Babu Singh And Ors. vs Union Of India (Uoi) And Ors. on 20 February, 1979

Equivalent citations: AIR1979SC1713, (1981)3SCC628, AIR 1979 SUPREME COURT 1713, 1981 (3) SCC 628

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Bench: D.A. Desai, P.N. Shinghal

JUDGMENT

D.A. Desai, J.

1.This appeal by certificate under Article 133(1)(a) arises from the dismissal in limine of Civil Writ Petition No. 1046 of 1969 by a Division Bench of Punjab and Haryana High Court. The State of Punjab published the Notification dated 15th March, 1963 Annexure 'A' notifying that different pieces and parcels of land described in the notification were required for a public purpose namely : 'for the execution of Soil Conservation and other improvement works in the Catchment areas of Sukhna Lake Chandigarh and for raising a green belt around the Capital'. Simultaneously the notification recited that in view of the urgency in exercise of the powers conferred by Section 17 the requirement of the provision of Section 5-A shall be dispensed with. Immediately thereafter on the same day a declaration was made under Section 6 as per notification Annexure 'B' that the pieces and parcels of land more particularly set out in the schedule to the notification were required for the public purpose namely : 'for carrying out Soil Conservation measures in Sukhna Lake Catchment Area in Kharar Tehsil, District Ambala'. After this declaration was made under Section 6 an award was made by the Collector on 23rd October, 1963 and subsequently on 21st March, 1964. The appellants and some other persons whose lands were acquired made a representation to the Chandigarh Administration presumably requesting for allotment of alternative land and a reply was given as per Annexure 'D' that their request for allotment of alternative sites was rejected. The appellants filed their petition on 22nd April, 1969 inter alia contending that the urgency clause was unlawfully applied and accordingly if the inquiry as contemplated in Section 5-A could not be dispensed with, it was illegal to simultaneously issue notification under Sections 4 and 6 on the same day and, therefore, the entire process of acquisition was vitiated. Some other contentions were also raised to which a reference would be made while examining the contentions put forth on behalf of the appellants in this appeal.

2. On a notice being issued Land Acquisition Collector filed the return dated 5th August, 1969. It was contended that long before the Writ Petition was filed the entire process of acquisition was over and possession was taken by the Acquiring Authority and the public purpose for which the land was

acquired was being executed stage by stage commencing from 1963 and is a continuing process. It was, therefore, contended that the petition must fail on the ground of delay and laches. On merits it was also contended that enquiry under Section 5-A was rightly dispensed with and possession of lands and the huts standing thereon was taken over and no illegality committed in acquiring the lands.

3. Mr. O.P. Varma learned Counsel who appeared for the appellant raised three contentions before us:

> 1. The Scheme of Land Acquisition Act does not permit issuing of notifications under Sections 4 and 6 simultaneously and therefore acquisition is bad in law.
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> 2. A declaration under Section 6 could only be made in respect of a public purpose set out and recited in the notification under Sections 4 and 6 and as there is a material variation in the recitation of public purpose in the notification under Sections 4 and 6, the declaration made under Section 6 is illegal and invalid.
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> 3. If the State Government did not take possession for a period of six years after making a declaration and even after the award the declaration under Section 6 got exhausted and no further action can be taken pursuant to the declaration under Section 6 and as the appellants are still in possession, the respondents should be restrained from disturbing their possession pursuant to the acquisition proceedings.
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> 4. Section 4 confers power on the appropriate Government to issue a preliminary notification notifying that the land in the locality mentioned in the notification is either needed or is likely to be needed for a particular public purpose. The notification under Section 4 is generally styled as a preliminary notification and indicates the commencement of the process of acquisition which passes through specified statutory stages so as to result in the vesting of the land sought to be acquired in the Government as envisaged by Section 16. After a notification is issued under Section 4, Section 5-A enables any person interested in the land which has been notified under Section 4, to submit his objections to the proposed acquisition within thirty days from the date of the issue of the notification. Sub-section (2) of Section 5-A enjoins a duty on the Collector to give an opportunity to the objector of being heard either in person or by pleader and after making enquiry, if any, as he thinks necessary to submit a report to the Government. Section 6 confers power on the Government to make a declaration after taking into consideration the report submitted by the Collector under Section 5-A, that the land is required for the stated public purpose. Sections 9, 10 and 12 prescribed procedure for ascertaining the compensation payable for the land acquired. Section 16 provides for vesting of the land so acquired in the Government free from all incumbrances. Section 17 confers power on the Government in the case of urgency to dispense with the enquiry under Section 5-A in respect of land proposed to be acquired provided the land answers the description prescribed under Section 17. If the urgency clause is applied, Sub-section

(4) of Section 17 enables the Government to dispense with the enquiry contemplated by Section 5-A.

5. Notification, Annexure 'A' to the Writ Petition dated 15th March, 1963 contains a specific recital that the urgency clause is applied and the enquiry under Section 5-A is dispensed with. If Section 5-A enquiry is dispensed with in exercise of the power conferred by Section 17, the State Government soon after issuing notification under Section 4 can proceed to make a declaration as contemplated by Section 6, If application of the urgency clause permits the Government to dispense with enquiry under Section 5-A obviously the very urgency would necessitate making of the declaration under Section 6 immediately after issuing the notification under Section 4. They can be one after the other. We find nothing in the provisions of the Land Acquisition Act which would come in the way of the Government issuing a notification under Section 6 immediately after the notification under Section 4 if on applying urgency clause enquiry under Section 5-A is dispensed with and both can be on the same day. This position is clearly established by the decision in Somavanti v. State of Punjab . The contention in terms raised was that the notification under Sections 4 and 6 could not have been made simultaneously and are, therefore, without efficacy. Negativing this contention Mudholkar, J., speaking for the majority observed as under:

Undoubtedly the law requires that notification under Sub-section (1) of Section 6 must be made only after the Government is satisfied that particular land is required for a public purpose. Undoubtedly also where the Government has not directed under Sub-section (4) of Section 17 that the provisions of Section 5-A need not be complied with the two notifications that is under Sub-section (1) of Section 4 and Section 6 cannot be made simultaneously. But it seems to us that where there is an emergency by reason of which the State Government directs under Sub-section (4) of Section 17 of the Act that the provisions of Section 5-A need not be complied with, the whole matter, that is, the actual requirement of the land for a public purpose must necessarily have been considered at the earliest stage itself that is when it was decided that compliance with the provisions of Section 5-A be dispensed with. It is, therefore, difficult to see why the two notifications cannot, in such a case, be made simultaneously. A notification under Sub-section (1) of Section 4 is a condition precedent to the making of notification under Sub-section (1) of Section 6. If this Government, therefore, takes a decision to make such a notification and, thereafter, takes two further decisions, that is, to dispense with compliance with the provisions of Section 5-A and also to declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provision of the law even though the two notifications are published on the same day.

6. In the case before us notification under Sub-section (1) of Section 4 was issued on 15th March, 1963 and in view of the urgency the Government by the same notification dispensed with the provision of Section 5-A and thereafter made a requisite

declaration under Sub-section (1) of Section 6 and issued the notification on the same day. In these circumstances we see no illegality in the issuance of the notification under Section 4 and under Section 6 on the same day and accordingly the first contention of Mr. Verma must be negatived.

7. The next contention is that the public purpose set out in the notification under Sub-section (1) of Section 4 and the one under Sub-section (1) of Section 6 being different from each other, the declaration made under Sub-section (1) of Section 6 and the consequent notification publishing the declaration would be invalid. The contention is that the declaration can be made under Sub-section (1) of Section 6 in respect of that public purpose for which the notification under Sub-section (1) of Section 4 is issued. Without examining the merit of contention in law it must fail in the facts of this case because we see no difference in the statement of public purpose in the notification under Section 4(1) and in the notification under Section 6(1). Public purpose for which the land is needed as set out in the notification under Section 4(1) is:

For the execution of Soil Conservation and other improvement works in the Catchment areas of Sukhna Lake Chandigarh and for raising a green belt around the capital.

Public purpose as set out in the notification under Section 6(1) is:

For carrying out Soil Conservation measures in Sukhana Lake Catchment area in Kharar Tehsil, District Ambala.

A mere comparison of the statement of public purpose made in the respective notifications would by itself negative the contention raised on behalf of the appellants. The statement of public purpose under Section 4(1) notification is more comprehensive setting out details of improvement works while the one set out under Section 6(1) notification is more precise and restricted in terms. Broadly speaking the public purpose for which the land is acquired is for soil conservation measures in Sukhna Lake Catchment area. A green belt is one such measure and its explicit statement does not change the public purpose. What the law requires is a broad and understandable statement of public purpose and this is being insisted upon with a view to giving an opportunity to those whose lands are proposed to be acquired, to effectively object the proposed acquisition in an enquiry under Section 5-A. If such be the object behind the provision requiring setting out of public purpose in the notification issued under Section 4(1) as also one under Section 6(1), it would appear that the statement of public purpose as set out in both the notifications is the same and there is no difference between the two. We specifically requested Mr. Verma to point out any real contradiction between the statement of public purpose in Section 4(1) and Section 6(1) notifications to appreciate his submission but none such was pointed out, and, therefore, the contention must be negatived.

8. The last contention is that even though the Government invoked powers under Section 17 claiming that in view of the emergency, the urgency clause must be applied and thereby deprived the appellants of their statutory right to put forth the objection against the proposed acquisition, yet the Government did not take possession of the land involved in the dispute for a period of six years and, therefore, the power to take possession after complying with Section 9 got exhausted and on this account the acquisition itself must be declared illegal and invalid. We have not been able to appreciate this submission. If the impugned notifications are valid and the declaration made under Section 6 has become final and an award under Section 12 is made, even if possession is not taken, we fail to appreciate how thereby the notification under Section 6 would become invalid. It may be that after invoking the power under Section 17 proceedings for acquisition dragged on and possession is not taken, it may reflect upon the exercise of power under Section 17. It may indicate that there was no urgency and there is colourable exercise of power. That is not the contention. The submission of Mr. Verma is that as possession is not taken declaration under Section 6 becomes invalid. We see no substance in this contention. In fact the submission that possession of acquired land is not taken by the Government does not stand scrutiny.

[After considering the evidence in the rest of para 8 and paras 9 and 10, the judgment proceeded]:

11. Before we conclude, it must be pointed out that the writ petition was filed on 22nd April, 1969 i.e. nearly six years and one month after the publication of the impugned notification and about 5 years after the award. No explanation is offered why writ petition was filed after such an inordinate delay and after the entire process of acquisition was over. The High Court dismissed the writ petition in limine presumably on account of delay. This Court in Aflatoon v. Lt. Governor of Delhi and Indrapuri Griha Nirman Sahakari Samiti Ltd. v. State of Rajasthan that if a person allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and declaration under Section 6 were valid and then attacked the notification on the grounds which were available to him at the time when the notification was published, it would be putting a premium on dilatory tactics. The length of the delay is an important circumstance because of the nature of the acts done within the interval on the basis of the notification and declaration and, therefore, a challenge to a notification under Section 4 and a declaration under Section 6 of the Act should be made within a reasonable time thereafter. If it is not so done the petition is liable to be dismissed. This appeal must fail for this additional reason because the challenge to two notifications was after a period of six years and after the whole process of acquisition was over and the State Government had spent a considerable amount in carrying out the public purpose.

12. Accordingly this appeal fails and is dismissed but in the circumstances of this case with no order as to costs.