

Jaswindkr Kaur and Others Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 14, 2009

Acts Referred: Land Acquisition Act, 1894 " Section 17(1), 17(1)(2), 17(2), 4, 5
Northern India Canal and Drainage Act, 1873 " Section 20, 30A, 30C

Citation: (2011) 1 ILR (P&H) 91

Hon'ble Judges: Satish Kumar Mittal, J; M.S. Sullar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.S. Sullar, J.

As the points raised in the above mentioned writ petitions are inter-connected. therefore, we propose to dispose of the same by this common judgment, in order to avoid repetition of the facts.

2. The following principal controversies are involved in these writ petitions :-

(i) Whether the authorities under the Northern India Canal and Drainage Act, 1873 (hereinafter to be referred as "the Canal Act") have the

jurisdiction to formulate the scheme to extend the irrigation facilities to the land of more farmers ?

(ii) Whether the urgent acquisition proceedings sought to acquire the land for implementing such irrigation scheme are illegal or arbitrary on the

ground of alleged delay ?

3. The matrix of the facts, culminating in the commencement, relevant for disposal of the instant writ petitions and emanating from the record, is that

in the wake of request of S/Shri Teja Singh, Ranjit Singh. Baljit Kaur, Harnek Singh, Panch, Sarpanch of Gram Panchayat and other co-sharers of

village Ferozeshah, an irrigation scheme dated 5th July. 2000 (Annexure P2) was prepared by the Divisional Canal Officer (for bravery "DCO")

under the provisions of the Canal Act, for the extension of canal distributory from Burji No. 9700 TR to Burji No. 17600 IF, in order to extend

the irrigation facility to more land to raise the "crop yield" of the farmers. The appeal filed by Gurdeep Singh son of Hardip etc. (father-in-law of

Jaswinder Kaur-petitioner No. 1) assailing the said scheme, was dismissed by the Superintending Canal officer (for short "SCO"), - vide order

dated 10th July, 2001 (Annexure P3). Gurdeep Singh and some other right holders, challenged the impugned orders dated 8th June, 2000 and 5th

July, 2000 (Annexure P2 and P3) respectively by filing C WP No. 10912 of 2001, which ultimately was dismissed as withdrawn by this Court,--

vide order dated 23rd May, 2002 (Annexure P1), without any permission to file fresh one.

4. Now the present petitioner No. 1--Jaswinder Kaur (daughter-in-law of Gurdeep Singh) (petitioner in C WP No. 10912 of 2001) and other

share holders, have again challenged the orders 8th June. 2000, 5th July. 2000 and 10th July, 2001 (Annexures P2, P4 and P5) respectively,

through present writ petition No. 17308 of 2007, mainly on the grounds that the impugned orders are beyond jurisdiction and scope of the

provisions of the ("anal Act and that no objections were invited before publication of the scheme, therefore, the scheme is illegal and without

jurisdiction.

5. It is undisputed fact that in order to implement the above scheme, the State of Punjab sought to acquire the strip of land measuring 3.64 acres,

by invoking the urgency provisions under the Land Acquisition Act, 1894 (hereinafter to be referred as ""the LA Act""). Petitioners have challenged

the impugned acquisition-proceedings in CWPNo. 11564 of 2009 on the grounds of delay and non-existence of urgency in the matter.

1. CWP No. 17308 of 2007

6. According to the petitioners, the authorities under the Canal Act were not competent to frame the scheme, so as to reduce their existing water

supply and further to provide additional irrigation facility to the land of the private respondents. They claimed that the impugned scheme dated 8th

June, 2000 (Annexure P2) is without jurisdiction and the S.C.O. has illegally dismissed their appeal, vide order dated 10th July. 2001 (Annexure

P5).

7. At the first instance, learned counsel for the petitioners canvassed that once an outlet has been provided either in accordance with the scheme or

on the basis of any other order, the same cannot be closed/ reduced in size or shifted from its existing site by the authorities, as there is no specific

provision under the Canal Act in this respect. Thus, according to the learned counsel, the impugned scheme (Annexure P2) is without jurisdiction

and in support of this contention, he has placed reliance on the Judgment of this Court in Madan Lal and Others versus The Chief Engineer Canals

and Others 1983 PLJ 1.

8. After hearing the learned counsel for the parties and after going through the record, we cannot accept the argument of learned counsel for the

petitioners. In the above mentioned case, it was observed that "the channel and the contrivance do not fall within the meaning of term

watercourse"" as known to the Canal Act, and if that is so, none of the provisions of sections 20, 30-A, 30-B and 30-C would be applicable"".

There is hardly any dispute about this proposition of law but the same is not applicable to the facts of present case, wherein it is not disputed that

the irrigation scheme was prepared by D.C.O. for further extension of canal distributory and State of Punjab acquired the strip of land for its

implementation. Meaning thereby, the State is extending canal distributory at its own expenses, then naturally provisions of ("anal Act mutatus

mutandi are applicable in this case.

9. An identical question was decided by a Division Bench of this Court in Kundan Lal versus The Divisional Canal Officer and Others 1968 PLJ

324. Having interpreted the relevant provisions of the Canal Act, it was ruled that no doubt. Section 20 of the Canal Act does not authorize either

the opening or closing or reduction in size of existing outlet, but at the same time, it has categorically been held that the authorities have the powers

to formulate such scheme for extension of canal distributor to provide more irrigation facility to the farmers and to perform other irrigation related

functions u/s 30-A of the Canal Act.

10. As indicated earlier, the impugned scheme (Annexure P2) was prepared not to close any outlet adversely affecting the petitioners but it

(scheme) was prepared to extend the canal distributory from Burji No. 9700 TR to Burji No. 17600 TF to enable the other landowners to irrigate

their land and to raise their ""crop-yield"" at State expense. Therefore, this argument of learned counsel for the petitioners stricto-sensu deserves to

be repelled, in view of law laid down in Kundan Lal's case (supra).

11. On the other hand, the respondents in their written statement have reiterated that in the wake of demand of 39 share holders, the scheme of

extension of canal distributory in question was prepared and duly published after following the due procedure. The petitioner appeared and after

hearing them and other participants, their objections were rejected by the DCO in the interest of large number of farmers, and scheme was finally

approved. In this view of the matter, we are of the view that canal authority has the jurisdiction to formulate the irrigation scheme (Annexure P2)

under the Canal Act.

12. The next submission on behalf of the petitioners that there is no need to extend the canal distributor also cannot be accepted, because it is the

sovereign function of the State to provide more irrigation facilities to the agriculturists, keeping in view the welfare of its citizens, the petitioners

cannot legally be permitted to put hurdle, in any manner in the implementation of such welfare activities of the State.

13. The matter did not rest there. Admittedly, the scheme was prepared on 5th July, 2000. The appeal filed by the other share holders was also

dismissed on 10th July, 2001, but the petitioners have filed the present CWP No. 17308 of 2007 on 12th November, 2007, after more than seven

years of framing the scheme. No explanation muchless reasonable. in this respect, has either been pleaded or urged on behalf of the petitioners, to

explain such inordinate and unexplained delay. In such situation, we are of the opinion that this writ petition deserves to be dismissed on the

grounds of delay "latches as well.

14. Moreover, it is the case of the petitioners that CWP No. 10912 of 2001 filed by Gurdeep Singh and others right holders challenging the

impugned order was dismissed as withdrawn on 23rd May. 2002. It has been specifically pleaded in the written statement filed on behalf of the

respondents that Gurdeep Singh was none else but father-in-law of Jaswinder Kaur wife of Basant Singh son of Gurdeep Singh--petitioner No. 1.

It means, the writ petition filed by the father-in-law of Jaswinder Kaur petitioner No. 1 and other co-sharers challenging the impugned orders has

already been dismissed as withdrawn and the second writ petition on the same cause of action is not maintainable.

15. However, the argument of learned counsel that dismissal of earlier writ petition will not affect the rights of the present petitioners, is not only

devoid of merit, but misplaced as well, because it has come on record that Gurdeep Singh, father-in-law of petitioner No. 1 and other share

holders, were unsuccessful in that petition. It means, the petitioners in the earlier writ petition litigating their rights claimed in common for themselves

and others and all such persons (like the petitioners) interested in such right shall be deemed to claim under the persons so litigating, which they

have lost. But now they want to revive the lost legal battle, which cannot legally be permitted as per law. Therefore, the petitioners are estopped

from filing the present writ petition on the same cause of action, which is otherwise legally barred. Thus, it would be seen from any angle that CWP

No. 17308 of 2007, is devoid of any merit and is liable to be dismissed.

2. CWP No. 11564 of 2009

16. The case of the petitioners in this writ petition further proceeds that the scheme (Annexure P2) could not be implemented without acquisition of

the land required for the purpose. Therefore, the State of Punjab issued preliminary notification dated 26th November, 2008 (Annexure P4) u/s 4

of the L.A. Act and sought to acquire the strip of land measuring 3.64 acres, at public expense for a public purpose, namely, for extension of Ghall

Distributory RD 9700-17600 off-taking at RD 56000/R of Sirhind Feeder in Teshil and District Ferozepur, by invoking the urgency provisions and

dispensing with the objections u/s 5-A of the L.A. Act. Vide notification dated 19th February, 2009 (Annexure P5) issued u/s 6 of the L.A. Act,

the State of Punjab has declared that the land described therein is urgently required for the above said purpose. It is clearly depicted in the

notification (Annexure P5) that in view of urgency of the acquisition, the Governor of Punjab in exercise of the powers u/s 17(1) of the L.A. Act

directed the Land Acquisition Officer to take possession of the land specified therein.

17. The petitioners, claiming themselves to be share/right holders of the village, have challenged the impugned notifications (Annexures P4 and P5),

inter alia, pleading that in fact, from the very beginning, it was in the knowledge of the State authorities that the land would be required for

implementation of irrigation scheme, but the State acquired the land after the delay of more than 8 years. According to the petitioners, neither the

need of the State was genuine nor there was any ground for acquiring the land was available while dispensing with the provisions of section 5-A of

the L.A. Act. Hence, the impugned acquisition is mala fide and arbitrary.

18. The respondents contested the writ petitions and filed written statements pleading certain preliminary objections regarding maintainability of the

writ petitions and locus standi of the petitioners. It was claimed that Gurdip Singh, father-in-law of petitioner No. 1 has challenged the impugned

orders (Annexures P2 and P3) by way of CWP No. 10912 of 2001, which was dismissed as withdrawn. Therefore, the present petitions are not

maintainable on the same cause of action According to the respondents, as all the co-sharers were not getting proper irrigation, therefore, on

demand of 39 share holders (poor farmers) in order to raise their crop-yield, the scheme for extension of canal distributory in question was

prepared after following the due procedure. The petitioners appeared and after hearing them and other participants, their objections were rejected

by the DCO in the interest of large number of farmers,--vide order dated 5th July, 2000. The appeal filed by them was also dismissed,--vide order

dated 10th July, 2001. The scheme (Annexure P2) and order (Annexure P3) were stated to be legally correct. It was pleaded that as the matter

was most urgent and having received the funds from the Government on 21st October, 2008, the notifications under sections 4 and 6 of the L.A.

Act were rightly issued without any loss of time by invoking the urgency provisions as per law. It will not be out of place to mention here that the

respondents have stoutly denied all other allegations contained in the writ petitions and prayed for their dismissal.

19. Above being the position on record, now the short and significant question, though important, arises for determination in this case, is whether

the impugned acquisition proceedings are illegal and arbitrary.

20. In this regard, the learned counsel for the petitioners while relying upon the decision of the Supreme Court in Babu Ram and Another Vs. State

of Haryana and Another, submitted that the requirement of the land for implementation of the scheme was in the knowledge of the State authorities,

when it was prepared, but the land was acquired after a delay of considerable period which vitiates the acquisition by invoking the urgency

provisions without there being any actual urgency. These arguments are untenable. The Hon"ble Apex Court in Babu Ram's case (supra) has

observed as under :-

33. The only other aspect of the matter which requires consideration is whether the lands in question have already been utilized for the sewage

treatment plant. From the averments made and photographs which were brought to our notice, it appears that the site is still lying unutilized. In such

circumstances, we consider it only proper that the appellants should get an opportunity to file their objections to the proposed acquisition u/s 5-A

of the L.A. Act and the respondents would be at liberty to take consequential steps after disposal of the same.

34. We, accordingly, dispose of the appeal by directing that notwithstanding the invocation of Section 17(2)(c) of the L.A. Act in its application to

the States of Punjab and Haryana, the appellants will be at liberty to file objections u/s 5-A of the L.A. Act within a month from the date before the

authority concerned, who will, thereafter, dispose of the same upon giving the objections, if any, an opportunity of hearing and placing their

respective cases.

21. In above-said case, the land was acquired by invoking the urgency provisions for setting up of the sewerage treatment plant which was

proposed to be set up in the vicinity of school and grain-market which are the places of public activities. On the peculiar facts and circumstances of

that case, a liberty was granted to the landowners to file objections u/s 5-A of the L.A. Act within one month and the authorities were directed to

dispose of the same after affording an opportunity of hearing to them. In the instant case, the land has been acquired for a vital public purpose i.e.,

for extension of canal distributory in question on the demand of the farmers and to raise the yield of their field. It is not the case of the petitioners

that the acquired land is not suitable or some other alternative land is available for implementation of the indicated irrigation scheme. Furthermore,

the State has to take its policy decision as to how the public interest is to be served. State Government after detailed examination of the site in

dispute has concluded that the acquired strip of land is most suitable for the required purpose and such decision of the Government cannot be

challenged by the petitioners on flimsy grounds.

22. Above all, it was cogently explained by the respondents in their written statement that having received the requisite funds from the Government

on 21st October, 2008, the notifications under sections 4 and 6 of the L.A. Act were issued without any loss of time by invoking the urgency

provisions as per law. Therefore, these arguments of learned counsel for the petitioners stricto-sensu deserve to be repelled, in the obtaining

circumstances of the case.

23. As is evident from the record, it has been clearly depicted in the impugned Notification (Annexure P-5) that the appropriate authority was

satisfied that the land was urgently required for a public purpose, therefore, the requirement of inviting of objections u/s 5-A of the L.A. Act was

dispensed with. Hence, the urgency was clear and implicit. It is the subjective satisfaction of the State Authorities. The Court cannot interfere in this

regard and there is no legal requirement that the Notification should specially recite in detail the nature of the urgency. It is only to disclose the

consideration by the Government on urgency for taking action under Sections 17(1)(2) of the Act (which has been duly complied with in the

present case). In this regard, reference can be made to decision of the Hon'ble Supreme Court in Union of India versus Shri Ghanshyam Dass

Kedia 1996 (2) Indian Civil Cases 50.

24. The last contention of learned counsel for the petitioners that only one month was required to file and decide the objections u/s 5-A of the L.A.

Act, but the respondents took more than 2/4 months in issuing notification u/s 6 of the L.A. Act, has got no direct bearing on the validity of the

acquisition proceedings. As stated above, the respondents have categorically pleaded that having received the requisite funds for the extension of

the canal distributory in question on 21st October, 2008, notification (Annexure P4) was immediately issued u/s 4 of the L.A. Act on 26th

November, 2008 and subsequent declaration/notification (Annexure P5) was issued u/s 6 of the L.A. Act on 19th February, 2009. Moreover, we

are of the opinion that any post notification delay subsequent to the decision of the State Government dispensing with the requirement of Section 5-

A of the Act by invoking the urgency provisions, will not invalidate the decision, in any manner, particularly, when no mala fide on the part of the

respondents has been alleged in the petition. Reliance in this regard can be placed on the decisions of the Hon'ble Apex Court in Chameli Singh

and others etc. Vs. State of U.P. and another, , First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, Division

Bench judgments of this Court in Luxmi Narain versus State of Haryana, (7) Vijay Pal and others versus State of Haryana and Others CWP No.

19844 of 2008 decided on 30th November, 2009 and in CWP No. 17852 of 2009 titled ""Kalu Ram and Others versus The State of Haryana

and others"" decided on 4th December, 2009.

25. No other point worth consideration has been urged or pressed by the learned counsel for the petitioners.

26. For the reasons recorded above, both the writ petitions are hereby dismissed.