is not necessary to refer to the other contentions raised in the Writ Petition, because it is common ground before us that the whole controversy must be determined by the answer to the question, 'whether or not the proceedings were vitiated by reason of the admitted fact that no proceedings under Part VII of the Act had been taken in making the acquisition'.

The matter was heard, in the first instance, by Bishan Narain, J. The learned Judge dismissed the petition, holding that the acquisition was by the Government for a public purpose, namely, of construction of tenements for industrial workers, under a schempeal against the order to the Collector of the district or such other officer as may, by notification, be authorised in this behalf by

the State Government.

Section 6 imposes a restriction on the transport of agricultural cattle for slaughter and reads:

> "S. 6. No person shall transport or offer for trans port or cause to be transported any agricultural cattle from any place within the State to any place outside the State, for the purpose of its slaughter in contra. vention of the provisions of this Act or with the knowledge that it will be or is likely to be, so slaugh- tered."

Section 7 prohibits the sale, purchase or disposal otherwise of certain kinds of animals. It reads-.

> "S. 7. No person shall purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dis- pose of or cause to be purchased, sold or otherwise disposed of cows, calves of cows or calves of she- buffaloes for slaughter or knowing or having reason to believe that such cattle shall be slaughtered."

Section 8 relates to possession of flesh of agricultu- ral cattle and is in these terms:

> "S. 8. Notwithstanding anything contained in any other law for the time being in force, no person shall have in his possession flesh of any agricultural cattle slaughtered in contravention of the provisions of this Act."

Section 10 imposes apenalty for a contravention of s. 4(l)(a) and s. 11 imposes penalty for a contraven- tion of any of the other provisions of the Act. On behalf of the petitioners it has been pointed out, and rightly in our opinion, that cl. (a) of sub-s. (2) of s. 4 of the Act imposes an unreasonable restriction on the right of the petitioners. That clause in its first part lays down that the cattle (other than cows and calves) must be over 20 years of age and must also be unfit for work or breeding; and in the second part it says, "or has become permanently incapacitated from work or breeding due to age, injury, deformity or an incurable disease." It is a little difficult to understand why the two parts are juxtaposed in the section. In any view the restriction that the animal must be over 20 years of age and also unfit for work or breeding is an excessive or unreasonable restriction as we have pointed out with regard to a similar provision in the Uttar Pradesh Act. The second part of the clause would not be open to any objection, if it stood by it- self. If, however, it has to be combined with the age- limit mentioned in the first part of the clause, it will again be open to the same objection; if the animal is to be over 20 years of age and also permanently in- capacitated from work or breeding etc.,then the age- limit is really meaningless. Then, the expression 'due to age' in the second part of the clause also loses its meaning. It seems to us that cl. (a) of sub-s. (2) of s. 4 of the Act as drafted is bad because it imposes a dis- proportionate restriction on the slaughter of bulls, bullocks and buffaloes it is a restriction excessive in nature and not in the interests of the general public. The test laid down is not merely permanent incapa- city or unfitness for work or breeding but the test is something more than that, a combination of age and unfitness' Learned Counsel for the petitioners has plac- ed before us an observation contained in a reply made by the Deputy Minister in the course of the debate on the Bill in the Madhya Pradesh Assembly (see Madhya Pradesh Assembly Proceedings, Vol. 5 Serial no. 34 dated April 14, 1959, page 3201). He said that

the age fixed was very much higher than the one to which any animal survived. This observation has been placed before us not with a view to an interpre- tation of the section, but to show what opinion was held by the Deputy Minister as to the proper age- limit. On behalf of the respondent State our atten- tion has been drawn to a book called The Miracle of Life (Home Library Club) in which there is a state- ment that oxen, given good conditions, live about 40 years. Our attention has also been drawn to certain extracts from a Hindi book called Godhan by Girish Chandra Chakravarti in which there are statements to the effect that cows and bullocks may live up to 20 or 25 years. This is an aspect of the case with which we have already dealt. The question before us is not the maximum age upto which bulls, bullocks and buffaloes may live in rare cases. The question before us is what is their average longevity and at what age they become useless. On this question we think that the opinion is almost unanimous, and the opinion which the Deputy Minister expressed was not wrong. Section 5 in so far as it imposes a restriction as to the time for slaughter is again open to the same ob- jection as has been discussed by us with regard to a similar provision in the Uttar Pradesh Act. A right of appeal is given to any person aggrieved by the order. In other words, a member of the public, if he feels aggrieved by the order granting a certificate for slaughter, may prefer an appeal and hold up for a long time the slaughter of the animal. We have pointed out that for all practical purposes such a restriction will really put an end to the trade of the petitioners and we are unable to accept a restriction of this kind as a reasonable restriction within the meaning of cl. (6) of Art. 19 of the Constitution. Section 6 standing by itself, we think, is not open to any serious objection. It is ancillary in nature and tries to give effect to the provision of the Act prohibiting slaughter of cattle in contravention of the Act.

Section 7 relates to the prohibition of sale, purchase etc., of cows and calves and inasmuch as a total ban on the slaughter of cows and calves is valid, no ob- jection can be taken to s. 7 of the Act. It merely seeks to effectuate the total ban on the slaughter of cows and calves (both of cows and she-buffaloes). Sec- tion 8 is also ancillary in character and if the other provisions are valid no objection can be taken to the provisions of s. 8. Sections 10 and 11 impose penal- e subsidised by the Government out of public funds; that Part VII of the Act had no application to the present proceedings, and that, therefore, the noti- fication under s. 6 was not invalid. The appellants preferred an appeal, under the Letters Patent. The Letters Patent Bench dismissed the appeal, but for different reasons. After an examination of the precedents of the different High Courts, bearing on the controversy in this case, the Bench came to the conclusion, which may better be expressed in its own words:-

> "There is thus considerable authority for the view advanced by the learned counsel for the appellants that compliance with the provisions of Part VII is obligatory in the case of all acquisitions for a company. In the present case the acquisition was undoubtedly for the benefit of a company. I have given this matter my most anxious consideration, and, with great respect to the learned Judges, whose decisions have been noted above, I find myself unable to subscribe to the views expressed by them. It seems to me that their views were coloured by the background of the provisions of the Constitution. Article 31 of the Constitution prohibits compulsory acquisition of property for anything except a public purpose. Therefore, acquisition for anything which is not a public purpose cannot now be done compulsorily, but it has never been

> disputed that before the Constitution came into force land could have been acquired compulsorily by Government for a purpose which was not public. There is nothing in the Land Acquisition Act to warrant the assumption that the embargo placed by Article 31 of the Constitution found place in the Act. It seems to me that the Land Acquisition Act contem- plates two categories of acquisitions".

After an examination of the provisions of the Act, the High Court observed that the Land Acquisition Act came into force when there was no bar to compulsory acquisition for private purposes. Such a bar was only imposed, for the first time, by Art. 31 of the Constitution. After the Constitution came into force, Part VII of the Act became redundant or null and void. But, in its view, the present acquisition proceedings were saved from all attack based on non-compliance with the provisions of Part VII of the Act. The reason for this conclusion, according to the High Court, was that as the land was acquired for a public purpose, there was no need to comply with the provisions of Part VII, even though the Company is to bear all the expenses for the acquisition. It is manifest that the main point for determination in this appeal is: Whether or not the acquisition proceedings had been vitiated by reason of the admitted fact that there was no attempt made by the Government to comply with the requirements of Part VII of the Act. It is equally clear that the Letters Patent Bench of the High Court was misled in its conclusions, because all the provisions of Art. 31 of the Constitution had not been brought to their notice. It is not correct to say that Part VII of the Act had become redundant or null and void, as suggested by the High Court, because that Part provided for acquisition for a private purpose. As held by this Court in a recent decision, in the case of Babu Barkaya Thakur v. The State of Bombay (1), the Act deals with two kinds of acquisitions: (1) for a public purpose, at the cost of the Government, and (2) for a purpose akin to such a purpose, at the cost of a Company, and to the latter class of acquisition, the provisions of Part VII are attracted. It was further held in that case that acquisition of a site for building residential houses for industrial labour was a public purpose, and that the Land Acquisition Act was immune from attack based on the provisions of Art. 31(2) of the Constitution, in view of the provisions of cl. 5(a) of that Article, which saved an existing law of the nature of the Act in question. As will presently appear, the conclusion of the High Court is entirely correct, but the process of reasoning by which it has reached that conclusion is erroneous. That process suffers from the initial error arising from the fact that the provisions of Art. 31(5) of the Constitution had not been brought to the notice of that Bench. If the Bench were cognizant of the true legal position that the Land Acquisition Act, in its entirety, including Part VII dealing with the acquisition of Land for Companies, was not subject to any attack under Art. 31(2) of the Constitution, it would not have based that conclusion on that ratio. Otherwise, there would be no answer to the contention in which the appellants had persisted throughout the long course of litigation in which they have indulged in their vain effort to save the land from being used for the public purpose aforesaid. The Letters Patent Bench has also fallen (1) [1961] 1 S.C.R. 128.

into another error in assuming that "the compensation was paid in its entirety by the Company". It is better to clear the ground by showing that this assumption is not well- founded in fact.

In their Writ Petition, as originally filed in the High Court, it was not categorically stated by the appellants that the compensation in respect of the land in question was paid, or was to be paid, by the Company. It may be stated here, by the way, that it is common ground that the second

respondent is a Company within the meaning of the Act, being a registered society under the Co-operative Societies Act. It is also common ground that the purpose for which the land was being acquired was for erecting residential quarters for industrial labour, which had organised itself into the Co- operative Housing Society, the second respondent. It was only at a later stage of the proceedings in the High Court, that is to say, in the replication filed on behalf of the appellants to the Written Statement filed by the Government, in answer to the appellant's Writ Petition, that, for the first time, it was alleged by the appellants that "the entire amount of compensation has been borne by the res- pondent society". This allegation has not been either supported or countered by evidence on either side. But it has been pointed out by the learned single Judge that it was clear from the Government Housing Scheme that a substantial amount to be expended on this Scheme comes out of the Revenues, in the form of subsidies and loans. It was stated at the Bar, with reference to the terms and conditions of the Government Housing Scheme, that 25% to 50% of the cost of land and structures to be built upon the land was to be advanced by Government out of public funds, in the shape of subsidy and loan. It would, thus, appear that the High Court was not right in the assumption made as aforesaid. It is clear from the statement of facts on record that the respondent No. 2 is a 'Company', within the meaning of the Act; that the land is acquired for the. benefit of the Company, and at its instance, and that a large proportion of the compensation money was to come out of public funds, the other portion being supplied by the Company or its members. There is also no doubt that the structures to be made on the land would benefit the members of the Co-operative Society. But, the private benefit of a large number of industrial workers becomes public benefit within the meaning of the Land Acquisition Act. In this connection, it may be mentioned that s. 17 of the Act was amended by the Land Acquisition (Punjab Amendment) Act (11 of 1954) in these terms-

> "17(2)(b). Whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land for the purpose of any library or educational institution or for the construction, ex. tension or improvement of any building or other structure in any village for the common use of the inhabitants of such village, or any godown for any society registered under the Co-operative Societies Act, 1912 (II of 1912), or any dwelling-house for the poor, or the construction of labour colonies under a Government-sponsored Housing Scheme, or any irrigation tank, irrigation or drainage channel, or any well, or any public road, the Collector may, immediately after the publication of the notice mentioned in sub-section (1), and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances".

It will appear from the (amended) s. 17(2)(b), quoted above, that the construction of labour colonies, under a Government-sponsored Housing Scheme, has been included in the category of 'works of public utility'. As already indicated, even apart from the indication given by the (amended) section 17, quoted above, this Court has held, in the recent decision (1) that building of residential quarters for industrial labour is public purpose. Hence, even apart from the amended provisions of s. 17, it is clear on the authorities that the purpose for which the land was being acquired was a public purpose.

(1) [1961] 1 S.C.R. 128.

Having cleared the ground, it now remains to consider the terms of s. 6, on which great reliance was placed on behalf of the appellants. There is no doubt that, as pointed out in the recent decision of this Court (1), the Act contemplates acquisition for a public purpose and for a Company, thus conveying the idea that acquisition for a Company is not for a public purpose. It has been held by this Court, in that decision, that the purposes of public utility, referred to in ss. 40-41 of the Act, are akin to public purpose. Hence, acquisition for a public purpose as also acquisitions for a Company are governed by considerations of public utility. But the procedure for the two kinds of acquisitions is different, in so far as Part VII has made substantive provisions for acquisitions of land for Companies. Where acquisition is made for a public purpose, the cost of acquisition for payment of compensation has to be paid wholly or partly out of Public Revenues, or some fund controlled or managed by a local authority. On the other hand, in the case of an acquisition for a Company, the compensation has to be paid by the Company. But, in such a case, there has to be an agreement, under s. 41, for the transfer of the land acquired by the Government to the Company on payment of the cost of acquisition, as also other matters not material to our present purpose. The agreement contemplated by s. 41 is to be entered into between the Company and the Appropriate Government only after the latter is satisfied about the purpose of the proposed acquisition, and subject to the condition precedent that the previous consent of the Appropriate Government has been given to the acquisition. The ` previous consent' itself of the Appropriate Government is made to depend upon the satisfaction of that Government that the purpose of the acquisition was as laid down in s. 40. It is, thus, clear that the provisions of ss. 39-41 lay down conditions precedent to the application of the machinery of the Land Acquisition Act, if the acquisition is meant for a Company. Now, s. 6 itself contains the prohibition to the making of the necessary declaration under that section in these terms- (1) (1961] 1 S.C.R. 128.

> "Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority".

Section 6 is, in terms, made subject to the provisions of Part VII of the Act. The provisions of Part VII, read with s. 6 of the Act, lead to this result that the declaration for the acquisition for a Company shall not be made unless the compensation to be awarded for the property is to be paid by a company. The declaration for the acquisition for a public purpose, similarly, cannot be made unless the compensation, wholly or partly, is to be paid out of public funds. Therefore, in the case of an acquisition for a Company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But, that does not necessarily mean that an acquisition for a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a Company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition for a Company is to be made at the cost entirely of the Company itself, such an acquisition comes under the provisions of Part VII. As in the

present instance, it appears that part at any rate of the compensation to be awarded for the acquisition is to come eventually from out of public revenues, it must be held that the acquisition is not for a Company simpliciter. It was not, therefore, necessary to go through the procedure prescribed by Part VII. We, therefore, agree with the conclusion of the High Court, though not for the same reasons.

The appeal, accordingly, is dismissed with costs.

Appeal dismissed.