

# **Lt. Governor Of Himachal Pradesh vs Avinash Sharma on 28 April, 1970**

**Equivalent citations: 1970 AIR 1576, 1971 SCR (1) 413, AIR 1970 SUPREME COURT 1576, 1970 KER LJ 656 1970 2 SCJ 735, 1970 2 SCJ 735**

**Author: J.C. Shah**

**Bench: J.C. Shah, K.S. Hegde**

PETITIONER:

LT. GOVERNOR OF HIMACHAL PRADESH

Vs.

RESPONDENT:

AVINASH SHARMA

DATE OF JUDGMENT:

28/04/1970

BENCH:

SHAH, J.C.

BENCH:

SHAH, J.C.

HEGDE, K.S.

CITATION:

1970 AIR 1576

1971 SCR (1) 413

1970 SCC (2) 149

CITATOR INFO :

D 1972 SC1363 (13)

R 1975 SC1767 (4)

RF 1989 SC 49 (26,27)

RF 1991 SC1117 (9,10)

ACT:

Land Acquisition Act, 1894 Ss. 4, 6, 17 (1) and (4) and 48-  
Land vesting in Government after notification under S.  
17(1)-If can revert to original owner by cancellation of  
notification under S. 21 of the General Clauses Act, 1897-  
Original possession of acquired land taken illegally-- If  
land vests in Govt. free from encumbrances 15 days after s.  
17(1) notification.

HEADNOTE:

Possession of an area of land in Himachal Pradesh including some land belonging to the respondent was taken in December 1963 by the Deputy Commissioner and the land was handed over to the Air Force Authorities. Subsequently, on March 31, 1964, a notification under s. 4 of the Land Acquisition Act, 1894, was published. Thereafter by a composite notification under s. 6 and s. 17(1) & (4) dated May 16, 1964, the State Government declared that the land was needed for a public purpose" that since it was required urgently, the enquiry under s. 5-A of the Act was dispensed with, and that possession of the land would be taken under s. 17(1) of the Act after the expiry of 15 days of the notice under s. 9(1) of the Act. The Collector then served notices under s. 9 in June 1964. On October 5, 1965, the State Government published an order cancelling the notifications dated March 31, 1964 and May 16, 1964, for acquisition of the land. The respondent filed a writ petition and prayed that the notification dated October 5, 1965, be quashed and that a writ of mandamus be issued directing the authorities to discharge their duties in law to determine compensation for compulsory and urgent acquisition. The petition was allowed by the Judicial Commissioner.

In appeal to this Court it was contended on behalf of the appellant that under s. 21 of the General Clauses Act, the State had the power to cancel the notifications at any time and that s. 48 of the Land Acquisition Act did not trench upon that power; furthermore, where the Government had obtained possession illegally or under some unlawful transaction and notification under sec. 17(1) was issued, the land did not vest in the Government 'free from all encumbrances; and that the notification issued by the State Government under Sec. 17(1) and (4) was without authority because it did not recite that the land notified was "waste or arable".

HELD : Dismissing the appeal,

When possession of the land is taken under s.17(1) of the Land Acquisition Act the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification under s. 17(1). Although the government may cancel or rescind notifications under section 4 and 6 of the Land Acquisition Act a notification under s. 17(1) cannot be cancelled nor can it be withdrawn in exercise of the powers under Sec. 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power in the General clauses Act, [415 H, 417 C-E]

State of Madhya Pradesh and Ors. v. Vishnu Prasad Sharma & Ors [1966] 3 S.C.R. 557, referred to.

JUDGMENT :

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 514 of 1967. Appeal by special leave from the judgment and order dated September 27, 1966 of the Judicial Commissioner's Court at Simla and Civil Writ Petition No. 30 of 1965. Jagadish Swarup, Solicitor-General, V. C. Mahajan and R. N. Sachthy for the appellants.

Bishan Narain and O. N. Mahindroo, for the respondent. The Judgment of the Court was delivered by Shah, J. The Deputy Commissioner, Mahasu, apparently acting on the request of the Air Force authorities took possession on December 23, 1963, of an area of land in village Galu Chak. That area included 8-14-0 bighas belonging to the respondent. The record does not disclose the authority under which possession of the land was taken and delivered over to the Air Force. There was correspondence between the Air Force Authorities and the State of Himachal Pradesh in regard to the land occupied by the Air Force and ultimately on March 31, 1964, a notification under s. 4 of the Land Acquisition Act, 1894, was published notifying that the area of land (including the land of the respondent) was likely to be needed by the State Government for a public purpose. By a composite notification under s. 6 & s. 17(1) & (4) dated May 16, 1964, the State of Himachal Pradesh declared that the land was needed for a public purpose, that since it was required urgent, the enquiry under s. 5-A of the Act was dispensed with, and that possession of the land will be taken under S. 17 (1) of the Act after the, expiry of fifteen days from the publication of the notice under s. 9(1) of the Act. The Collector of Mahasu then served notices under S. 9 of the Land Acquisition Act in June 1964. On October 5, 1965, the Government of Himachal Pradesh published an order cancelling the notification dated March 31, 1964, and May 16, 1964, for acquisition of land for a public purpose.

The respondent then presented a petition before the Judicial Commissioner, Himachal Pradesh, for a writ quashing the notification dated October 5, 1965, withdrawing and cancelling the previous notifications and for a writ of mandamus directing the authorities of the State Government to act according to law and discharge the duties cast by law upon them in the matter of determination of compensation for compulsory and urgent acquisition. The petition was granted by the Judicial Commissioner. In the view of the Judicial Commissioner when the notification 415 under s. 17(1) & (4) was issued, and possession was taken by the State Government the land vested in the Government and it was not competent to the State Government thereafter to withdraw the notifications in exercise of the power under s. 48 of the Land Acquisition Act. Against the order of the Judicial Commissioner, this appeal has been preferred with special leave.

The Solicitor-General appearing on behalf of the State- contended that under s. 21 of the General Clauses Act the State has the power to cancel the notifications at any time, and that s. 48 of the Land Acquisition Act did not trench upon that power. Under the Land Acquisition Act a notification under s. 4 of the Act may be issued by the appropriate Government that any land is needed or is likely to be needed for a public purpose. Unless the inquiry under s. 5-A is dispensed with, any person interested in the land notified may object to the acquisition of the land, or of any land in the locality. On the objections made, the Collector holds an inquiry after giving the objector an opportunity of being heard, and makes a report. The appropriate Government may, if satisfied, after considering the report, if any, of the Collector under s. 5-A(2), make a declaration that the land is needed for a

public purpose. The declaration is conclusive evidence that the land is needed for a public purpose. Then follows an inquiry as to the amount of compensation payable to the owner of the land, and to the other claimants. If the land is waste or arable, the Government may in case of urgency dispense with the inquiry under s. 5-A and direct that possession may be taken on the expiration of fifteen days after publication of the notice under s. 9(1) of the Act even though no award of compensation is made by the Collector. When possession is taken the land vests exclusively in the Government free from all encumbrances.

In the present case a notification under s. 17(1) and (4) was issued by the State Government and possession which had previously been taken must, from the date of expiry of fifteen days from the publication of the notice under s. 9(1), be deemed to be the possession of the Government. We are unable to agree that where the Government has obtained possession illegally or under some unlawful transaction and a notification under s. 17(1) is issued the land does not vest in the Government free from all encumbrances. We are of the view that when a notification under s. 17(1) is issued, on the expiration of fifteen days from the publication of the notice mentioned in s. 9 (1), the possession previously obtained will be deemed to be the possession of the Government under s. 17(1) of the Act and the land will vest in the Government free from all encum- branches.

4 1 6 It is true that the notification issued by the State of Himachal Pradesh under s. 17( 1) & (4) does not recite that the land notified was "waste or arable". But it was not contended before the Judicial Commissioner that the Government issued the notification under s. 17(1) & (4) without authority. Power under sub-ss. (1) & (4) of s. 17 may be only exercised when the land is waste or arable, and the Government having issued the notification, it is not be open to them to contend for the first time at this stage that the land of the respondent was not waste or ,arable and the notifications were unauthorised.

Section 48 of the Land Acquisition Act by the first sub- section provides :

" Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. "

Power to cancel a notification for compulsory acquisition is, it is true, not affected by S. 48 of the Act: by a notification under s. 21 of the General Clauses Act, the Government may cancel ,or rescind the notifications issued under ss. 4 & 6 of the Land Acquisition Act. But the power under s. 21 of the General Clauses Act cannot be exercised after the land statutorily vests in the State Government. In State of Madhya Pradesh and Ors. v. Vishnu Prasad Sharma & Ors(1) on which reliance was placed, the only question which fell to be considered by the Court was whether a notification under s. 4(1) may be followed by successive notifications under S. 6 for small parts of the land comprised in one notification issued under s. 4. The Court rejected the contention that the State was invested with such a power. In considering the argument the Court referred to the power to cancel the notification under S. 21 of the General Clauses Act, apart from the power conferred by s. 48 of the Land Acquisition Act. The Court observed "Section 48(1) is a special provision for those cases where proceedings for acquisition have gone beyond the stage of the issue of notice under s. 9 (1) and it provides for payment 'of compensation under s. 48(2) read with ` . 48(3). We cannot . . . . accept the

argument that without an order under s.48(1) the notification under s.4 must remain out- standing. It can be cancelled at any time by Government under s. 21 of the General Clauses Act and what (1) [1966]3 S.C.R 557.

s. 48(1). If no notice has been issued  
under possess-ion it cannot withdraw from

the acquisition. Before that it may cancel the notification under ss. 4 and 6 or it may withdraw from the acquisition under s. 48(1). If no notice has been issued under S. 9 (1) all that the government has to do is to pay, for the damage caused as provided in s. 5; if on the other hand a notice has been issued under s. 9 (1), damage has also to be paid in accordance with the provisions of s.

48 (2).

and (3)."

But these observations do not assist the case of the, appellants.,. It is clearly implicit in the observations that after possession has been taken pursuant to a notification under s. 17 (1) the land is vested in the Government, and the notification cannot be cancelled under s. 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under s. 48 of the Land., Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under s. 17 (1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification.

The appeal fails and is dismissed with costs.

R.K.P.S.  
dismissed.

Appeal