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MAHENDER PAL & OTHERS

v.

STATE OF HARYANA & OTHERS
(Civil Appeal No. 3604 of 2009)

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MAY 15, 2009

[S.B. SINHA AND ASOK KUMAR GANGULY, JJ.]

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Land Acquisition Act, 1894 – s. 17(4) – Emergency powers – Invocation of – Scope – Land acquisition for development and utilization of land for outer ring road, green belt on both sides – Writ petition challenging the Notifications dismissed – On appeal held: In such cases, valuable right of hearing can be taken away only if condition precedent for emergency power is satisfied – For invoking the said provision, existence of foundational fact is a sine qua non for formation of opinion – Subjective satisfaction must be based on an objective criteria – Ipse dixit on the part of the State would not serve the purpose – Petitioner made out a case for examination of their cases – Hence, matter remitted to High Court for consideration afresh.

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The question which arose for consideration in this appeal was whether for acquisition of land for development and utilization of land for outer ring road, green belt on both sides, the State Government could have resorted to the emergency powers in terms of s. 17 of the Land Acquisition Act, 1894.

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Allowing the appeal and remitting the matter to High Court, the Court

HELD: 1.1. Right to file objection and hearing thereof to a notification issued by the appropriate government expressing its intention to acquire a property is a valuable right. Such a valuable right of hearing and

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particularly in a case of this nature could have been taken away only if conditions precedent for exercise of this emergency power stood satisfied. Sub-section (4) of section 17 of the Land Acquisition Act, 1894 is an exception to s. 5A. An opinion of the government in this behalf is required to be formed if there exists an emergency. Existence of the foundational fact for invoking the said provision is, therefore, a sine qua non for formation of opinion. Such an subjective satisfaction must be based on an objective criteria. Ipse dixit on the part of the State would not serve the purpose. Appellants made out a case for examination of their cases. The nature of constructions and other features of the land sought to be acquired have been noticed. [Para 12] [422-E-H; 423-A]

1.2. The purported public purpose for which the land is to be acquired is for laying down a road. The road connection is one of the purposes mentioned in sub-section (2) of section 17 of the Act in respect whereof sub-section (4) thereof would apply. But the same would not mean that for the purpose of road connection irrespective of the nature of cases and/ or irrespective of the nature of the road to be constructed; s.17(4) could be invoked. [Para 13] [423-B-C]

1.3. As an extraordinary power has been conferred upon the Appropriate Government in terms whereof the normal procedure laid down under section 5A of the Act could be dispensed with, the High Court, should have entered into the merit of the matter. The impugned judgment cannot be sustained and is set aside. The matter is remitted to the High Court for consideration of the matter afresh on merit. [Paras 14 and 17] [423-D; 426-C]

- A *Union of India and Ors. v. Mukesh Hans* (2004) 8 SCC 14; *Union of India and Ors. v. Krishan Lal Arneja and Ors.* (2004) 8 SCC 453, referred to.

- B 1.4. An exception carved out from the main provision as a result whereof a citizen of India may be deprived of his property particularly having regard to the fact that if it is considered to be a human right, procedural safeguards laid down therefor must be scrupulously complied with. It being an expropriatory legislation deserves strict construction. [Para 16] [426-A-B]

- C *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai and Ors.* (2005) 7 SCC 627; *Devinder Singh and Ors. v. State of Punjab and Ors.* (2008) 1 SCC 728; *City Montessori School v. State of Uttar Pradesh and Ors.* 2009 D (2) SCALE 740, relied on.

Case Law Reference:

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|---|--------------------|--------------|---------|
| | (2008) 12 SCC 418 | Relied on. | Para 14 |
| E | (2004) 8 SCC 14 | Referred to. | Para 15 |
| | (2004) 8 SCC 453 | Referred to. | Para 15 |
| | (2005) 7 SCC 627 | Relied on. | Para 16 |
| | (2008) 1 SCC 728 | Relied on. | Para 16 |
| F | 2009 (2) SCALE 740 | Relied on. | Para 16 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3604 of 2009.

- G From the Judgment & Order dated 10.05.2007 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 7008 of 2007.

- H R.K. Kapoor, Shweta Kapoor, Harish Chandra Pant, Gunjan Sinha and Anis Ahmed Khan for the Appellants.

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T.V. George and Shinoj K. Narayanan for the Respondents. A

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted. B

2. This appeal is directed against a judgment and order dated 10.05.2007 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 7008 of 2007.

3. On or about 6.01.2006, a notification under Section 4 read with Section 17(4) of the Land Acquisition Act, 1894 (for short "the Act") was issued for acquisition of the land in question for an alleged public purpose, viz., for the development and utilization of land for residential/ commercial purpose. A declaration under Section 6 of the Act was issued on 9.08.2006. C D

4. A writ petition was filed by the appellants challenging these notifications which was dismissed as withdrawn with liberty to file a fresh one on the same cause of action.

5. On 14.11.2006, the government issued a notification under Section 4 read with Section 17(4) of the Act and on 15.11.2006 as also a declaration under Section 6 of the Act, for acquiring the land for public purpose, viz., for the development and utilization of land for outer ring road, green belt on both side, Pataudi Road to Jhajjar Road in the area of village Gokalgarh, District Rewari. E F

6. Appellants' land was being used for residential purposes and which also has the Samadhis of the ancestors of the appellants and a Shiva temple. The revenue records confirm the existence of these pucca constructions. G

7. On 14.03.2007, notices were issued to the appellants under Section 9 of the Act. Appellants filed objections thereto on 29.03.2007. H

A 8. A writ petition was filed by the appellants, which was dismissed in limine by reason of the impugned judgment.

9. Appellants are, thus, before us.

B 10. The principal question which arises for consideration in this appeal is as to whether in the facts and circumstances of this case the emergency powers in terms of Section 17 of the Act could have been resorted to by the State.

C 11. The Act has been enacted for the acquisition of land for public purposes and for Companies. Having regard to the provisions contained in Article 300A of the Constitution of India as also the provisions of Act, the State in exercise of its power of 'eminent domain' may deprive a person of his right to a property only when there exists a public purpose and a reasonable amount by way of compensation is offered for acquisition of his land. The Act fulfills the aforementioned criteria. It, however, lays down the details procedures therefor. It is also of some significance to notice that the Parliament, by reason of the Act, has imposed further restrictions/ conditions for acquisition of land for the benefit of the land-owner.

F 12. Right to file objection and hearing thereof to a notification issued by the appropriate government expressing its intention to acquire a property is a valuable right. Such a valuable right of hearing and particularly in a case of this nature could have been taken away only if conditions precedent for exercise of this emergency power stood satisfied. Sub-section (4) of Section 17 of the Act is an exception to Section 5A of the Act.

G An opinion of the government in this behalf is required to be formed if there exists an emergency. Existence of the foundational fact for invoking the aforementioned provision is, therefore, a sine qua non for formation of opinion. Such an subjective satisfaction must be based on an objective criteria. Ipse dixit on the part of the State would not serve the purpose.

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Appellants, in our opinion, had made out a case for examination of their cases in details. The nature of constructions and other features of the land sought to be acquired have been noticed by us hereinbefore. A

13. The purported public purpose for which the land is to be acquired is for laying down a road. B

We are not unmindful of the fact that the road connection is one of the purposes mentioned in Sub-section (2) of Section 17 of the Act in respect whereof Sub-section (4) thereof would apply. But the same would not mean that for the purpose of road connection irrespective of the nature of cases and/ or irrespective of the nature of the road to be constructed; Sub-section (4) of Section 17 of the Act could be invoked. C

14. As an extraordinary power has been conferred upon the Appropriate Government in terms whereof the normal procedure laid down under Section 5A of the Act could be dispensed with, the High Court, in our opinion, should have entered into the merit of the matter. [See *Mahadevappa Lachappa Kinagi and Others v. State of Karnataka and Others* (2008) 12 SCC 418] D E

In *Union of India and Others v. Mukesh Hans* [(2004) 8 SCC 14], this Court held:

"32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before F G H

A dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry.

B If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with.

C But then that is not the language of the section which in our opinion requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in each and every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with Section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act."

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15. In *Union of India and Others v. Krishan Lal Ameja and Others* [(2004) 8 SCC 453], this Court held:

"16. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal

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procedure laid down under Section 5A of the Act in A
exceptional case of urgency. Such powers cannot be lightly
resorted to except in case of real urgency enabling the
Government to take immediate possession of the land
proposed to be acquired for public purpose. A public B
purpose, however, laudable it may be, by itself is not
sufficient to take aid of Section 17 to use this extraordinary
power as use of such power deprives a land owner of his
right in relation to immoveable property to file objections
for the proposed acquisition and it also dispenses with the
inquiry under Section 5A of the Act. The Authority must C
have subjective satisfaction of the need for invoking
urgency clause under Section 17 keeping in mind the
nature of the public purpose, real urgency that the situation
demands and the time factor i.e. whether taking
possession of the property can wait for a minimum period D
within which the objections could be received from the land
owners and the inquiry under Section 5A of the Act could
be completed. In other words, if power under Section 17
is not exercised, the very purpose for which the land is
being acquired urgently would be frustrated or defeated. E
Normally urgency to acquire a land for public purpose does
not arise suddenly or overnight but sometimes such
urgency may arise unexpectedly, exceptionally or
extraordinarily depending on situations such as due to
earthquake, flood or some specific time-bound project F
where the delay is likely to render the purpose nugatory
or infructuous. A citizen's property can be acquired in
accordance with law but in the absence of real and genuine
urgency, it may not be appropriate to deprive an aggrieved
party of a fair and just opportunity of putting forth its
objections for due consideration of the acquiring authority. G
While applying the urgency clause, the State should indeed
act with due care and responsibility. Invoking urgency
clause cannot be a substitute or support for the laxity,
lethargy or lack of care on the part of the State
Administration." H

- A 16. It is a well-settled principle of law that an exception carved out from the main provision as a result whereof a citizen of India may be deprived of his property particularly having regard to the fact that if it is considered to be a human right, procedural safeguards laid down therefor must be scrupulously
B complied with. It being an expropriatory legislation deserves strict construction. {See *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai and Others* [(2005) 7 SCC 627]; *Devinder Singh and Others v. State of Punjab and Others* [(2008) 1 SCC 728]; and *City Montessori School v. State of*
C *Uttar Pradesh & Ors.* [2009 (2) SCALE 740]}.

17. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly and the matter is remitted to the High Court for consideration of the matter afresh on merit.

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18. Mr. T.V. George, learned counsel appearing on behalf of the State, submits that counter-affidavit before the High Court shall be filed within four weeks. The State may also produce the records before the High Court so as to enable it to arrive
E at a satisfaction that, in the facts and circumstances of this case, the emergency power of the appropriate government could be resorted to. We request the High Court to consider the desirability of disposing of the matter expeditiously.

- F 19. The appeal is allowed with the aforementioned directions with costs. Counsel's fee assessed at Rs.10,000/-.

N.J.

Appeal allowed.