

(2002) 10 MP CK 0017
In the Madhya Pradesh High Court
Case No : M.P. No. 986 of 1990

Adarsh Grah Nirman Sahkari Samiti Ltd., Sagar	APPELLANT
Vs	
State of M.P. and others	RESPONDENT

Date of Decision : 03-10-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 6

Citation : (2003) 1 MPLJ 625

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : K.N. Agrawal, for the Appellant; Seema Agarwal, Panel Lawyer for Respondent Nos. 1 and 3 and Arpan Pawar, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioner in this writ petition seeks quashment of the notification issued u/s 4 on 21st August, 1987 as well as declaration issued u/s 6 of the Land Acquisition Act. Writ petition has been preferred on 6-4-1990 whereas award R-4/5 was passed on 21-8-1989.

The petitioner is a co-operative housing society registered under the M.P. Co-operative Societies Act; registration No. is 12/1980; formed with an object to construct small houses. On 30th July, 1987, the society purchased land having an area of 1.42 acres out of Khasra No. 121 which later on renumbered as Khasra No. 121/2 and Sy. No 415 Tahsil and District-Sagar for a sum of Rs. 45,000/- as per sale deed Annexure-B to the petition. The names of respective members were mutated in the revenue papers; State of M.P. issued a notification in M.P. Gazette Part-I dated 21-8-1987 under sub-section 1 of section 4 of Land Acquisition Act, 1984 read with section 5A and sub-section (1) of section 17 for acquisition inter alia of the land in question. The purpose for acquisition is "residential scheme"; a fresh notification was published in M.P. Gazette Part I

dated 17th June, 1988 as earlier certain mistakes crept in the previous notification dated 21-8-1987. It was mentioned that provision of section 5 will not be applicable as section 17(1) of the Act has been invoked. Petitioner submits that Khasra No. 114/1 of village Makroniya belonging to Manas Grah Nirman Sahkari Samiti, which is adjoining to the petitioner's society land bearing Khasra No. 121/2 was not acquired. On 21st August, 1987 a notification u/s 6(1) of the Act was published; petitioner challenges the acquisition proceedings on the ground that provisions of the Land Acquisition (Companies) Rules, 1963 have not been complied with prior to issuance of notification u/s 4 of the Act. The notification u/s 4 of the Act was neither published in the locality nor the Collector caused public notice of the substance of such notification to be given at convenient places in the said locality. The acquisition does not come within the purview of public purpose.

Petitioner further avers that member of the petitioner-society came to know of the acquisition when they were served with notices u/s 9 of the Act inviting objections, if any. One of such notice is Annexure-I dated 27-10-1988. The Land Acquisition Officer without looking into these objections passed an award and when the members came to know with regard to delivery of award, they have filed an application on 4-1-1990 u/s 18 of the Act for referring the matter to the Civil Court for enhancement of the compensation; application is Annexure K to the petition but as the reference court cannot decide about the validity of the notification, hence the present writ petition has been filed. The respondents could not proceed with the matter without giving opportunity to file objections u/s 5A of the Act, there was no urgency in the matter. Thus, the acquisition is bad in law.

The respondent No. 4 has filed the return. It is contended that section 4 notification was published in the gazette and also in local newspapers; section 6 notification was also issued. Once the notification u/s 4 was issued in the year 1987, it was not open to the society to transfer the land on 27-1-1988; otherwise also the purchase was made just on the eve of the acquisition. Possession of the land was handed over to the housing board as per receipt R-4/2 dated 27-2-1988; the society appeared before the Land Acquisition Officer on various dates and was having the knowledge of the acquisition; order sheets are collectively filed as R-4/3; order dated 27-2-1988 indicates that petitioner society was present before the Land Acquisition Officer and had the knowledge of the acquisition and participated in the proceedings leading to passing of award; an application for enhancement of the award was also filed. It is also the case set up that the Civil Court has enhanced the award; the enhanced award is R-4/6 passed on 7-1-2000 and compensation has been enhanced. The amount has been deposited; there is no illegality or infirmity in the acquisition proceedings. Once an award has been passed; the land stands vest absolutely with the respondents; challenge to the acquisition is misconceived; local publicity was made. There is no mala fide in acquisition.

Shri K.N. Agarwal, learned counsel appearing for the petitioner submits that due publicity is mandatory u/s 4 of the Land Acquisition Act was not made. Though award has been passed but the acquisition is bad in law and defeats the public object of the scheme framed by the State Government as contained in Annexure-L. The land which was owned by the petitioner society ought not to have been acquired; discrimination has been made and the acquisition is for no good purpose.

Shri Arpan Pawar, learned counsel appearing for respondent No. 4 M.P. Housing Board contended that petitioner society was having the knowledge of the acquisition as apparent from the order sheet R-4/3 from February, 1988; notification in the gazette was made, publication in the newspaper was made and they have taken a chance of passing the award in their favour participating in the acquisition proceedings and after filing the application for enhancement of the award; the award having been enhanced by the Civil Court, the petition deserves to be dismissed. Construction of houses is a national requirement. No illegality or irregularity is committed in acquisition; whatever that may be now after passing of the award the questions raised cannot be agitated by the petitioner and the writ petition is belated in the facts and circumstances of the case.

Mrs. Seema Agarwal, learned Panel Lawyer for respondents 1 to 3 has supported the acquisition and submits that there is no flaw in the acquisition proceedings; land has been properly acquired and stands absolutely vested and once award has been passed no interference is called for.

The first question for consideration is that petitioner was having the knowledge or for the first time came to know after passing of the award. Perusal of the order sheet R-4/3 dated 17-2-1988 clearly indicates that Adarsh Grah Nirman Sahkari Samiti was present through its President and other persons. It is clear that notification was issued in the gazette and also in the local newspapers. Petitioners have participated in the acquisition proceedings; section 17 was invoked, as such inquiry u/s 5A was dispensed with, as such there is no question of deciding the objections filed. The fact remains that petitioners were having the knowledge of acquisition from the gazette and local newspapers and petitioner was present before the Land Acquisition Officer from February, 1988, took the chance of award being passed in favour of members and most surprisingly transferred the land to the members in January, 1988 which was an illegality. Once notification is issued u/s 4, there cannot be any valid acquisition of right. The transfer obviously cannot affect the acquisition proceedings adversely.

The award was passed on 21-8-1989; not only that the application for seeking enhancement was filed by the petitioner as averred in para 9. The application is Annexure-K and the reference was made to the Civil Court for enhancement of the compensation and compensation has been enhanced as per Award R-4/6 passed on 7-1-2000.

The Apex Court in The Municipal Council, Ahmednagar and Another Vs. Shah

Hyder Beig and Others, has held that once award has been passed, notification u/s 4 and declaration u/s 6 cannot be challenged subsequently. Such a writ petition is not maintainable as the petitioner has taken a chance of obtaining the award in his favour and applications were also filed for enhancement of the award and enhanced award has been passed, hence, in my opinion, no challenge can be entertained.

Otherwise also the challenge to the notification u/s 4 is to be made expeditiously as held by the Apex Court in Hari Singh and Others Vs. State of U.P. and Others, and in Municipal Corporation of Greater Bombay vs. The Industrial Development Investment Co. Pvt. Ltd. and ors., AIR 1996 SCW 3871 the Apex Court has laid down that:-

29. It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before "exercising the power under Article 226 The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches.

In State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc., delay of 4 years was held to be fatal to maintainability of writ petition and in Reliance Petroleum Ltd. Vs. Zaver Chand Popatlal Sumaria and Others, the Apex Court held that delay alone is fatal to maintainability of writ petition challenging land acquisition.

In my opinion, the writ petition is not maintainable and as the award has been passed, the petitioner participated in process, filed application for enhancement, the petitioner by his conduct is estopped to file the writ petition. The same has been filed belatedly.

No illegality or infirmity has been pointed out in the notification issued u/s 4; it was duly published in the local newspaper. The submission raised that there is discrimination is not borne out from the pleadings; the pleadings are not sufficient to show the discrimination. The submission of learned counsel that there is a scheme to give the land to such housing societies, existence of such a scheme cannot come in the way of acquisition made for housing purpose for a scheme of housing board. The housing is an urgent purpose and of national importance. Thus, invocation of section 17 is proper. Even otherwise there is no merit in the writ petition.

Resultantly the writ petition is dismissed. Costs on parties.

Security, if deposited, be refunded to the petitioner.