

(1996) 04 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 16241 of 1992 connected with C.M.W.P. No. 15099 of 1986

Amarnath Ashram Trust Society and Another; Kishori Raman
Shiksha Samiti and Others

APPELLANT

Vs

Governor of U.P.and Others; State of U.P.and Others

RESPONDENT

Date of Decision : 16-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 48

Citation : (1996) 04 AHC CK 0066

Hon'ble Judges : S.P.Srivastava, J and M.Katju, J

Final Decision : Dismissed

Judgement

S. R. Srivastava, J.

1. The Amar Nath Ashram Trust, Mathura, a Society registered under the Societies Registration Act, 1860 made an application to the Government of Uttar Pradesh to acquire for the public purpose namely for construction of playground for students of Amar Nath Vidya, Ashram (Public School), Mathura (hereinafter referred to as the "School") under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the Act"), the plot No. 530/1 having an area of 2.67 acres situate in Keshopur Manoharpur, district Mathura for construction of playground for students of the School. The aforesaid plot of land was owned by Kishqri Raman Shiksha Samiti, Mathura, the respondent No. 5. In the proceedings initiated by the State Government for the acquisition of the aforesaid plot, a notification dated 1st August, 1986 under Section 4 of the Act was published on 1681986 notifying for general information that the land referred to above was required for a public purpose namely ; playground of students of the School.

2. The aforesaid notification under Section 4 of the Land Acquisition Act was challenged by Kishori Raman Shiksha Samiti and Another. before this Court in

Civil Misc. Writ Petition No. 15099 of 1986 filed on 29/1986. The petitioner in this case sought for the quashing of the aforesaid notification.

3. During the pendency of aforesaid writ petition, a notification dated 4th September, 1987, in continuation of the notification dated 18/1986 was published under Section 6 of the Land Acquisition Act which indicated that the Governor after considering the report made under Section 5A of the Land Acquisition Act and the report under sub rule (4) of Rule 4 of the Land Acquisition (Companies) Rules, 1963 and consulting the Land Acquisition Committee contemplated under Rule 3 of the said Rules and after publication of the agreement entered into between Amar Nath Ashram Trust, Mathura and Governor of Uttar Pradesh in respect of the Land indicated above was pleased to declare under Section 6 of the said Act that he was satisfied that the land mentioned in Schedule which was the plot No. 350/1 having an area of 2.67 acres in dispute was needed for the construction of playground for students of the school and the Collector of Mathura was directed to take steps for the acquisition of the said land.

4. It may be noticed here at this stage that before the issuance of the notification under Section 6 of the Act, the Kishori Raman Shiksha Samiti filed another writ petition during the pendency of the Civil Misc. Writ Petition No. 15099 of 1986 when the proceedings under Section 5A were pending and only recommendation had been made for the issuance of notification under Section 6 of the Land Acquisition Act. This Court dismissed the said writ petition observing that only recommendation had been made after disposing of the objection filed by the petitioners under Section 5A and in the aforesaid circumstances, no interference was called for under Article 226 of the Constitution of India at that stage.

5. This order was challenged by the Kishori Raman Shiksha Samiti and Another. before the Apex Court which dismissed the special leave petition giving the opportunity to the petitioners to apply for the amendment of the Writ Petition No. 15099 of 1986. Thereafter the petitioners in Civil Misc. Writ Petition No. 15099 of 1986 applied for amendment in the said writ petition which was allowed on 22/4/1991. By way of amendment, the petitioners prayed for a mandamus declaring the notification dated 18/1986 and 49/87 issued under Sections 4 and 6 of the Land Acquisition Act to be null and void.

6. Before the Civil Misc. Writ Petition No. 15099 of 1986 as amended could be disposed of on merits, the State Government issued a notification on 1st, May 1992, whereunder exercising the jurisdiction envisaged under Section 48 of the Land Acquisition Act, the Government withdrew from the acquisition of the land in dispute with result that the entire proceedings for acquisition stood dropped.

7. It was thereafter that Writ Petition No. 16241 of 1992 was filed on 11th May, 1992, praying for the quashing of the order dated 15/1992 and the issuance of the mandamus requiring the respondents to arrange for handing over of the land to the petitioners in pursuance of the agreement dated 11/8/1987 and the notifications dated 18/1986 and 49/1987.

8. Considering the facts and circumstances of the case, both the aforesaid writ petitions have been heard together and are being disposed of by a common order.

9. We have heard Sri R.N. Singh, learned Counsel for the petitioners in Civil Misc. Writ Petition No. 16241 of 1992 and Sri Janardan Sahai, learned Counsel for the petitioners in Civil Misc. Writ Petition No. 15099 of 1986. We have also heard the learned Standing Counsel representing the Governor of Uttar Pradesh, Lucknow and the State of Uttar Pradesh, impleaded as respondent Nos. 1 and 2 in Civil Misc. Writ Petition No. 16241 of 1990 and representing the State of Uttar Pradesh and Collector, Mathura impleaded as respondent Nos. 1 and 2 in Civil Misc. Writ Petition No. 15099 of 1986.

10. The learned Counsel for the petitioner in Civil Misc. Writ Petition No. 16241 of 1992 has strenuously contended that the impugned notification under Section 48 of the Land Acquisition Act stood vitiated on account of its having been issued in a mala fide exercise of power. In this connection, the petitioners allegations in the Civil Misc. Writ Petition in support of the aforesaid plea are directed against Sri V. Venkatchharam, the Special Secretary to Government (Education). The allegation made in sum and substance is that Sri V Venkatchharam, the Special Secretary (Education) yielding to the pressure and influence of Sri R. K. Garg, the State Minister for Power, U. P. had issued the notification dated 15/1/1992 exercising power under Section 48 of the Land Acquisition Act. It has further been alleged that Sri V Venkatchharam, the Special Secretary was in so haste that he got the notification issued in the name of the Government so that the Governor may not be aware of the real situation existing at the spot.

11. The provisions contained in Section 48 of the Land Acquisition Act stipulate that except in the case provided for under Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. The use of the expression "shall be at liberty" leads to an inescapable conclusion that the discretion to withdraw from acquisition provided for under Section 48 of the Land Acquisition Act is of a very wide amplitude. An order passed in an exercise of such a discretionary jurisdiction if challenged on the ground of mala fides casts a heavy burden on the person who alleges mala fide and the very seriousness of such allegations demand proof of a higher order of credibility. The charge of mala fides against an authority is more easily made than made out or proved.

12. It must be emphasised that the charge of mala fide action can only mean want of good faith which refers to an action which is done honestly irrespective of the fact whether it is done negligently or not. The malice or ill will on the part of the concerned authority has to be established by sufficient material leading to the conclusion that the action complained of is the result of such malice or ill will. There may be a situation where the use of the discretionary power may amount to abuse or misuse of that power or its exercise for an unauthorised purpose which may be to please some politician or any particular person or such discretionary power is exercised on a total nonapplication of mind or discloses

favouritism/nepotism which may render the action so taken irretrievably vitiated.

13. While, it may be difficult to obtain information and evidence regarding activities carried on with foul motives, inference could however, be drawn from proved facts which should be clear and unambiguous. The allegations of bias or mala fides against the persons who are not parties to the writ petition cannot be entertained as they cannot have any opportunity to reply to the allegations of the petitioner. The burden of establishing the charge of bad faith is on him who seeks to invalidate or nullify any act or order but mala fides need not to be proved by direct evidence alone. However vague assertions of mala fides are of no consequence. It is necessary that in case the plea is raised clinching evidence has to be brought to the notice of the Court besides opportunity to the person concerned against whom mala fides or bias is pleaded to meet such allegations. Where such an official against whom the plea of bias or mala fide is raised has not been impleaded as a party conominee in the petition, such a plea cannot be allowed to be raised. It must be remembered that possibility of suspicion of mala fides would not be a sufficient ground to justify an order nullifying an administrative action as suspicion cannot be taken to be a substitute for the proof.

14. While considering the requirement of impleading the person against whom allegations of mala fides are made or the effect of nonjoinder of such a person, it was observed by the apex Court in its decision in the case of State of Bihar v. P. P. Sharma, reported in 1992 S.C.C. (I) 222 that "it is settled law that the person against whom mala fides or bias was imputed should be impleaded conominee as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made."

15. It may be noticed that in the aforesaid case, the person against whom allegations of mala fides had been made had not been impleaded as respondents conominee. On the effect of such a nonjoinder, the Apex Court observed that on this ground alone the High Court should have stopped enquiry into the allegations of mala fides or bias alleged against them.

16. In the aforesaid view of the matter, when a petitioner seeks to get an order passed by an executive authority nullified branding the same as vitiated on account of bias or mala fides, it is necessary to implead the authority concerned in his personal capacity also so that he may be in a position to effectively reply to the allegations of mala fides or bias levelled against him. In the present case the deliberate omission of the petitioner to implead the respondents authority conominee whose action is sought to be attacked on the ground of mala fides clearly indicates that the petitioner has no courage to confront the said authority with the allegations of mala fides made against him so as to create a situation where the correctness of the assertions may not be verified. It must be emphasised that the allegations of mala fides alone are not sufficient to fault the impugned action of the executive authority which is quite high up in the hierarchy of the authorities under the State through whom the Government of

the State function.

17. In the circumstance indicated herein before, we are of the clear opinion that it will be wholly inappropriate to interfere while exercising the extraordinary equity jurisdiction envisaged under Article 226 of the Constitution of India sustaining the plea of mala fides for upsetting the impugned order.

18. It has been next contended that the impugned order has been issued in an arbitrary manner and being in colourable exercise of power on the part of the State stands vitiated in law. What has been urged is that after the completion of the entire proceedings contemplated under Chapter VII of the Act and the publication of the notification under Section 6 of the said Act it was not open to the State to back out and withdraw from the acquisition in purported exercise of the discretionary jurisdiction vested in it as contemplated under Section 48 of the Land Acquisition Act.

19. The provisions contained in Section 48 of the Land Acquisition Act is to the following effect:

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed^I) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any Sand of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him inthe prosecution of the proceedings, under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this Section....."

20. The Apex Court in its decision in the case of Sri Niwas Cooperative H.B. Society Limited v. M.G. Shastri, reported in 1994 (2) A.L.R, 230 had pointed out that the scheme underlying the provisions of the Land Acquisition Act clearly indicated a distinction statutorily recognised namely, acquisition for a public purpose and acquisition for a private purpose. It was observed that even for the acquisition for a company, unless utilisation of the land so acquired is integrally connected with public use, resort to the compulsory acquisition under Chapter VII cannot be had It was emphasised that the object appeared to be that the land acquired under Chapter. VII of the Act shall always remain to serve the public and it is not open to the Government to waive any of the provisions of Part VII as the provisions contained therein have mandatory operation. The acquisition for a private company get limited only for purpose envisaged under Section 40(I)(a) of the Act and thereby the public purposes envisaged therein get safeguard and protected. The dominant purpose of public utility pervades the

provisions in Chapter VII of the Act.

21. It may be noticed that even this Court after noticing various provisions of the Land Acquisition Act in its decision in the case of *R.L. Aurora v. State of U.P. and Others* rendered by a Division Bench, reported in AIR 1958 All 872 had pointed out that no land can be acquired for a company unless such acquisition is in the opinion of the State Government for a public purpose.

22. In the present case in the notification under Section 4 of the Land Acquisition Act dated 1886, it has clearly been mentioned that the land in dispute was being acquired for a public purpose. As pointed out by the Apex Court in its decision in the case of *Jhandu Lal v. State of Punjab*, reported in AIR 1961 SC 343 where acquisition is made for the public purpose the cost of acquisition for payment of compensation has to be paid wholly or partly out of public revenue or some fund controlled or managed by a local authority. "Part" does not necessarily mean a substantial part and in each and every case whether such contribution satisfies the requirement of law would depend upon the facts of a particular case. In the case of *Sri Niwas Cooperative Society (supra)*, it was pointed out that the mere fact that the declaration for acquisition for a company cannot be made without satisfying the requirements of Part VII of the Act does not necessarily mean that an acquisition for a public purpose cannot be made otherwise than under the provisions of Part VII of the Act if the cost or the portion of the cost of acquisition is to come out of public funds. In case, therefore, where the acquisition for a company is for a public purpose the cost of acquisition thereof should be borne wholly or in part out of public funds.

23. In the counteraffidavit filed on behalf of the respondent Nos. 1 and 2 it has been indicated that no part of the compensation was borne by the State and realising this keeping in view the fact that the acquisition was proclaimed to be for a public purpose, the agreement dated 11887 was rescinded by the State Government, and notification in question was issued exercising the jurisdiction envisaged under Section 48 of the Land Acquisition Act as possession of the land had not been taken. The petitioners have not disputed before us that the State had not dispossessed the owner from the land in dispute by the date of the issuance of the impugned notification and no part of compensation was to be borne by the State. In the counteraffidavit it has also been asserted that Kishori Raman Shiksha Samiti had given a notice/application to withdraw and cancel the notification under Section 6 of the Act. It has been asserted that the notification dated 1592 had been issued after due consideration of all the relevant facts.

24. As has already been indicated herein before the discretion with which the State Government stands vested in the matter relating to withdrawal from the acquisition is of a wide amplitude. It is open to the Government, even after the award is made but before possession is taken to withdraw from acquisition of any land in exercise of the powers envisaged under Section 48 of the Land Acquisition Act. This discretionary jurisdiction however, though wide is not of an unlimited nature. No order in exercise of such a jurisdiction can be passed on

mere subjective satisfaction and further such order ought not be irrational or based on extraneous considerations or collusive or in colourable exercise of power. In case it is established that the impugned withdrawal from acquisition is collusive, mala fide, or perverse or the State Government has resorted to oblique motive so as to over reach law, in that case an interference by this Court may be warranted depending on the facts pleaded and established on record.

25. In its decision in the case of *Special Land Acquisition Officer, Bombay v. M/s Godrej and Boyce*, reported in AIR 1987 SC 2421, the Apex Court had observed that the original owner's interest in the land sought to be acquired remain unaffected until possession is taken and neither the notification under Section 4 nor the notification under Section 6 has any effect on his rights as these notifications do not confer any right on the State Government to interfere with the ownership or other rights in the land. It is in this view of the position that Section 48 of the Act gives a liberty to the State Government to withdraw from the acquisition at any stage before possession is taken.

26. It was further observed in the decision referred to herein above that having regard to the scheme of the Act it is difficult to see why the State Government should at all be compelled to give cogent reasons for a decision not to go ahead with its proposal to acquire a piece of land. In the present case, however, the State Government, has disclosed the reason for the impugned action. The acquisition in question had been proclaimed to be for a public purpose. No part of the cost of acquisition was being borne by the State or was being paid out of public funds or public revenue.

27. Considering the facts and circumstances of the case and the pleadings of the parties we are of the considered opinion that no justifiable ground is made out for the striking down of the impugned order under Section 48 of the Act and compel the State Government to acquire the land in dispute pursuant to the notifications dated 1986 and 4987.

28. In the result, Civil Misc. Writ Petition No. 16241 of 1992 is dismissed. Consequently, Civil Misc. Writ Petition No. 15099 of 1986 is also dismissed as having been rendered infructuous.

29. There shall, however, be no order as to costs.