

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.11315 of 2013(O&M)

Date of decision:17.11.2015

Gurnam Singh and others

....Petitioners

VERSUS

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Surinder Garg, Advocate for the petitioners.

Mr. N.D.S. Mann, Additional A.G. Punjab
for the respondents.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the notifications dated 14.05.2012 and 08.03.2013 under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act') for the purpose of construction of Abul Khurana Link Drain No.4 for easing the problem of water logging in the area in question.

The land measuring 10.10 acres was intended to be acquired for the purposes of construction of Abul Khurana Link Drain No.4 from RD-0 to 8000 falling into Abul Khurana Link Drain No.2 at RD-5600 Tehsil Malout, District Muktsar vide notification dated 14.05.2012 published under Section 4 of the Act.

The arguments of learned counsel for the petitioners are two-fold. Firstly that the substance of the notification was not pasted or

published on the notice board in the locality in question, thus, the petitioners were deprived of their right to file objections under Section 5-A of the Act. It is further contended that the proposed drain bifurcates the entire land of the petitioners into two which will make the entire land of the petitioners as uncultivable. The drain can be planned in some other manner so as to protect the land of the petitioners from being bifurcated.

In an additional affidavit filed, Sh. Gulshan Rai Nagpal, Executive Engineer, Drainage Construction Division, Faridkot has averred that notifications under Section 4 and 6 of the Act were published in the Government Gazette on 14.05.2012 and 08.03.2013, respectively. Notification under Section 4 of the Act was also published in English newspaper 'Hindustan Times' and Punjabi newspaper "Jag Bani" on 25.07.2012 whereas notification under Section 6 was published in same English newspaper and newspaper in vernacular language on 20.03.2013. It is also averred that wide publicity of the intended acquisition was done in the village by making announcements from the village Gurudwara.

The argument of learned counsel for the petitioners is that the substance of the notification is required to be displayed on the notice board on a conspicuous part of the area in question. Since there was no such publication, therefore, the pre-requisite condition for a valid publication of notification under Section 4 of the Act has not been satisfied.

We do not find any merit in the argument raised. Section 4 of the Act provides that a notification is required to be published in the Official Gazette and in two daily newspapers of which at least one shall be in the regional language having circulation in the locality. The Collector is

further required to cause public notice of the substance of such notification to be given at the convenient places in the said locality.

Section 4 of the Act reads as under:-

“4. Publication of preliminary notification and powers of officers thereupon.-- (1) Whenever it appears to the appropriate government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,-

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose.

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.”

The notification under Section 4 of the Act was published in the official gazette and also in the two newspapers. The substance of the

notification was also announced from local Gurudwara. Thus all the modes of the publications stand satisfied. In view of the said fact, we do not find any infirmity in publication of the notification under Section 4 of the Act.

In respect of the argument that the proposed drain will bifurcate the land of the petitioners, we find that the stand of the respondents is that the area is under severe water logging problem. The *abadies* and surroundings of village Abul Khurana are at low lying area and that during the rainy season the rain water accumulates and damages the abadies and agricultural land which required immediate attention. The project has been sanctioned in the interest of farmers including the petitioners. In respect of bifurcation of the land, the respondents have averred to the following effect:-

“12. That the contents of this para are denied as Abul Khurana Link Drain No.4 From RD 0-8000 was proposed to relieve the farmers alongwith the petitioners of this area from the problem of water logging. Wherever the land is bifurcated due to the construction of this drain necessary Bridges, Field Paths and Water Course X-ings will be constructed alongwith the construction of said drain. This way there will be no loss of irrigation or approach to the fields of petitioners.

13. The contents of this para are denied as construction of drains is a technical job and the alignment of this drain has been so proposed as to give maximum relief to the farmers including the petitioners. Utmost care has been taken that there is no unnecessary wastage of agriculture land and purpose of construction of this drain is achieved most efficiently. This drain has its own catchment area therefore, other drain existing in the area cannot handle the problem of area to be catered by this drain.”

The drain is planned for easing the problem of water logging. Such drain cannot be constructed anywhere. The drain has to be such which can have natural flow of the water. Such aspects are required to be examined by the experts alone. The drain is to serve the larger public

interest of easing the problem of water logging. If the land of the petitioners is bifurcated, the Court cannot come to the help of the petitioners to stop the construction of drain. The respondents have undertaken to provide bridges, field paths and water course crossings etc. to ease the problem of the petitioner which he may suffer individually.

Keeping in view the larger public interest which the drain will serve, the individual interest cannot be preferred. In view thereof, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

NOVEMBER 17, 2015
'D. Gulati'

(RAJ RAHUL GARG)
JUDGE