

(1992) 07 AHC CK 0034

In the Allahabad High Court

Case No : C.M.W.P. No's. 9161 and 7523 of 1984

Ajib Singh and others

APPELLANT

Vs

State of Uttar Pradesh and another

RESPONDENT

Date of Decision : 23-07-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition (Uttar Pradesh Amendment and Validation) Act, 1974 — Section 4(1)

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

Citation : AIR 1993 All 10

Hon'ble Judges : S.D. Agarwala, J;M. Katju, J

Bench : Division Bench

Advocate : J.C. Joshi, for the Appellant; Standing Counsel, for the Respondent

Judgement

S.D. Agarwala, J.—These are two petitions under Article 226 of the Constitution of India challenging the notification dated 22-6-1983 issued u/s 4(1) read with Section 17(4) of the Land Acquisition Act (hereinafter referred to as "the Act") as well as the notification dated 23-6-1983 issued u/s 6 of the Act. The notification u/s 4 of the Act was published in the U.P. Gazette on 22-6-1983 and the notification u/s 6 of the Act was published in the U. P. Gazette on 28th of June 1983.

2. In the notification issued u/s 4 of the Act, it was categorically stated that the land in dispute was required for the construction of godown, residential quarters for its workers and other allied works by the Bazpur Co-operative Sugar Factory Limited Bazipur in district Nainital. In the notification, further, it was stated that the land was urgently required for the above public purpose and consequently, the enquiry u/s 5A of the Act was being dispensed with.

3. Initially, when the petition was filed the State of U.P. and the Collector/ Land Acquisition Officer, Nainital were made respondents in the petition. Thereafter, the applications were made on behalf of the Bazpur Co-operative Sugar Factory Limited Bazipur, district Nainital for whose purpose the land was sought to be

acquired for being im- pleaded as respondent in these petitions. M/ s. Bazpur Co-operative Sugar Factory Limited was allowed to be impleaded as a respondent in these petitions.

4. We have heard the learned counsel for the petitioners in both these petitions and the learned Standing Counsel and Sri A. K. Misra learned counsel for the newly added respondent, M/s. Bazpur Co-operative Sugar Factory Limited. Learned counsel for the petitioners have raised various contentions before us challenging the impugned notifications. The first submission raised by the learned counsel is that since the Collector did not publish any notice of the substance of the notification at any conspicuous place in the locality nor any publicity was given to the said notification nor any notice was served on the petitioner or any other tenure-holder whose land was sought to be acquired and as such the impugned notifications are invalid in law and cannot be given effect to.

5. In support of the petitioners' contention, the only allegation made in the petition is in paragraphs 8 and 9. In paragraph 8, it has been stated that no publicity was given nor any notice was issued under the provisions of the Land Acquisition Act in regard to the notifications. In paragraph 9, however, it has been stated that the Collector did not publish any notice of the substance of the notifications at any conspicuous place in the locality nor any notice was given to the persons whose land was sought to be acquired.

6. Sri J. C. Kukreti, District and Land Acquisition Officer, Nainital has filed a counter-affidavit. In paragraph 7 of the counter-affidavit, the contents of paragraphs 8 and 9 of the petition have been denied. In paragraph 8 of the petition, however, it has been categorically stated that in view of the Land Acquisition (U. P. Amendment and Validation) Act VIII of 1974 the public notice of the notification u/s 4 of the Land Acquisition Act was not required where the provisions of Section 17(4) of the Act have been invoked. The resultant effect is that it is not disputed that the public notice as required u/s 4 of the Land Acquisition Act was not given.

7. The question that arises for consideration is whether in the absence of the public Notice, the notification u/s 4 of the Act can be given effect to.

8. Section 4(1) which is relevant for determining the present controversy reads as follows:

"Publication of Preliminary Notification and Powers of Officers Thereupon -- (1) Whenever it appears to the (appropriate Government) that land in any locality (is needed or) is likely to be needed for any public purpose (or for a company), a notification to that effect shall be published in the Official Gazette, (and in two daily newspapers circulating in that locality of which at least one shall be in the regional language) and the Collector shall cause public notice of the substance of such notification to be given at convenient place in the said locality (the last of the dates of such publication and the giving of such public notice, being

hereinafter referred to as the date of the publication of the notification)".

9. By the Land Acquisition (U. P. Amendment and Validation) Act VIII of 1974, in sub-section (1) of Section 4, between the words "and" and the "Collector" the following clause was inserted and be deemed always to have been inserted, namely:

"except in the case of any land to which by virtue of a direction of the State Government under sub-section (4) of Section 17, the provisions of Section 5A shall not apply."

10. On a reading of sub-section (1) of Section 4 along with the amendment made by the 1974 Act, it is clear that the public notice as contemplated by Section 4(1) of the Act is not applicable to a case where the notification has been issued u/s 4(1) read with Section 17(4) dispensing with the provisions of Section 5A of the Act. In view of this position of the law, it is, therefore, clear that merely because public notice was not given of the substance of the notification u/s 4 in the locality it would not invalidate the notification. Since Section 5A of the Act has been dispensed with, the question of issuing notices to the persons whose land were sought to be acquired does not arise. Consequently, we do not find any substance in the first submission made by the learned counsel for the petitioner.

11. The second submission made by the learned counsel for the petitioner is that the acquisition being for a company and the respondents have not complied with the provisions of Chapter VII of the Land Acquisition Act, the entire acquisition proceedings are invalid and bad in law.

12. In paragraph 16 of the writ petition, a bald allegation has been made that since the acquisition is for a company and no compliance having been made with the requirement of Chapter VII of the Land Acquisition Act, the acquisition proceedings are illegal. There is no specific allegation as to which part of Chapter VII of the Land Acquisition Act has been complied with.

13. In the counter-affidavit of Sri J. C. Kukreti, the District Land Acquisition Officer, Nainital, reply of this paragraph has been given in paragraph 13 of the counter-affidavit in which it has been categorically stated that in the notification u/s 6 of the Act, it has been categorically stated that the amount of compensation to be awarded is to be paid partly out of the public revenues of the State and consequently the provisions of Chapter VII of the Land Acquisition Act and Company Rules 1963 are not applicable in a case where a part of the amount is payable by the State.

14. We have examined the notification u/s 6 of the Act. In the said notification, it has been categorically stated that the amount of compensation to be awarded for compensation of the acquisition of the land shall be paid partly out of the revenues of the State. There is no averment in the petition or in any other affidavit filed in this Court denying that part of the compensation has not been

paid out of the public revenue of the State. In the circumstances, the question which we have to consider is as to whether the provisions of Part VII of the Land Acquisition Act is applicable in a case where the part of the compensation is paid out of the public revenues of the State in a case where acquisition is made for public purpose.

15. In *Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others*, it has been categorically held that even a contribution of Re. 1 / - from the said revenue was held adequate to hold that the acquisition was for public purpose and consequently, the provisions of Part VII in the Company Acquisition Rules would be effective in such an acquisition. The principle laid down in this case is fully applicable to the facts of the present case. The purpose for which the instant acquisition is made is for the purpose of constructing godown, residential quarters for its workers and other allied works by the Bazpur Co-operative Sugar Factory Limited. These purposes, on the face of it, are public purpose and consequently, one part of the compensation is being contributed by the State. Thus the question of the applicability of the provisions of Part VII of the Land Acquisition Act and Company Rules does not arise. The second submission made by the learned counsel, in our opinion, is not substantiated.

16. The third submission made by the learned counsel for the petitioner is that in the instant case the State Government did not apply its mind on the question of urgency and consequently, the direction issued dispensing with the provisions of Section 5A of the Act is wholly arbitrary. In this connection, it has been further urged that the action of the State Government in dispensing with the provisions of Section 5A of the Act is mala fide.

17. So far as the question of mala fide is concerned, there is no allegation in the petition and as such, it is not open to the petitioner to take this ground. So far as the question of the applicability of the mind by the State Government is concerned, the factual position is as follows:

18. In paragraph 13 of the writ petition, it has been alleged that there was nothing on the record before the Governor to form an opinion that it was a matter of urgency in which dispensing with the requirement of Section 5A of the Act was necessary. In paragraph 15 of the petition, it has been further stated that the impugned notification has been issued arbitrarily and without application of mind. Sri R. K. Gupta has filed a counter-affidavit on behalf of the State in which detail facts have been given as to Why the State Government thought it fit to dispense with the provisions of Section 5A of the Act. It has been stated that the State Government considered the proposal of acquisition of the land in question in great depth and after satisfying itself that the acquisition was urgently needed for the construction of sugar godown and constructions of labours quarters, the provisions of Section 5A of the Act has been dispensed with. It has been further stated that the notification in respect of the land was no doubt earlier issued on 24-2-1976. The final notification could not be issued due to various reasons and the proceedings were dropped. Since then the

cooperative sugar mill, Bazpur was expanded and a distillery has been erected by the Mills but the godown and quarters of workers could not be constructed for the last seven years resulting in great hardship for storage of sugar and providing accommodation to labour class. Sugar is a perishable item which can be easily damaged by moisture and rains and needs proper storage facilities. Similarly, labours are also to be provided with the proper residential accommodation. It was after considering these facts that the State Government came to the conclusion that it was a matter of urgency and provisions of Section 5A of the Act be dispensed with.

19. From the facts stated in the counter-affidavit on behalf of the State Government, we are of the opinion that it cannot be said that the State Government did not apply its mind for dispensing with the provisions of Section 5A of the Act and neither it can be said that the said decision was arbitrary. In the State of U. P. v. Smt. Pista Devi, AIR 1986 SC 2025, the Hon'ble Supreme Court had an occasion to consider the validity of the notification u/s 4 of the Act wherein Section 5A of the Act had been dispensed with. It has been observed by the Supreme Court that the provisions of housing accommodation has become a matter of national urgency. Judicial notice can be taken of this fact and as such it took the view that in the case of proceedings relating to acquisition of land for providing housing sites, it would be appropriate to dispense with the provisions of Section 5A of the Act, In the facts and circumstances of this case, we are of the opinion that the third submission raised on behalf of the petitioner is not substantiated.

20. The last submission which has been made by the learned counsel for the petitioner is that there was certain constructions already existing on the land prior to the date of the issue of the notification u/s 4 of the Act. If that be so, in the interest of justice, we think it proper that the said question should have been considered by the Collector before acquiring the land.

21. In the result, both the writ petitions fail and are dismissed with the following directions:

22. It will be open to the petitioners to make representation before the Collector concerned for exemption of their land on which there existed constructions, residential commercial and industrial before publication of the impugned notification u/s 4 of the Act, within two months from today. If such representations are filed before the Collector, he will investigate into the matter and get the plots concerned surveyed and thereafter decide it on the basis of the material produced by the petitioners and its own record, after sending intimations to the concerned parties of the date on which the matter will be considered by it. This decision shall be taken by the Collector as far as possible within two months from the date of receipt of the judgment. The decision so taken shall be communicated to the concerned parties within two weeks thereafter. In case, the Collector finds that the petitioners' constructions were pre-notification constructions, it will make necessary recommendation to the

State Government for exemption of only that portion of the land on which the constructions exist. However, if the Collector decides against any of the petitioners, it will be open to them to make representation before the Government within a month after the decision of the Collector. The Government will look into the grievance of the petitioners and pass appropriate orders expeditiously. This order will apply only to that land where the constructions already exist and which are prior to the date of the issue of the notification u/s 4 of the Act.

23. Till the Government decides the question of grant of exemption, status quo, as on today, shall be maintained by the parties.

24. The parties are directed to bear their own costs.

25. Petitions dismissed.