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STATE OF HARYANA AND ORS.

v.

DEWAN SINGH AND ORS.

NOVEMBER 6, 1995

B

[K. RAMASWAMY AND B.N. KIRPAL, JJ.]

*Land Acquisition Act, 1894 :*

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*Ss.4(1), 5-A, 6, 17(4)—Acquisition of land—Award made—Land owners receiving compensation under protest and filing writ petition challenging exercise of power under S.17(4) dispensing with inquiry under S.5-A—High Court allowing claim—Held, High Court not justified in interfering—Appropriate course would be to sustain the proceedings—Land owners allowed to make application for reference to Civil Court for determination of compensation.*

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A notification under S.4(1) of the Land Acquisition Act, 1894 was published on 22.1.1981 in respect of the land of the respondent-land-owners. The Collector made the award on 19.4.1984. On 13.5.1985 the land owners filed a writ petition before the High Court challenging the notification under S.4(1) and the award on the ground that exercise of power under S.17(4) by the Collector and dispensing with enquiry under S.5-A of the Act by him was bad in law as there was no urgency. The High Court allowed the writ petition. Aggrieved, the State Government filed the appeal by special leave.

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Allowing the appeal, this Court

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HELD : 1. After the award was made, the Court would not be justified to quash the notification under Section 4(1) and declaration under Section 6 of the Land Acquisition Act, 1894 for dispensing with the enquiry under Section 5-A. [786-E]

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2. The notification under Section 4(1) and the declaration under S.6 of the Act were not challenged till May 13, 1985 while the award came to be made on April 13, 1984. The respondents in fact received the amount under protest but that fact was not brought to the notice of the High Court. An application for reference under Section 18 was made within the limita-

tion provided therein, and after the writ petition was allowed the application was withdrawn. In these circumstances the appropriate course would be to sustain the notification under S.4(1) and the declaration under S.6 and the award made under S.11. It would be open to the respondents to make an application under S.18 to the Collector for reference to Civil Court for determining the compensation. [786-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10446 of 1995.

From the Judgment and Order dated 27.5.85 of the High Court of Punjab & Haryana at Chandigarh in C.W.P. No. 2496/85.

Altaf Ahmed, ASG., U.R. Lalit, B. Datta, K.C. Bajaj for Ms. Indu Malhotra, K.B. Rohtagi, Baldev Atreya, Ms. Aparna Rohtagi, Ajay Kumar Agrawal, B.S. Jain, J.P. Singh, G.C. Tyagi, Sunil Kumar Jain, Jatinder K. Bhatia for the appearing parties.

The following Order of the Court was delivered :

Leave granted.

The notification under Section 4 of the Land Acquisition Act, 1894 (for short, "the Act") was furnished on January 22, 1981. Notices were given under Section 9 of the Act. The Collector after conducting an enquiry made an award on April 19, 1984 and allegedly took possession of the land on the even date. The respondents assert that they are in possession. The respondents filed the writ petition on May 13, 1985 challenging the notification under Section 4(1) of the Act on the ground that dispensing with an enquiry under Section 5-A exercising power under Section 17(4) of the Act was bad in law as there was no urgency and the award was, on the face of the case, bad in law. The High Court by order dated May 27, 1985 allowed the writ petition following *Dharam Singh v. State of Haryana* C.W.P. No. 2891 of 1984 decided on 9th November, 1984. Thus this appeal by special leave.

It is contended by the appellant that after the award had been made, the respondents received compensation and also sought reference under section 18. The Land Acquisition Officer was competent to make the award within two years under Section 11-A of the Act after the Amendment Act 68 of 1984. The award came to be made within that period. So the proceedings under Section 4 and 6 shall not stand lapsed by operation

A of Section 11-A of the Act.

It is contended for the respondents that enquiry under Section 5- A is a valuable right and a minimum right by which the owner is entitled to show that the land is not fit to be used for public purpose. It would be open to show that some other land would be more suitable for public purpose, viz., land for market committee. Exercising the power under Section 17 (4) dispensing with the enquiry conducted under Section 5-A is clearly illegal. Though there was delay on the part of the respondents in challenging the notification, delay does not mitigate to take away the valuable right of approaching the High Court. The order of the High Court in *Dharam Singh's* case (supra) was not challenged. It is open to the appellants to canvass the correctness of the award on that premise, though the award had become final.

The question for consideration is whether the High Court was justified in interfering with the award dated April 19, 1984 made by the Collector and the notification under Section 4(1). It is seen that the notification under Section 4 (1) and the declaration were not challenged till May 13, 1985 while the award came to be made on April 13, 1984. The respondents in fact received the amount under protest but that fact was not brought to the notice of the High Court. It is also not in dispute that at that point of time an application for reference under Section 18 was made within the limitation provided therein. It would appear that after the writ petition was allowed the application was withdrawn. After the award was made, the Court would not be justified to quash the notification under Section 4(1) and declaration under Section 6 for dispensing with the enquiry under Section 5-A.

In these circumstances, we think that the appropriate course would be to sustain the notification under Section 4(1) and the declaration under Section 6 and the award made under Section 11. It would be open to the respondents to make an application under Section 18 within 30 days from to-day to the Collector for reference to Civil Court for determining the compensation.

The appeal is accordingly allowed and the judgment of the High Court under appeal is set aside. However, in the circumstances, there will be no order as to costs.