

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

**CWP No. 266 of 2006
Date of decision : 15.12.2016**

Bhag Singh and others

.....Petitioners

v.

State of Punjab and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present : Mr. H.S. Grewal, Advocate, for the petitioners
Mr. Gaurav Garg Dhuriwala, Dag, Punjab
Mr. R.S. Khosla, Senior Advocate with
Mr. Sarvesh Malik, Advocate, for respondents No. 2 and 3

Mahesh Grover, J. (Oral) :

This is a petition under Article 226 of the Constitution of India seeking quashing of the notification issued by the State under Sections 4 and 17 of the Land Acquisition Act, 1894 (hereinafter known as the “Act of 1894”). Although other prayers for declaring Section 17 (3-A)(a) of the Act of 1894 ultra vires the provisions of the Constitution of India, in particular Article 31-A has also been made, but arguments have been addressed only on the first aspect of the matter, limited to the quashing of the notification issued under Section 17 (3-A)(a) of the Act of 1894.

With an intent to lay down sewerage channel, a notification under Section 4 followed by Sections 6 and 17 of the Act were issued on 2.12.2003, 3.12.2003. The award was announced on 26.12.2005 and in the case of the petitioners, it pertains to an area of 7.15 acres.

However, another notification came to be issued seeking to acquire

57.41 acres, again for the same purpose, which was challenged by way of CWP No. 5466 of 2005, in which the State took up a stand to release 43.482 acres of land, in view of which the said writ petition was withdrawn. The challenge is now limited to the acquisition of 7.15 acres, which was the original acquisition, initiated to lay down sewerage pipes from the land of the petitioners.

The challenge has been mounted to contend that the acquisition is bad for the following reasons :-

- 1) that the purpose voiced to invoke the emergency provision to acquire a land could not be altered to intend utilization of the land for any other purpose than the one for which acquisition was initiated in the first place;
- 2) that the award being beyond two years, was violative of the provisions of Section 11 A of the Act of 1894 and thus, the entire proceedings stood vitiated.

Learned counsel for the petitioners, however, in all fairness, states that since emergency provisions were invoked, there would be no cause for restitution of the land but the State would be obliged to go into the process again, and in this regard, he has placed reliance on two judgments of the Hon'ble Supreme Court in the cases of **“Laxmi Devi v. State of Bihar and others, 2015 (10) SCC 241”** and **“Soorajmull Nagarmull v. State of Bihar and others, 2015 (10) SCC 270”**. Reference has been made to the following observations of the Hon'ble Supreme Court to enhance their case :-

“28. We do, however, recognize that Satendra Prasad Jain has been interpreted more broadly in the past. In Allahabad Development Authority vs. Naziruzzaman, Department of Telecommunications v. Madan Mohan Pradhan and Banda Development Authority, Banda v. Mota Lal Agarwal, this Court has dismissed the landowners' challenges to the respective acquisitions on the basis

of Avinash Sharma and Satendra Prasad Jain. It is pertinent to note that all three of these cases were brief in their explanations of Avinash Sharma and Satendra Prasad Jain and did not examine their rationes decidendi, their innate contradictions, their intentions or their consequences at any length. We thus feel it appropriate to rely on our own detailed exploration of these cases, as opposed to simply placing reliance on the largely contradictory case law that has developed over the years. It was for this reason that we had revisited the curial concept of ratio decidendi.

29. The scenario before us depicts the carelessness and the callousness of the State, quite different from the situation in Satendra Prasad Jain and Avinash Sharma. The Appellants herein are being denied just and fair compensation for their land in proceedings which commenced in 1987, despite the directions of the High Court passed as early as in 1988 to pass an award within four months. The *raison d'être* behind the introduction of Section 11A was for the landowners to have a remedy in the event of an award not being passed expeditiously.

If Satendra Prasad Jain is interpreted to mean that Section 11A will not apply to any acquisition under the urgency provisions, landowners such as the Appellants before us will have no protection, even if they are not paid full compensation for their land for decades. This cannot be in keeping with the legislative intent behind this Section. Furthermore, keeping empirical evidence in sight, we make bold to opine that circumstances require this Court to reconsider its view that even if the stated public interest or cause has ceased to exist, any other cause can substitute it, especially where the urgency provisions have been invoked.

30. We feel it imperative to distinguish between the setting aside of an acquisition and the reversion of possession to the erstwhile landowners. While the L.A. Act and the judgments discussed above do not allow for the latter, we are of the considered opinion that this does not necessarily imply that the former is also not an option.

Both the abovementioned cases dealt with a factual situation in which the Government was attempting to set the acquisition of the land at naught so that they would not have to pay compensation to acquire it. Setting aside of the acquisition in those cases was tantamount to reverting the possession to the original owners. In this scenario, however, the two do not have to go hand in hand. In allowing the acquisition of land that the Government finds necessary to be set aside, we would not necessarily be holding that the land revert to the appellants, as the alternative of permitting the Government to keep possession provided it re-acquires the land with a new Section 4 notification exists. This option, particularly in the present factual matrix, does the least violence to the intent and content of the L.A. Act, in that it upholds Section 11-A even in cases of acquisition under Section 17 while preserving the requirement of Section 17 that the unencumbered possession of the land remain vested in the Government. It also protects the rights of the landowners, thus fulfilling the intent of Section 11A, while allowing the Government to acquire land in cases of emergencies without its title being challenged, which is the avowed intention of Section 17. Any other interpretation of the law would serve to protect only those landowners who had approached the Court to stop the Government from undoing an emergency acquisition, while leaving in the cold equally aggrieved landowners seeking to enforce their right to fair compensation for their land. Even equity demands that the party bearing the consequence of the delay in the Award ought not to be the innocent landowner, but the errant State.

31. While we presently refrain from passing any orders or direction pertaining to or interfering with the possession of the Government over the subject land, the acquisition dated 18.11.1987 is set aside for non-compliance with the provisions of Section 11A of the L.A. Act. As all the subsequent notifications by the Respondent State having lapsed, the respondent State is directed to initiate fresh acquisition proceedings or take any other action available to it in accordance with law within six weeks from today. The respondent-

State is restrained from contending that the land is no longer required by it or that it should revert to the Appellants. The Appeal is allowed in these terms.”

In **Soorajmull Nagarmull's** case (supra), the Supreme Court observed likewise but in totally different circumstances. In this case, acquisition process was initiated by issuing notifications under Sections 4 and 6 of the Act of 1894 on 25.3.1981 invoking the urgency provisions contained in Section 17 of the Act. The operation of Section 5-A was simultaneously made inapplicable by resorting to Section 17(4) of the Act. Possession of the land was taken soon thereafter on 20.8.1981. The land was subsequently declared to be a 'protected forest' and then the proceedings were initiated afresh in another notification under Section 4 on 24.5.1995, followed by notification dated 17.8.1996, by invoking the urgency provisions of Section 17 again dispensing with the provisions of Section 5-A.

This acquisition was challenged before the High Court at Patna to contend that the same land was being acquired again which reflected non application of mind. The State took up a plea that the earlier acquisition proceedings had lapsed due to delay in publishing the award.

On 17.11.2003, the State took steps to annul the second proceedings by relying on Section 48. Another writ petition came to be filed seeking release of the land in question. A public interest litigation also came to be filed and during the pendency of these writ petitions, an award was published on 27.9.2006, purportedly in continuity of the 1981 acquisition proceedings. The State took up a plea that cheques were issued to the land owners but inadvertently with a wrong name and when the mistake was sought to be rectified, review was sought during the pendency of the proceedings.

Before the High Court, the pleas raised by the land owners were that since no award had been passed till 2006, the application had lapsed under Section 11 A and; that proceedings under Section 11 were initiated in the year 1995-96 and, besides provisions of Section 17 were not available with the State.

It was noticed that 1981 acquisition had never been challenged by the writ petitioners.

It was in the wake of these convoluted facts that the Court observed that the **Laxmi Devi's** case (supra), the relevant of which has been extracted above, would be applicable. Section 11A was held to be attracted keeping in view the peculiar circumstances of the case which were not available in the case of “**Satender Prasad Jain v. State of UP, 1993 (4) SCC 369**” and “**Lt. Governor of HP v. Avinash Sharma, 1970 (2) SCC 149**”. It was on account of these un-warranted delays that the Hon'ble Supreme Court sought to draw distinction from the observations of the **Satender Prasad Jain's** case (supra), which may be relevant for the present purpose and these are extracted hereinafter :-

“When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.”

Therefore, the applicability of Section 11A in a sense that if award is delayed, it would nullify the acquisition proceedings, would be an argument

raised only to be rejected in the present case, as the facts do not justify such a conclusion.

The view in **Satender Prasad Jain's** case (supra) was also approvingly noticed in **“Sanjeevnagar Medical & Health Employees' Cooperative Housing Society v. Mohd. Abdul Wahab and others, 1996 (3) SCC 600”**, which is as under :

“.....In **Satendra Prasad Jain v. State of UP 6**, the question arose : whether notification under Section 4(1) and the declaration under Section 6 get lapsed if the award is not made within two years as envisaged under Section 11-A? A Bench of three judges had held that once possession was taken and the land vested in the Government, title to the land so vested in the State is subject only to determination of compensation and to pay the same to the owner. Divesting the title to the land statutorily vested in the Government and reverting the same to the owner is not contemplated under the Act. Only Section 48(1) gives power to withdraw from acquisition that too before possession is taken. That question did not arise in this case. The property under acquisition having been vested in the appellants, in the absence of any power under the Act to have the title of the appellants divested except by exercise of the power under Section 48(1), valid title cannot be defeated. The exercise of the power to quash the notification under Section 4(1) and the declaration under Section 6 would lead to incongruity.”

Therefore, we would conclude particularly, in the given set of facts when the award was delayed merely by 23 days to cross the statutory limits of two years the ratio of **Laxmi Devi** and **Soorajmull's** cases (supra) would not be available to the petitioners whereas, **Satender Prasad Jain's** case (supra) observations would be squarely applicable.

Having said so, we would proceed to examine the next issue

regarding the change of purpose of acquisition.

The land was acquired for a public purpose i.e. to lay sewerage pipes and to create a storm water drain but instead of utilizing the land for this purpose as specified in acquisition of 2003, some other land was utilized for the said purpose, acquired pursuant to a subsequent notification of 2005, acquiring more than 57.41 acres, out of which, eventually 43.482 acres was released.

The acquisition of the land of the petitioners measuring 7.5 acres originally stated for the purpose of laying sewerage pipes, is now sought to be utilized for a road, as per the master plan, dividing Sectors 81 and 84 and also a part of Sector 81.

There is no doubt in our mind that this would also constitute a public purpose as did the original cause and thus, in view of the observations made by the Hon'ble Supreme Court in **“National Thermal Power Corporation Ltd. v. Mahesh Dutta and others, 2009 (3) SCC 375”**, where it was categorically observed that a change of purpose would be permissible when proceedings under Section 17 have been initiated, provided, it seeks to serve a public purpose, we would disagree with the contention of learned counsel for the petitioners in this regard as well. Extracted portion of the relevant judgment is reproduced here :

“It is furthermore neither in doubt nor in dispute that the initiation of the acquisition proceedings at the instance of the appellant was for setting up of a thermal power station. It had to be shifted to another site only because the Central Government asked it to do so keeping in view the ecological perspective in mind. It is, therefore, permissible for the appellant to put the land in question which has vested in it for another purpose which would come within the purview of any public purpose as has been noticed by this Court in

Khatri (supra) and for any other purpose as has been noticed by this Court in Keerwani Ammal (supra)

Yet again in “**Kasturi & others v. State of Haryana, (2003) 1 SCC 335**”, this Court has held :

“12. If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land. As already noticed, the State Government in this regard has already initiated proceedings for resumption of the land. In our view, there arises no question of any unjust enrichment to the appellant Company.”

In “**Ravi Khullar and another v. Union of India and others, 2007 (2) RCR (Civil) 757**”, it was contended :

16. The learned Additional Solicitor General appearing on behalf of the respondents submitted that having regard to the authorities on the subject the question is no longer res integra. It is not as if lands acquired for a particular public purpose cannot be utilised for another public purpose. He contended that as long as the acquisition is not held to be mala fide, the acquisition cannot be invalidated merely because the lands which at one time were proposed to be utilised for a particular public purpose, were later either in whole or in part, utilised for some other purpose, though a public purpose. He, therefore, submitted that some change of user of the land, as long as it has a public purpose, would not invalidate the acquisition proceeding which is otherwise valid and legal.”

For the aforesaid reasons, we dismiss the present writ petition.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

15.12.2016
Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No