
(1982) 02 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1620 of 1972

Ajadul Bux and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-02-1982

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 4(1), 5A

Citation : AIR 1982 All 435

Hon'ble Judges : S.D. Agarwala, J;B.N. Sapru, J

Bench : Division Bench

Advocate : A.P. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution. By means of the present petition proceedings under the Land Acquisition Act in respect of plots Nos 1309, 1310, 1311, 1312, 1313, 1318 and 1319 of village Gani Bundwara, pergana Patialla, Dist, Etah has been challenged. The notification u/s 4(1) of the Land Acquisition Act, hereinafter referred to as the Act was issued on 15th Dec. 1969. The case of the petitioners is that they have got their own residential building, family graveyard and mosque in plot No. 1310 and over plots Nos. 1312 and 1313 they have their own residential house and some portion of the land appurtenant thereto. It has been further alleged in the petition that the petitioners did not receive any notice u/s 4 of the Act nor any other information was given to the petitioners. Subsequently a notification was issued on 17th Feb, 1972 u/s 6 r. w. Section 17(1) of the Act and the possession of the land in dispute was sought to be taken over from the petitioners on the basis of the said notification. Hence the necessity of filing the present petition in this Court.

2. The petition was admitted on 14th Mar, 1972 and the respondents were directed not to dispossess the petitioners from the plots in dispute. This interim order was confirmed on 25th July 1972. The result, therefore, is that the

petitioners" possession over the plots in dispute still remains.

3. The petitioners have challenged the validity of the notification u/s 4 of the Act on the ground that there was no urgency at all and the State Government could not have dispensed with the provisions of Section 5-A of the Act resulting in serious prejudice to the petitioners.

4. Notification u/s 4 Sub-section (1) of the Act was issued on 15th Dec. 1969. This notification was published in the U. P. Gazette dt. 27th Dec. 1969. The land was sought to be acquired for a public purpose namely for construction of water tanks, godown, Engineers residence and installation of tube well for water works of Municipal Board, Gang Dundwara, in the district of Etah. In para 2 of the said notification it was stated as under :--

"The Governor being of opinion that the case is one of urgency and as such the provisions of Sub-section (1) of Section 17 of the said Act was applicable to the land is further pleased under Sub-section (4) of the said section to direct that the provisions of Section 5-A of the said Act shall not apply."

5. No further action was taken in pursuance of the above notification for more than two years and on 18th Feb. 1972 a notification u/s 6 of the Act was issued. This notification was published in the U. P. Gazette dt. 4th Mar. 1972 In para 2 of the said notification the Governor directed that since the case is one of urgency and Section 17(1) applied therefore, the possession may be taken of the arable land though no award had been made u/s 11 of the Act.

6. The petitioner challenged the notification u/s 4 of the Act on the ground that the State Govt. had failed to make out any case of urgency and as such they were illegally deprived of being heard as required by Section 5-A of the Act. In the counter-affidavit of Dharmendra Singh filed on behalf of the State Government no explanation at all has been given as to why the case was of such an urgency that the petitioners were deprived of the opportunity u/s 5-A of the Act. The position therefore, which emerges from the facts on record is that the notification u/s 4 of the Act had been issued on 15th Dec. 1969 by virtue of which the provisions of Section 5-A of the Act were dispensed with and thereafter a notification u/s 6 of the Act was issued on 18th Feb. 1972. The very fact that the notification u/s 6 of the Act was issued after more than two years establishes prima facie that in fact there was no urgency at all. In the absence of any material being placed by the State Government as to the circumstances in which the Governor was satisfied of the urgency of the matter which made it necessary to direct that the provisions of Section 5-A of the Act would not apply, it appears that Clause (2) of the notification dt. 15-12-1969 was passed without any application of mind and without considering the circumstances of the case. Section 5-A of the Act only permitted a period of 21 days for objecting to the acquisition of the land. No irreparable injury was likely to be caused to the state Government if such an opportunity would have been afforded to the persons whose land was sought to be acquired. The purpose for which the land was

sought to be acquired which has already been stated above does not on the face of it appear to be such a purpose that an inquiry as contemplated u/s 5-A should have been denied in the case. If facts would have been brought to the notice of this Court and it would have been established that in the circumstances of the case it was necessary to direct that the provisions of Section 5-A of the said Act should not apply, that it may have been possible for this court to uphold the notification, This interpretation however, depends upon the facts and circumstances of each case.

7. In *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, :

"Once the court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material however meagre on which it could reasonably base its opinion the courts should not and will not interfere. There might, however, be cases in which the power is exercised in such an obviously arbitrary or perverse fashion without regard to the actual and undeniable facts Or in other words, so unreasonably as to leave no doubt whatsoever in the mind of court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all due to misunderstanding of the law or some other reason, to what was legally imperative for it to consider."

8. The Hon'ble Supreme Court in the above case while considering the scope of Section 4, Section 5-A and Section 17, of the Act held that it was open to the court to examine as to whether the condition precedent to the exercise of power u/s 17(4) of the Act had been fulfilled or not. It further held that the officer or authority concerned has to apply its mind on the question whether there is an urgency of such a nature that even the summary proceedings u/s 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry u/s 5-A of the Act has to be considered. In view of the principle stated above, as I have already held that no material has been placed by the the State Government as to why the provisions of Section 5-A of the Act were dispensed with, it appears that the order directing dispensation of the inquiry u/s 5-A of the Act is purely an arbitrary order and without any material on record and as such the conditions precedent for the exercise of power u/s 17(4) of the Act was not in existence in the instant case, The notification therefore, u/s 4 r/w, Section 17(4) of the Act dispensing with the provisions of Section 5-A of the Act is consequently invalid. Since the notification u/s 4 of the Act is invalid, the subsequent proceedings consequent to the issue of the said notification, are also bad in law.

9. In the result the petition is allowed. The notifications dated 15th Dec, 1969 and 17th Feb. 1972 are hereby quashed. In the circumstances of the case the parties are directed to bear their own costs.