

(1989) 01 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 111, 107 to 110, and 112 to 116, of 1983

Ajit Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-01-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 31
Land Acquisition Act, 1894 — Section 5A

Citation : (1989) WLN 333

Hon'ble Judges : S.S. Byas, J; D.L. Mehta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In all these writ petition, petitioners have challenged the acquisition proceedings particularly, the notification published in Rajasthan Rajpatra vide (Annexure-4). The State Government has issued the notification in exercise of the powers conferred u/s 17(4) of the Rajasthan Land Acquisition Act, 1953, for acquiring the land for the purpose of housing schemes of Industrial City, Kota, of Rajasthan. This land was to be acquired to make it available to the Housing Board. In these writ petitions, the petitioners have challenged the notification issued u/s 14(4) on the ground that notices u/s 4(5) were not served properly on the petitioners. The petitioners have also submitted that hearing as required u/s 5A of the Land Acquisition Act, which has not been given to them. It will not be out of place to mention that the petitioners have not stated in these writ petitions how the land is not required for housing purposes of the city. There is no allegation of malafide. It will not be out of place here to mention that the land which is required by the Housing Board for the construction of the houses will be used for housing purposes and constructed houses will be allotted by way of sale or hire purchase to the needy people who are shelterless. The law is enacted for the society, and the society is not for the law. Even if it is assumed that there is a technical error in the application of law, it should not come in the way of allotment activities where the question of welfare of society is involved. Everyone

knows that housing problem is the acute problem for the residents of towns and cities. Prices are touching the sky. The concept of property is good to a limited extent but when it comes in the way of development or in the way of social welfare, generally the court should not come at the rescue of the property holders. One must understand that after 42nd amendment of the Constitution, the word "Socialist" has been inserted in the preamble of the Constitution of India. The insertion of the word "Socialist" indicates the thinking of people. At the time of framing of Constitution the father of the Constitution Dr. Ambedkar wanted to use the word "Socialist" in the Constitution but he could not achieve the object at that time as it was considered not necessary. In the year 1976, people considered it proper that the word "Socialist" should be inserted and cherished desired of Dr. Ambedkar, should be fulfilled. Apart from that, Article 31, relating to the property which was a fundamental right under Chapter III was taken out of that chapter relating to the fundamental rights of the Constitution. This also indicates the rethinking of the nation. Both these amendments direct the courts to consider that the right to property should not be given undue weightage now. The principles of natural justice should also not be stretched to the extent that the scheme of development is flattered down resulting in the agony of the soul of the country the shelterless persons. The people should not be allowed to feel that the courts are hyper technical and are guardians of the persons who believe in the doctrine of status quo in all sphere of life. On the country, it is the need of the time that the people should feel that the courts are the guardians of those poor, needy, down trodden, harassed and tortured people. It does not mean that the court should give a good-bye to the theory of right to property but it only means that it should be applied in such a way that the cause of society may not suffer because of the technicalities of law.

2. In these writ petitions, petitioners have challenged the notification (Annexures-4), on the ground that the agricultural land should not be acquired for the housing schemes. The second ground is (Annexure-1) that notice is not served, and if served, has not been properly served. The third ground is that it came to the knowledge of petitioners very late that the land is being acquired and notification u/s 17(4) of the Act, has been issued. The petitioner submitted an application before the Land Acquisition Officer and submitted that they have been deprived of the right of making objections against the acquisition as such the notification (Annexure-4) should be quashed. Annexure-3, is the representation which was submitted by the petitioner subsequent to the issuance of notification dated March 11, 1982. These writ petitions are pending at the stage of admission for the last five years. Stay order has been obtained by the petitioners. Every time adjournment is sought. The Government Advocate is not so much interested in opposing the adjournment. It is the duty of the Court to see that the writ petitions are decided even at the admission stage if possible. It is agonising that about five years have passed in the matter of pending acquisition and the writ petition has not crossed the line of admission. Even today the court waited, but the counsel for the petitioners was not interested in

attending the court in this case. The practice has developed in some cases that some Advocates do not come in time and consider that at the most the petition will be dismissed in default. Restoration applications are generally not contested as it is a common cause. In such matters, it is the duty of the Court to see that the justice does not suffer and proper orders in time. We have gone through the file and we are of the view, that the petitioners had ample knowledge about the notification issued u/s 17(4). Even if it is assumed that there was no proper service u/s 4(5) even then no case of prejudice has been made out. Even (Annexure 3), the objections filed against acquisition are taken on its face value we do not find any reason to stay the acquisition proceedings. There is no force in the objection referred to in (Annexure-3). Even if it is assumed though not correct that there is an infringement of the right, even then we are not satisfied to give any relief to the petitioners. They have not stated in the writ petitions how the land is not required for the housing purposes. The land is situated in Kota and there is no allegation of discrimination or malafide. It will not be out of place here to mention that Kota is a Industrial city of Rajasthan State and State of Rajasthan is a developing State, Number of industries have developed in Kota and housing problem in the most acute problem in the city. It is the duty of the court to take judicial notice of such facts. Every mistake or every violation of law does nor necessarily directs the court to exercise its powers conferred under Article 226 of the Constitution of India. The Court should not forget that to safeguard the benefit and welfare of the society is also important duty of court At the most the grievance of the petitioner is that before taking the proceedings u/s 17(4) of the Land Acquisition Act, it was obligatory on the part of State or the Authority of the State to give hearing u/s 4(5) of the Rajasthan Land Acquisition Act In the case of Shahoodul Haque Vs. The Registrar, Co-operative Societies, Bihar and Another, Their Lordships have held that when the facts stand admitted or there cannot be two views in the matter it is not necessary to give hearing at all. The land is the part of the city area, it is necessary for the purpose of construction of houses and houses are to be constructed by the Housing Board and will be allotted to the needy persons, are very important facts which cannot be over-looked. What type of objection the petitioner can raise? The objection of the petitioner is that it is an Agricultural Land. Generally, agricultural land is required for housing purposes Land is not elastic which can be Stretched Naturally, the land which is used for agricultural purposes will have to be acquired for housing purposes Even the petitioner has not said any thing about the discrimination or malafide. The Court should not be a party in destroying the spirit of the constitution particularly relating to Chapter III of the Constitution, where every one has a right to life. Right to life included right to livelihood and shelter place is necessary within a reasonable limit. The land is required to prove shelter place to the needy. Will the petitioner except that the court should come at his rescue on technical grounds and should destroy the spirit of Constitution? We are fortified in our views in this matter by the judgment of Hon''ble Supreme Court in the case of State of U.P. Vs. Smt. Pista Devi and Others, Their Lordships have also taken the judicial notice of the fact and allowed the acquisition of the

land. Once we take the judicial notice, objections in the matter of need for acquisition do not come in the way.

3. We are of the view that the notification issued u/s 17(4) is good and the writ petitions are dismissed. The stay order granted in the year 1983, is vacated

No order as to costs.