

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1897-1994 (O&M)
Reserved on: 11.03.2024
Date of Decision : April 10, 2024

DHANRAJ (DECEASED) THROUGH HIS LRs AND OTHERS
...Petitioners
V/S
THE STATE OF HARYANA AND OTHERS
...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present : Mr. Chetan Mittal, Senior Advocate with
Mr. Mayank Aggarwal, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners ask for quashing of a notification dated 27.03.1992 (Annexure P-2), as became issued by respondent No.1, thus under Sections 4 and 17 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”). Furthermore, a prayer is also made for the quashing of a notification No.14/38/91-EDU-1(3) dated 24.02.1993 (Annexure P-3), as became issued under Section 6 of the Act of 1894.

GROUND OF CHALLENGE

2. The learned Senior counsel for the petitioners contends, that the notification (supra), as became issued through invocation of the urgency

provisions embodied in Section 17 of the Act of 1894, though were for a public purpose, namely for the construction of cycle stand, canteen and play grounds of Government College, Bawal, Tehsil Bawal, District Rewari, but he submits that the said notification is colourably issued and/or is whimsically issued.

3. The learned Senior counsel for the petitioners contends, that on the subject lands, the petitioners have installed a saw mill, and, have also constructed several shops on the main road i.e. Sawan road which is connected to Delhi Jaipur National highway. He further submits, that they have also raised shops on Jaipur National highway. The constructions (supra), are averred to be raised on the subject lands prior to the issuance of a notification under Section 4 of the Act of 1894. In addition, learned Senior counsel also submits, that the petitioners have a *samadhi* of their ancestors thus existing on the subject lands.

4. That since the respondent has invoked the urgency statutory provisions, as embodied in Section 17 of the Act of 1894, provisions whereof are extracted hereafter, therefore the petitioners contend that since in terms of sub-Section 4 thereof, rather the provisions of Section 5-A carried in the Act of 1894, are not made applicable, upon, invocation of the statutory urgency provisions (supra).

“17. Special powers in cases of urgency.—(1) In cases of urgency, whenever the [appropriate Government], so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government]], free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, [or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity,] 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:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and, trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

[(3A) Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-section (3),—

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2) (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.]

(3B) The amount paid or deposited under sub-section (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of Collector's award, be recovered as an arrear of land revenue.]

(4) In the case of any land to which, in the opinion of the [appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the [appropriate Government] may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time [after the date of the publication of the notification] under section 4, sub-section (1).]”

5. Resultantly, the learned Senior counsel for the petitioners contends, that thereby the petitioners become forestalled to make any protest against the acquisition of their estates. Furthermore, he submits that with the declaration issued under Section 6 of the Act of 1894, becoming notified on 24.02.1993. Therefore, since the declaration issued under Section 6 of the Act of 1894, was so issued, thus much belatedly from the date of issuance of a notification under Section 4 of the Act of 1894, whereby the statutory urgency provision (supra) thus became invoked. In sequel, it is contended that the invocation of the statutory urgency provision, thus was done colourably, capriciously, and/or arbitrarily. Consequently, it is further argued that the notifications respectively issued under Sections 4 and 6 of

the Act of 1894, for the public purpose (supra), but are required to be quashed, and, set aside.

6. The learned Senior counsel for the petitioners in making a submission that the belated issuance of a declaration under Section 6 is *per se* personificatory that there was no urgent or emergent requirement prevailing, upon the acquiring authority to, in the exercise of its power of *eminent domain* rather acquire the petitioners' lands, thus has depended, upon a judgment rendered by the Hon'ble Apex Court in "**Hamid Ali Khan V. State of U.P.**", **2021 (20) SCC 65 242**, relevant paragraphs 54, 61 whereof are extracted hereinafter.

"55. It is to be noticed that the declaration under section 6 was issued only on the eve of expiry of one year from 11.4.2008. The urgency indicated in the file is to tide over the bar of issuance of declaration under section 6 beyond one year from 11.4.2008 the date on which notification under 4/17 was issued. There is no indication in the file about the urgency for issuing the declaration immediately after the notification under Section 4. In other words, the file does not reveal any urgency at all associated with the need to acquire the land immediately which constitutes the foundation for invoking the urgency clause.

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61. We would therefore think that in the facts of this case, having regard to the nature of the scheme, the delay with which section 6 declaration was issued, possession taken and the nature of the material on the basis of which the proposal was processed, the appellants are justified in contending that the notification under 17(4) dispensing with the inquiry under Section 5A was unjustified."

7. The learned Senior counsel for the petitioners also makes dependence, upon a judgment rendered by the Hon'ble Apex Court in case titled as "**Devender Kumar Tyagi and others V. State of Uttar Pradesh and others**", reported in **2011 (9) SCC 164**, wherein, in the relevant paragraph

28 thereof, paragraph whereof becomes extracted hereinafter, it has been mandated that any inordinate delay in the issuance of a declaration under Section 6 of the Act of 1894, from the date of the publication of a notification under Section 4 of the Act of 1894, is a candid indicator that the acquiring authority has proceeded at a slow pace, and, as such, is also an exhibition of lethargical and lackadaisical attitude of the government. Resultantly, when therebys the Hon'ble Apex Court rather invalidated the invocation of the urgency provisions, as cast under Section 17 of the Act of 1894, whereby the land-losers become deprived of their valuable rights to raise objections against their estates becoming put to acquisition. Therefore, it was declared therein, that the invocation of Section 17 of the Act of 1894, is done in a most arbitrary and whimsical manner.

“28. In the facts and circumstances of the present case, it is clear that this Court, vide its Order dated 17.08.2004, has issued a direction to the respondents to relocate the bone mills and allied industries causing environment pollution and health hazards as per the recommendations of the CPCB and, inter alia, respondents were also directed to identify the area for relocation. Pursuant to this, respondents have filed an affidavit in the month of December, 2004 specifying the construction of the Leather City Project at Hapur in Ghaziabad. Subsequently, it was only after the lapse of two years, the State Government had issued a Notification under Section 4 on 03.07.2006 and the same was published on 04.7.2006. Thereafter, the State Government took more than 17 months in order to make a declaration of the Notification under Section 6 from the date of publication of the Notification under Section 4 of the LA Act. In view of the above circumstances, it is crystal clear that the government functionary has proceeded at very slow pace at two levels, that is, prior to the issuance of the Notification under Section 4 and post the issuance of the Notification under Section 4, for acquisition of the land for construction of the Leather City Project, which undoubtedly

is a public purpose. Therefore, the above series of the events amply exhibit the lethargical and lackadaisical attitude of the State Government. In the light of the above circumstances, the respondents are not justified in invoking the urgency provisions under Section 17 of the LA Act, thereby, depriving the appellants of their valuable right to raise objections and opportunity of hearing before the authorities in order to persuade them that their property may not be acquired.”

8. The learned Senior counsel for the petitioners also makes dependence, upon a judgment rendered by the Hon’ble Apex Court in case titled as “Anand Singh and Another Vs. State of Uttar Pradesh and Others”, reported in 2010 (11) SCC 242, wherein, in the relevant paragraphs 52 and 55 thereof, paragraphs whereof becomes extracted hereinafter, it has been observed that if the acquiring agency takes about a year in issuing a declaration under Section 6 of the Act of 1894, from the issuance of a notification under Section 4 of the Act of 1894, thus the acquiring authority could not justify the dispensation of right to file objections under Section 5-A of the Act of 1894.

“52. Adverting now to the facts of the present case, it would be seen that somewhere in February, 2000, a Land Selection Committee was constituted to identify the availability of land for a housing colony by the GDA. In April, 2001, the Committee so constituted inspected the site and proposed acquisition of land in Village Manbela and few other villages but nothing further was done as the tenure holders opposed the acquisition of their land and the Commissioner, Gorakhpur in public interest stayed proposal for acquisition. Abruptly the notifications for the proposed acquisition were issued on November 22, 2003/February 20, 2004 under Section 4 of the Act. In these notifications urgency clause was invoked and the enquiry under Section 5A was dispensed with. Then, for more than one year nothing was done. It was only on December 28, 2004 that a declaration under Section 6 was made. If the matter could

hang on from April, 2001 to November 22, 2003/February 20, 2004 before the notifications under Section 4 were issued and for about a year thereafter in issuance of declaration under Section 6, acquisition proceedings could have been arranged in a manner so as to enable the land owners and/or the interested persons to file their objections under Section 5A within the prescribed time and complete the enquiry expeditiously.

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55. In the facts and circumstances of the present case, therefore, the Government has completely failed to justify the dispensation of an enquiry under Section 5A by invoking Section 17(4). For this reason, the impugned notifications to the extent they state that Section 5A shall not apply suffer from legal infirmity. The question, then, arises whether at this distance of time, the acquisition proceedings must be declared invalid and illegal.”

9. The above reliances, as made, upon the judgments (supra), by the learned Senior counsel for the petitioners, is contended to become well rested upon an ably constructed factual foundation, inasmuch as, it is contended before this Court, that a specific uncontested averment has been raised by the petitioners, that the delay as has occurred in the instant case, thus in the issuance of a declaration under Section 6 of the Act of 1894, since the issuance of notification under Section 4 of the Act of 1894, rather is almost 11 months, thus thereby in terms of the expostulations of law made in the verdicts (supra), the urgency clause as invoked by the acquiring authority was thus invoked malafidely and/or was exercised colourably.

10. The learned Senior counsel for the petitioners has also referred to Annexure R-1/1 dated 12.07.1990, annexure whereof, is a letter addressed by the Director of Higher Education, Haryana, Chandigarh to the Deputy Commissioner, Rewari to acquire the lands. Moreover, he also makes an allusion to Annexure R-2/2, which is also a reminder to the effect (supra), by

the Director, Higher Education, Haryana, Chandigarh to the District Commissioner, Rewari, thus for acquiring the lands. Furthermore, also a reference is made to Annexure R-3/3, which is again a reminder (supra), made by the Director of Higher Education, Haryana to the Deputy Commissioner, Rewari for acquiring the lands. Subsequently on 27.03.1992, a notification under Section 4 of the Act of 1894, was issued, and, that too with almost 2 years lapsing after a decision being made by the acquiring authority to acquire the petition lands.

11. Therefore, the learned Senior counsel apart from submitting that with the issuance of a declaration under Section 6 of the Act of 1894, being made but after an elongated spell of time elapsing, since the issuance of a notification under Section 4 of the Act of 1894, rather has also contended before this Court, that the delay in the issuance of a notification under Section 4 of the Act of 1894, is exemplificatory of lethargy and indolence on the part of the acquiring authority to acquire the petitioners' estates, therebys, he also submits that the invocation of the urgency provisions rather is made in a *malafide* and in a colourable manner, just for depriving the petitioners from making protests against the acquisition of their estates, wherebys but naturally the petitioners have been untenably condemned unheard.

12. Lastly, the learned Senior counsel for the petitioners submits, that the Hon'ble Apex Court in case titled as "**Darshan Lal Nagpal V. Govt. (NCT of Delhi)**", reported in (2012) 2 SCC 327, has held that urgency clause can be invoked only if a small delay of a few weeks or months, has taken place but he submits that when the above delay is elongated, besides is magnificatory of defeating the land-losers' right to raise objection under

Section 5-A of the Act of 1894. Resultantly, it is contended that the exercise

of power of *eminent domain* by the acquiring authority becomes ridden with a stench of *malafides*. The relevant paragraphs No.29, 35-38, as carried in the verdict (*supra*), are extracted hereinafter.

“29. In the light of the above, it is to be seen whether there was any justification for invoking the urgency provisions contained in Section 17 (1) and (4) of the Act for the acquisition of the appellants' land. The Division Bench of the High Court accepted the explanation given by the respondents by observing that sub-station in East Delhi is needed to evacuate and utilise the power generated from 1500 MW gas based plant at Bawana. While doing so the Bench completely overlooked that there was long time gap of more than five years between initiation of the proposal for establishment of the substation and the issue of notification under Section 4 (1) read with Section 17 (1) and (4) of the Act. The High Court also failed to notice that the Government of NCT of Delhi had not produced any material to justify its decision to dispense with the application of Section 5A of the Act. The documents produced by the parties including the notings recorded in file bearing No. F.S(11)/08/L&B/LA and the approval accorded by the Lieutenant Governor do not contain anything from which it can be inferred that a conscious decision was taken to dispense with the application of Section 5A which represents two facets of the rule of hearing that is the right of the land owner to file objection against the proposed acquisition of land and of being heard in the inquiry required to be conducted by the Collector.

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35. It is also apposite to mention that no tangible evidence was produced by the respondents before the Court to show that the task of establishing the substation at Mandoli was required to be accomplished within a fixed schedule and the urgency was such that even few months time, which may have been consumed in the filing of objections by the land owners and other interested persons under Section 5A(1) and holding of inquiry by the Collector under Section 5A(2), would have frustrated the project. It seems that the Bench of the High Court was unduly influenced by the fact that consumption of power in Delhi was increasing everyday and the DTL was making an effort to ensure supply of power to different areas and for that purpose establishment of substation at village Mandoli was absolutely imperative. In our view,

the High Court was not justified in rejecting the appellants' challenge to the invoking of urgency provisions on the premise that the land was required for implementation of a project which would benefit large section of the society.

36. It needs no emphasis that majority of the projects undertaken by the State and its agencies/instrumentalities, the implementation of which requires public money, are meant to benefit the people at large or substantially large segment of the society. If what the High Court has observed is treated as a correct statement of law, then in all such cases the acquiring authority will be justified in invoking Section 17 of the Act and dispense with the inquiry contemplated under Section 5A, which would necessarily result in depriving the owner of his property without any opportunity to raise legitimate objection. However, as has been repeatedly held by this Court, the invoking of the urgency provisions can be justified only if there exists real emergency which cannot brook delay of even few weeks or months. In other words, the urgency provisions can be invoked only if even small delay of few weeks or months may frustrate the public purpose for which the land is sought to be acquired. Nobody can contest that the purpose for which the appellants' land and land belonging to others was sought to be acquired was a public purpose but it is one thing to say that the State and its instrumentality wants to execute a project of public importance without loss of time and it is an altogether different thing to say that for execution of such project, private individuals should be deprived of their property without even being heard.

37. It appears that attention of the High Court was not drawn to the following observations made in State of Punjab v. Gurdial Singh (supra):

"it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting

itself into immediate forcible taking, makes a travesty of emergency power."

38. A recapitulation of the facts would show that the idea of establishing 400/220 KV sub-station was mooted prior to August, 2004. For next almost three years, the officers of the DTL and the DDA exchanged letters on the issue of allotment of land. On 28.7.2008 Secretary (Power), Government of NCT of Delhi-cum-CMD, DTL made a suggestion for the acquisition of land by invoking Section 17 of the Act. This became a tool in the hands of the concerned authorities and the Lieutenant Governor mechanically approved the proposal contained in the file without trying to find out as to why the urgency provisions were being invoked after a time gap of five years. If the sub-station was to be established on emergency basis, the authorities of the DTL would not have waited for five years for the invoking of urgency provisions enshrined in the Act. They would have immediately approached the Government of NCT of Delhi and made a request that land be acquired by invoking Section 17 of the Act. However, the fact of the matter is that the concerned officers/functionaries of the DTL, the DDA and the Government of NCT of Delhi leisurely dealt with the matter for over five years. Even after some sign of emergency was indicated in letter dated 9.9.2008 of the Joint Secretary (Power), who made a mention of the Commonwealth Games scheduled to be organized in October, 2010, it took more than one year and two months to the competent authority to issue the preliminary notification. Therefore, we are unable to approve the view taken by the High Court on the sustainability of the appellants' challenge to the acquisition of their land."

CONTENTIONS OF THE LEARNED STATE COUNSEL

13. The learned State counsel has contended that since the petitioners had earlier instituted CWP-8236 of 1992 before this Court, but when the said petition became dismissed, besides when SLP (C) No.2265 of 1993, as became preferred thereagainst before the Hon'ble Apex Court also became dismissed, on 06.04.1993, order whereofs, becomes extracted hereafter.

“....Learned counsel for the petitioners states that the declaration under section 6 was not published within one year. Therefore, it is open to him to challenge the notification as and when issued. The special leave petition is dismissed...”

14. Consequently, it is argued that since the Hon’ble Apex Court dismissed the SLP (supra), but reserved liberty to the petitioners to challenge the declaration issued under Section 6 of the Act of 1894, thus on the ground, that it was not published within one year. Resultantly, it is argued that save and excepting the petitioners challenging the declaration issued under Section 6 of the Act of 1894, on the restricted ground, that it was not published within one year, rather the petitioners are estopped from challenging the notifications (supra), on any other ground.

15. In short, the learned State counsel submits, that excepting the above, there is a complete estoppel against the petitioners to raise the ground(s) (supra), before this Court.

FINDINGS OF THE COURT

16. For the reasons to be assigned hereinafter the submissions addressed before this Court by the learned State counsel are rejected, and, the arguments (supra), as addressed before this Court by the learned Senior counsel for the petitioners are accepted.

17. Consequently, the writ petition is allowed, with a consequent relief that the notifications are quashed, and, set aside, and, with a direction to the acquiring authority to re-launch acquisition proceedings, through invoking the relevant provisions, as carried in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 (hereinafter referred to as the ‘Act of 2013’).

18. The reason for this Court making the above conclusion arises from the factum, that the above extracted decisions, as become made on 06.04.1993, by the Hon'ble Apex Court, on the SLP (supra), was made much prior to the judgments (supra), becoming rendered by the Hon'ble Apex Court. Therefore, if this Court restricts the onslaught as made to the declaration issued under Section 6 of the Act of 1894, on the limited ground that it was not published within one year, thereby this Court would be *prima facie* wanting in making adherences to the expostulations of law (supra), as made by the Hon'ble Apex Court in the judgments (supra).

19. In sequel, for ensuring that compliances are made to the expostulations of law (supra), as made by the Hon'ble Apex Court, in the verdicts (supra), thereby this Court proceeds to examine whether the said expostulations of law, are required to be adhered to, thus on the ground, that the factual foundation as erected for applying the said expostulations, rather becomes well constructed.

20. For discerning whether the petitioners have well erected or have well constructed the apposite factual strata, for thereons the expostulations of law (supra), becoming applied, this Court has from the records but gathered, that there has been gross indolence and lethargy on the part of the acquiring authority, as the manifestative from Annexures R-1/1 to R-3/3, and Annexure P-2, in its even issuing a notification under Section 4 read with Section 17 of the Act of 1894, whereby the petitioners' lands became subjected to acquisition. The said gross delay is but candidly exemplificatory *qua* the acquiring authority rather than making a fair objective speedy contemplation with respect to the invocation of the urgency clause for

therebys the subject lands being put to emergent acquisition, but has made a

gross delay in its making the said objective contemplation relating to the invocation of the urgency clause. If so, on account of the said delay, even in the issuance of a notification under Section 4 of the Act of 1894, thus the acquiring authority has completely failed to establish that there was ever an urgent requirement for the invocation of the urgency provisions, as carried in Section 17 of the Act of 1894. Therefore, the said delay is manifestative *qua* the invocation of the urgency clause being done *malafidely* and/or with a vice of *sub coloris officio*. Resultantly, even the delay in the making of a notification under Section 4 read with Section 17 of the Act of 1894, is concluded to be but arbitrary and whimsical rather merely for frustrating the petitioners from raising objections or protests against the acquisition of their estates, thus thereby the notification (supra) is hit by the principle of *audi alteram partem*.

21. Evidently the declaration issued under Section 6 of the Act of 1894, was issued almost after 11 months elapsing since the issuance of a defective, flawed, and, vitiated issuance of a notification under Section 4 of the Act of 1894. Since the Hon'ble Apex Court in the judgments (supra), has made expostulations, that the delay in the issuance of a declaration under Section 6 of the Act of 1894, is an exhibition of indolence and lethargy on the part of the acquiring authority, besides is manifestative of thereby the invocation of the urgency clause at the instance of the acquiring authority rather being ridden with a vice of *malafides*. Consequently, the said delay when is combined with the initially made ill delay in the issuance of a notification under Section 4 of the Act of 1894, thereupon this Court reiteratedly makes an inference, that thereby there was no need at all on the

provisions. Therefore, this Court concludes that the invocation of the apposite urgency provisions was done *malafidely*, and/or was done *sub coloris officio*. Resultantly, this Court is constrained to discountenance the issuance of notifications (supra).

FINAL ORDER

22. Consequently, the instant writ petition is allowed. The impugned notifications are quashed, and, set aside. However, liberty is reserved to the acquiring authority to re-launch acquisition proceedings through invoking the relevant provisions, as carried in the Act of 2013.

23. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

10.04.2024

Ithlesh

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No

(SUKHVINDER KAUR)
JUDGE