

DERA PHALAU LI

v.

STATE OF PUNJAB & ORS.

July 24, 1979

[N. L. UNTWALIA AND A. P. SEN, JJ.]

Land Acquisition Act, 1894 Ss. 4, 5A & 17(4)—Order issued under S. 17(4) dispensing with provisions of S. 5A—Validity of—Direction to Collector to take action under S. 17 on ground of urgency—Not a legal and complete fulfilment of the requirement of the law.

Allowing the appeal.

HELD: For making the provisions of section 17(1) applicable: (a) the land in respect of which the urgency provision is being applied should be waste or arable and (b) there should be an urgency for taking immediate possession requiring dispensation of the right of the owner for filing an objection under section 5A and this right should not be interfered in a casual or cavalier manner. [94C, F]

In the instant case the Notification under section 17(4) of the Act neither mentioned that the land is waste or arable nor that there was urgency to take recourse to the provisions of the Act. [94D]

The direction given to the Collector to take action under Section 17 on the ground of urgency is not a legal and complete fulfilment of the requirement of the law. [94E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2317 of 1969.

From the Judgment and Order dated 29-8-1968 of the Punjab and Haryana High Court in Civil Writ No. 2713/68.

N. N. Keswani for the Appellant.

The Order of the Court was delivered by

UNTWALIA, J. In this appeal filed by certificate, several points have been urged by learned counsel for the appellant. We do not consider it necessary either to state all the points or discuss them as none of them except one has got any substance. The point of substance which in our opinion must succeed in this appeal is as to whether even on the face of the Notification issued under Section 4 of Land Acquisition Act, 1894 (hereinafter called the Act), an Order under Section 17(4) dispensing with the compliance with the provisions of Section 5A was validly made. The paragraph of the Notification which incorporated

A apparently the order exercising the power under Sub-Section (4) of Section 17 of the Act reads as follows :—

B “Further in exercise of the powers under the said Act, the Governor of Punjab is pleased to direct that action under Section 17 shall be taken in this case on the grounds of urgency and provisions of section 5A will not apply in regard to this acquisition.”

C It is to be clearly understood that under Sub-Section (4), the appropriate Government may direct that the provision of Section 5A shall not apply where in the opinion of the State Government, the provisions of Sub-Section (1) or Sub-Section(2) are applicable, otherwise not. For making the provisions of Sub-Section (1) applicable, two things must be satisfied that the land in respect of which the urgency provision is being applied is waste or arable and secondly that there is an urgency to proceed in the matter of taking immediate possession and so the right of the owner of the land for filing an objection under Section 5A should not be made available to him. In the portion of the Notification which we have extracted above, it is neither mentioned that the land is waste or arable nor has it been stated that in the opinion of the Government, there was any urgency to take recourse to the provisions of Section 17 of the Act. A direction to the Collector has been given to take action under Section 17 on the ground of urgency but this is not a legal and complete fulfilment of the requirement of the law. It is to be remembered that the right of a person having any interest in the property to file an objection under Section 5A of the Act should not be interfered with in such a casual or cavalier manner as has been done in this case.

D For the reasons stated above, we allow this appeal set aside the order of the High Court dismissing the appellant's writ Petition, allow the writ Petition and strike down that portion of the Notification issued on 23-8-1967 under Section 4 of the Act which directed the exercise of power under Section 17. The authorities, if so advised, may proceed further in the matter after giving an opportunity to the appellant of filing their objection under Section 5A.

E Since the other side has not appeared, there is no order as to costs.