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JAGE RAM AND ORS.

v.

STATE OF HARYANA AND ORS.

March 2, 1971

B [K. S. HEGDE AND P. JAGANMOHAN REDDY, JJ.]

Land Acquisition Act, 1894 *ss.* 17(2)(c), 38 *to* 44*B*—*Public purpose*—*Declaration by Government not open to challenge unless acquisition is for collateral purpose or is a colourable exercise of power*—*Acquisition for Company*—*State contributing towards cost*—*Proceedings need not be taken under ss.* 38 *to* 44*B*—*Section* 17(2)(c) *cannot be interpreted* C ejusdem Generis—*Scope of s.* 17(2)(c)—*Maxims*—Ejusdem Generis—*Scope of Rule.*

In March 1969, the respondent State issued a notification under section 4 of the Land Acquisition Act, 1894, as amended by the Punjab Legislature, for acquisition of the appellants' land. The notification stated that the land was likely to be required to be taken by Government, at public expense, for a public purpose, namely, the setting up of a factory D for the starting of an industry and, further that action under section 17(2)(c) would be taken on the ground of urgency and provisions of s. 5A will not apply in regard to the said acquisition. The appellants filed a writ petition in the High Court questioning the validity of the acquisition on the ground, *inter alia*, that there was no urgency in the matter, of requiring the land therefore recourse to s. 17 was not justified. The state government pleaded that since the Government of India had E extended the time for completion of the project till April 30, 1969, it had become necessary to take immediate steps to acquire the land. The High Court dismissed the petition. In the appeal to this Court it was contended that (i) the acquisition in question being one for the benefit of a Company, proceedings should have been taken under ss. 38 to 44B of the Act, and that there was no public purpose involved in the case; (ii) there was no urgency and hence recourse could not be had to section 17 of the Act; and (iii) s. 17(2)(c) was inapplicable to the facts of the F case, because, though s. 17(2)(c) read by itself covered a very large field, applying the *ejusdem generis* Rule that provision had to be given a narrower meaning because of the provisions of s. 17(2)(a) and (b). Dismissing the appeal,

HELD : (i) On the facts of the case the purpose for which land was acquired was a public purpose. The question whether the starting of an industry is in public interest or not is essentially a question that has to G be decided by the Government. So long as it is not established that the acquisition is sought to be made for some collateral purpose or that there is a colourable exercise of power the declaration of the government that it is made for a public purpose is not open to challenge. [874 E-G]

Smt. Somavanti and Ors. v. *State of Punjab*, [1963] 2 S.C.R. 774 and *Raja Anand Brahma Shah* v. *State of U.P.*, [1967] 1 S.C.R. 373, referred to.

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In view of the fact that the State Government had contributed towards the cost of acquisition it was not necessary to proceed with the acquisition under Part VII of the Act. [875 A]

(ii) On the facts of the case there was urgency. The conclusion of the Government in a given case that there was urgency is entitled to weight, if not conclusive.

(iii) In interpreting cl. (c) of s. 17(2) the rule of *ejusdem generis* cannot be applied. If a given provision is plain and unambiguous and the legislative intent is clear, there is no occasion to call into aid that rule. Under cls. (a), (b) and (c) of sub-s. (2) of s. 17 the decision to acquire land has not to be made by the same authority but by different authorities. Further, the conditions under which the acquisition has to be made differ from clause to clause. Therefore, there is no basis to say that the general words in cl. (c) follow the particular and specific words in cls. (b) and (c). [877 E; 879 H]

State of Bombay v. *Ali Gulshan*, [1952] S.C.R. 867, *Lilavati Bai* v. *State of Bombay*, [1957] S.C.R. 721, *K. K. Kochuni* v. *State of Madras*, A.I.R. 1960 S.C. 1050, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2034 of 1969.

Appeal from the judgment and order dated May 7, 1969 of the Punjab and Haryana High Court in Civil Writ No. 850 of 1969.

K. L. Gosain, N. N. Goswamy, S. K. Mehta, K. L. Mehta and *K. R. Nagaraja*, for the appellant.

Harbans Singh and *R. N. Sachthey*, for respondents Nos. 1 and 2.

S. V. Gupte and *S. K. Gambhir*, for respondent No. 18.

The Judgment of the Court was delivered by

Hegde, J. This appeal by certificate arises from the decision of a Division Bench of the Punjab and Haryana High Court in a writ petition wherein the appellants challenged the validity of proceedings under ss. 4, 6, 9 and 17(2)(c) of the Land Acquisition Act, 1894 as amended by the Punjab Legislature. For convenience sake we shall refer to that amended Act as 'the Act'. The High Court dismissed the writ petition.

It appears that several contentions were sought to be advanced before the High Court but in this Court only three contentions have been pressed for our consideration i.e. (1) the acquisition in question being one for a company proceedings should have been taken under ss. 38 to 44(B) of the Act, the same having not been taken, the proceedings taken are void; (2) there was no urgency and hence recourse should not have been had to s. 17 of the Act and (3) Section 17(2)(c) is inapplicable to the facts of the case.

Now we may state the facts relevant for the purpose of deciding the questions in dispute.

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On 14/17 March, 1969, Government of Haryana issued a notification under s. 4 of the Act notifying for acquisition the land concerned in this case. The notification further directed that action under s. 17(2)(c) of the Act shall be taken on the ground of urgency and the provisions of s. 5-A shall not apply in regard to the said acquisition. The preamable to the said notification says that "whereas it appears to the Governor of Haryana that land is likely to be required to be taken by Government, at public expenses, for a public purpose, namely for the setting up a factory for the manufacture of Chine-ware and Procelain-ware including Wall Glazed Tiles etc. at village Kasser, Tehsil Jhajjar, District Rohtak, it is hereby notified that the land in the locality described in the specification below is likely to be required for the above purpose". On March 18, 1969 the Government isued a notification under s. 6 of the Act acquiring the land for a public purpose. On March 28, 1969 notices under s. 9 of the Act were served on the appellants. On April 8, 1969, the appellants filed the writ petition giving rise to this appeal.

The allegations in the writ petition include the assertion that there was no urgency in the matter of acquiring the land in question and therefore there was no justification for having recourse to s. 17 and thus deprive the appellants of the benefit of s. 5-A of the Act. It was further alleged therein that the acquisition in question was made for the benefit of a company and hence proceedings should have been taken under ss. 38 to 44(B) of the Act and that there was no public purpose involved in the case. It was further pleaded that the land acquired was not waste and arable land and that s. 2(c) of the Act did not confer power on the Government to dispense with the proceedings under s. 5-A. In the counter-affidavit filed by the Deputy Director of Industries (Administration), Government of Haryana on behalf of the State of Haryana, the above allegations were all denied. Therein it is stated that at the instance of the State of Haryana, Government of India had issued a letter of intent to a company for setting up a factory for the manufacture of Glazed Tiles etc. in village Kasser. That project was to be started with the collaboration of a foreign company known as Pilkington Tiles Ltd. The scheme for setting up the project had been finalised and approved by the concerned authorities. On November 26, 1968, the Government wrote to one of the promoters of the project, Shri H. L. Somany asking him to complete the "arrangements for the import of capital equipment and acquisition of land in Haryana State for setting up of the proposed factory". It was further stated in that communication the Government was pleased to extend the time for compleing the project upto April 30, 1969. Under those circumstances it

had become necessary for the State of Haryana to take immediate steps to acquire the required land. It was under those circumstances the Government was constrained to have recourse to s. 17 of the Act. The Government denied the allegation that the facts of this case did not come within the scope of s. 17(2)(c). It was also denied that the acquisition in question was not made for a public purpose.

We have earlier seen that in the notification issued under s. 4, it had been stated that the acquisition was made "at public expenses, for a public purpose" namely for the setting up a factory for the manufacture of China-ware and Porcelain-ware including Wall Glazed Tiles etc.

In the writ petition it was not denied that the acquisition in question was made at "public expenses". All that was challenged in the writ petition was that the purpose for which the acquisition was made not a public purpose.

There is no denying the fact that starting of a new industry is in public interest. It is stated in the affidavit filed on behalf of the State Government that the new State of Haryana was lacking in industries and consequently it was become difficult to tackle the problem of unemployment. There is also no denying the fact that the industrialisation of an area is in public interest. That apart, the question whether the starting of an industry is in public interest or not is essentially a question that has to be decided by the Government. That is a socio-economic question. This Court is not in a position to go into that question. So long as it is not established that the acquisition is sought to be made for some collateral purpose, the declaration of the Government it is made for a public purpose is not open to challenge. Section 6(3) says that the declaration of the Government that the acquisition made is for public purpose shall be conclusive evidence that the land is needed for a public purpose. Unless it is shown that there was a colourable exercise of power, it is not open to this Court to go behind that declaration and find out whether in a particular case the purpose for which the land was needed was a public purpose or not—see *Smt. Somavanti and ors.* v. *The State of Punjab*(1) and *Raja Anand Brahma Shah* v. *State of U.P.*(2). On the facts of this case there can be hardly any doubt that the purpose for which the land was acquired is a public purpose.

In view of the pleadings referred to earlier it is not open to the appellant to contend that the State Government had not contributed any amount towards the cost of acquisition. We were informed at the bar that the State Government had contributed

(1) [1963] 2 S.C.R. 774. (2) [1967] 1 S.C.R. 373.

A a sum of Rs. 100/- towards the cost of the land which fact is also mentioned in the award of Land Acquisition Officer. That being so it was not necessary for the Government to proceed with the acquisition under Part VII of the Act—see *Somavanti's case*(1).

B Now coming to the question of urgency, it is clear from the facts set out earlier that there was urgency. The Government of India was pleased to extend time for the completion of the of project upto April 30, 1969. Therefore urgent steps had to be taken for pushing through the project. The fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question C whether on the date on which the notification was issued, there was urgency or not the conclusion of the Government in a given case that there was urgency entitled to weight, if not conclusive.

This takes us to the question of applicability of s. 17(2)(c) to the facts of the case. The appellant had denied in the affidavit that the entire land acquired is either waste or arable land. That D contention of his has not been examined by the High Court. Therefore we have to proceed on the basis that the case does not come within the scope of s. 17(1). The State has also not purported to act under s. 17(1). It has purported to act under s. 17(2)(c). Therefore we have to see whether the State could have proceeded on the facts of this case under s. 17(2)(c). Section 17 as amend- E ed by the Punjab Act 2 of 1954, Punjab Act 17 of 1956 and Punjab Act 47 of 1956 to the extent necessary for our present purpose reads thus :

> "17 (1) In cases of urgency whenever, the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration F of fifteen days from the publication of the notice mentioned in section 9, sub-section (1) take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government free from all encumbrances.
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> Explanation . . . . . .
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> G (2) In the following cases, that is to say :—
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> (a) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Adminstration 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 H

(1) [1963] 2 S.C.R. 774.

providing convenient connection with or access to any such station;

(b) Whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land for the purpose of any library or educational institution or for the construction, extension or improvement of any building or other structure in any village for the common use of the inhabitants of such village, or any godown for any society registered under the Co-operative Societies Act, 1912 (Act II of 1912), or any dwelling-house for the poor, or the construction of labour colonies or houses for any other class of people under a Government-sponsored Housing Scheme or any irrigation tank, irrigation or drainage channel, or any well, or any public road;

(c) Whenever land is required for a public purpose which in the opinion of the appropriate Government is of urgent importance, 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 hour's notice of his intention so to do . . .

(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 crop and three (if any) on such land and for any other damage sustained by them caused by sudden dispossession ....

(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 5-A shall not apply...."

A Herein we are only concerned with the scope of s. 17(2)(c) as the vires of s. 17(2) is not challenged. Section 17(2)(c) if read by itself is plain. It seems to permit the appropriate Government to direct that the provisions of Section 5-A shall not apply whenever land is required for public purpose which in the opinion of the appropriate Government is of urgent im-
B portance. The conditions precedent for the application of s. 17 (2)(c) are (1) that the land must be required for a public purpose and (2) the appropriate Government must be of the opinion that the purpose in question is of urgent importance. But it was urged on behalf of the appellants that we should apply *ejusdem generie* rule in interpreting s. 17(2)(c). The conten-
C tion on behalf of the appelants was that though s. 17(2)(c) read by itself covers a very large field, that provision should be given a narrower meaning because of the provisions in s. 17(2) (a) and (b). It was urged that as the general words contained in s. 17(2)(c) follow the specific words of the same nature, in s. 17(2)(a) and (b), those general words must be understood as applying to cases similar to those mentioned in s. 17(2)(a)
D and (b).

The *ejusdem generis* rule is not a rule of law but is merely a rule of construction to aid the courts to find out the true intention of the legislature. If a given provision is plain and unambiguous and the legislative intent is clear, there is no
E occasion to call into aid that rule *ejusdem generis* rule is explained in Halsbury's Laws of England (3rd Edn.) Vol. 36 p. 397 paragraph 599 thus :

> "As a rule, where in a statute there are general words following particular and specific words, the
F general words must be confined to things of the same kind as those specified, although this, as a rule of construction, must be applied with caution, and subject to the primary rule that statutes are to be construed in accordance with the intention of Parliament. For the *ejusdem rule* to apply, the specific
G words must constitute a category, class or genus; if they do constitute such a category, class or genus, then only things which belongs to that category, class or genus fall within the general words...."

It is observed in Craies on Statute Law (6th Edn.) p. 181 that :

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> "The *ejusdem generis* rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically appli-

cable, and not as being, what it is, a mere presumption in the absence of other indications of the intention of the legislature. The modern tendency of the law, it was said, is "to attenuate the application of the rule of *ejusdem generis*". To invoke the application of the *ejusdem generis* rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects."

According to Sutherland Statutory Construction (3rd Edn.) Vol. II p. 395, for the application of the doctrine of *ejusdem generis*, the following conditions must exist.

(i) The statute contains an enumeration by specific words;

(ii) The members of the enumeration constitute a class;

(iii) The class is not exhausted by the enumeration;

(iv) A general term follows the enumeration and

(v) There is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires.

The scope of the *ejusdem generis* rule has been considered by this Court in several decisions. In *State of Bombay* v. *Ali Gulshan*(1); it was observed :

"Apart from the fact that the rule must be confined within narrow limits, and general or comprehensive words should recive their full and natural meaning unless they are clearly restrictive in their intendment, it is requisite that there must be a distinct genus, which must comprise more than one species, before the rule can be applied."

In *Lilavati Bai* v. *The State of Bombay*(2) it was observed :

"The rule of *ejusdem generis* is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted mean-

(1) [1955] 2 S.C.R. 867. (2) [1957] S.C.R. 721.

A ing has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the content and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words B their plain and ordinary meaning."

The same view was reiterated by this Court in *K. K. Kochuni* v. *State of Madras and Kerala*(1).

Bearing in mind the principles set out earlier, we shall now C consider whether the general import of the words in s. 17(2)(c) should be cut down in view of s. 17(2)(a) and (b). Under cl. (a) of s. 17(2), the acquisition is to be made by the Railway Administration when owing to any sudden change in the channel of any navigable river or other unforeseeen emergency it becomes necessary for the administration to acquire the im- D mediate possession of any land for the maintenance of the traffic or for the purpose of making thereon a river-side or ghat station or for providing convenient connection with or access to any such station. We would like to emphasize that under this provision, the acquisition can only be made by the Railway Administration and that when it considers that immediate possession of any land is necessary for the purposes mentioned therein. E Under cl. (b) of sub-s. (2) of s. 17. before an acquisition can be made, the Collector must form an opinion that it has become necessary to acquire the immediate possession of the land concerned for the purposes mentioned therein. Under cl. (c) of s. 17(2), the acquisition can be made only when the appropriate Government forms the opinion that because of urgent import- F ance, the concerned land has to be acquired for the purposes mentioned in that provision. Under cl. (a) the decision to acquire has to be made by the Railway Administration. Under cl. (b), the acquisition can be made only on the formation of the required opinion by the Collector. Under cl. (c) the acquisition can be made only when the requisite opinion is formed by G the appropriate Government. Further under cl. (a) the acquisition has to be made to meet certain unforeseeen emergency as a result of which the immediate possession of the land is necessary. Under cl. (b) the Collector must form an opinion that it has become necessary to acquire the immediate possession of land but under cl. (c) the requirement is that the appropriate H Government must form the opinion that the acquisiion is of urgent importance. Under cls. (a), (b) and (c) of sub-s. (2) of s. 17, the decision to acquire land has not to be made by the

(1) A.I.R. 1960 S.C. 1050.

same authority but by different authorities. Further the conditions under which the acquisition has to be made differ from clause to clause. Therefore there is no basis to say that the general words in cl. (c) follow the particular and specific words in cls. (b) and (c). Nor can it be said that the specific words contained in cls. (a) and (b) constitute a category, class or genus. Hence we are unable to accept the contention that in interpreting cl. (c) of s. 17(2), we should apply the rule of *ejusdem generis.*

As none of the contentions taken by the appellants are acceptable, thise appeal fails and is dismissed. But in the circumstances of the case we make no order as to costs.

K.B.N. *Appeal dismissed.*