
(2009) 04 RAJ CK 0073
In the Rajasthan High Court

Advani Hotels and Resorts (India) Ltd.	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : (2009) 04 RAJ CK 0073

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Judgement

Ajay Rastogi, J.—As alleged in petition, petitioner Company registered & incorporated under Companies Act, 1956 entered into an agreement to sale (Ann.4) on 01/11/1995 in respect of a part & parcel of land. It was further alleged that some land was sold to petitioner by Mutual Housing Co-operative Society Ltd., as referred to in para 8 of petition, on the premise whereof petitioner Company claims to be person- interested and has assailed notification u/s 4 of Land Acquisition Act, 1894 ("Act") & declaration u/s 6 of the Act (Ann.11 & 12).

2. Main thrust of arguments made by petitioner"s Counsel while assailing notification & declaration impugned is that "public purpose" disclosed in notification u/s 4 is completely vague, which has deprived petitioner-company from submitting written objections and so also of their valuable right provided for participation in inquiry u/s 5A of the Act. In support, Counsel relied upon decision of Apex Court in Munshi Singh and Others Vs. Union of India (UOI), .

3. Counsel further submits that after entering into agreement to sale (Ann.4), petitioner Company approached various authorities for approval of heritage Hotel/ Hospitality project at Jaipur, which was approved by Tourism Department, Government of India and so also by Director of Tourism, Art & Culture, Rajasthan Jaipur as is evident from correspondence dt.14/01/98 & 09/02/98 (Ann.5 & 6); and there being no public purpose involved, respondents initiated process invoked powers for acquisition of land; and "public purpose" as disclosed by

respondents in the notification u/s 4 is contrary to what has been envisaged in Section 3(f) of the Act; which vitiates acquisition proceedings initiated by respondents; as such Counsel submits that both the notification u/s 4 & declaration u/s 6 deserve to be quashed & set aside.

4. Respondent-State having entered into caveat filed their reply wherein it has been inter-alia averred that there are "Chhatri" & "Sannikat" of historical importance and keeping in view catchment area of water reservoir & in order to prevent any damage to "Chhatri" of 16th Century & "Sannikat", they were declared to be protected monument u/s 3(IV-A) of Rajasthan Monuments, Archaeological Sites & Antiquities Act, 1961 ("Act, 1961") vide notification dt. 29/08/07 (Ann.R.1) and at the same time, in order to prevent damages to historical monuments and so also damage to heritage picturesque to Amer Fort, which being public purpose u/s 3(f)(ii) and for tourism purpose, State Government making plan development from public funds issued/published notification u/s 4 of the Act (Ann.11).

5. Government Counsel submits that after notification u/s 4 of the Act (Ann.11) was published, neither the petitioner submitted written objections nor participated/appeared in the course of inquiry initiated by respondents u/s 5A of the Act for providing opportunity of hearing to objectors to the proposed acquisition; and only after declaration dt. 17/12/07 (Ann.12) u/s 6 of the Act being issued, petitioner has straight away approached this Court by assailing aforesaid notification & declaration.

6. Government Counsel further submits that final Award has also been passed on 05/12/2008 and petitioner who never raise any written objection or participated in personal hearing cannot be permitted to question acquisition proceedings initiated by respondents under notifications impugned herein and that apart, passing of final Award, the land finally vested with State Government and if at all petitioners feels aggrieved thereby can only claim compensation in accordance with law but has no locus standi to question acquisition which stood final after passing of the Award.

7. I have considered rival contentions of learned Counsel for parties and with their assistance, examined material on record. Both the notifications were issued on 29/08/07 and published in official gazette dt. 31/07/07 (Ann.R.10) while declaring monuments "Chhatri" of 16th Century & "Sanikat" of historical importance keeping in view catchment area of water reservoir besides in order to prevent any damage to the protected monuments (supra) u/s 3 (4A) of Act, 1961 and further declaring public purpose u/s 4 of the LA Act, for which the land was intended to be acquired. If petitioner was at all aggrieved of acquisition either with regard to public purpose allegedly being not disclosed or there were reasons to show that the land intended to be acquired was of no use for the Government, remedy was available to the petitioner to have submitted written objection and certainly was entitled for an opportunity of hearing either in person or by any person authorised on his behalf or by pleader to make such objections

u/s 5A(2) of the Act.

8. Inquiry provided u/s 5A of the Act of personal hearing to objectors/Khatedars has been held to be mandatory in character by consistent decisions of Apex Court which certainly confers valuable right in favour of land owner to object to proposed acquisition of his property.

9. In instant case, Land Acquisition Officer ("LAO") after taking note of written objections and having afforded opportunity of hearing to objectors and making further inquiry, if any, submitted report to the State Government, who after examining the record which includes written objections and proceedings having taken place in course of personal hearing afforded during inquiry, and so also report of the LAO, on being satisfied, made declaration of intending acquisition u/s 6 of the Act.

10. However, it is true that only in such cases where the land owner has filed objections to proposed acquisition, such objectors are entitled for personal hearing. In cases where objections to proposed acquisition have not been filed, the duty to hear such owners/Khatedars of the land proposed to be acquired does not arise. As regards scope of inquiry u/s 5A of the Act as to who would be competent to object against declaration u/s 6 has been recently considered by Apex Court in *Talson Real Estate (P) Ltd v. State of Maharashtra* 2007(13) SCC 186 *ad infra*:

16. The provisions of Section 5A of the Act is attracted only when a person interested in any land which has been notified u/s 4(1) makes objection in writing to the Collector within 30 days from the date of the publication of the notification. The period of 30 days will have to be countered from the last day of the publication of the notification u/s 4 of the Act which, in the present, was admittedly published in Official Gazette on 17-4-1997 and in two daily news papers on the same day. The substance of such notification was notified on the site on 30-4-1997. The appellant-company did not choose to file objections u/s 5-A of the Act against the acquisition of its land bearing survey No9.23/2/1, ad measuring 1 hectare 82 ares.

18. The appellant Company being the owner of the land, has not filed objection u/s 5-A, in principle, it must be accepted that it had no objection to Section 4 notification operating in respect of its property. Those claimant owners of the lands who have not filed objection u/s 5-A could not be allowed to contend that Section 5A inquiry was bad and that consequently Section 6 declaration must be struck down and that then the Section 4 notification would lapse.

11. In instant case, certainly petitioner Company had an opportunity to file written objections before the LAO or to show that public purpose as disclosed in notification u/s 4 was not public purpose as being covered u/s 3(f) of the Act or to persuade the authority that acquisition of its property should not be made. Curiously enough indisputably, petitioner Company at no point of time after publication of notification u/s 4, submitted any written objections nor has ever

participated in inquiry as provided in Section 5A(2) of the Act - in absence whereof, it cannot now be permitted to question preliminary notification u/s 4 or declaration made by State Government u/s 6 of the Act.

12. Judgment relied upon by Counsel for petitioner in *Munshi Singh v. Union of India* (supra) has no application in facts of instant case for the reason that it was a case where issue came up for consideration before Apex Court was that if public purpose has not been disclosed in preliminary notification u/s 4, what would be the effect of opportunity provided of submitting written objection or of participation in the inquiry provided u/s 5A of the Act and that can be considered to be denial of affording reasonable opportunity of hearing as provided u/s 5A of the Act. As noticed (supra), in instant case, once petitioner has failed to submit written objection, question of denial of opportunity of hearing or to examine about public purpose being declared in notification u/s 4 does not arise for consideration and that apart, State Government in its notification u/s 4 has declared public purpose in unequivocal term which cannot be said to be vague or in any manner has caused prejudice to the objector or person interested in submitting written objection as provided u/s 5A of the Act.

13. Moreover, in instant case, after publishing preliminary notification u/s 4 and taking note of written objections, besides opportunity of hearing being afforded to objectors u/s 5A, report was sent by the LAO containing recommendations - taking note whereof appropriate Government took decision to make a declaration u/s 6 obviously after being satisfied and consideration of relevant record, accordingly compliance of provisions of LA Act was made in true spirit, warranting no interference at the instance of petitioner Company.

14. Consequently, writ petition fails and is hereby dismissed. No order as to costs.