

(1963) 02 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 339 of 1962

Anand Kumar and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-02-1963

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 4, 6

Madhya Pradesh Housing Board Act, 1950 — Section 15, 16, 17, 3(3)

Citation : AIR 1963 MP 256 : (1964) ILR (MP) 546 : (1963) JLJ 449

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen, K.N. Agarwal and A.H. Saifi, for the Appellant; Rama Gupta, and V.S. Pandit, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.—The petitioners in this case pray for the issue of a writ of certiorari for quashing the notifications issued under Sections 4 and 6 of the Land Acquisition Act for the acquisition of land measuring 15.36 acres situated in mouza Hatital, tahsil and district Jabalpur, which includes some land belonging to them for a housing scheme of respondent No. 3, the Mahakoshal Housing Board.

2. The material facts are these: On 18th July, 1958, a notification was issued by Government u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) and published in the M. P. Gazette of Sth August, 1958. It stated that land, area 53.35 acres situated in Hatital, Circle No. 753, Tahsil Jabalpur, was likely to be needed for the construction of houses by the Mahakoshal Housing Board, Jabalpur. The Mahakoshal Housing Board was a body constituted under the M. P. Housing Board Act, 1950. After the formation of the new State of Madhya Pradesh this Board continued to function in the Mahakohhal region of the State u/s 3 (1-A) of the Housing Board Act till that Act was extended on 1st May, 1959, to all the regions of this State other than the Mahakoshal region. On 1st May, 1959, Government constituted a Housing Board for the entire State, which

then began functioning under the name and style of M. P. Housing Board. On 22nd March, 1961, Government issued a notification u/s 6 of the Act which, was published in the gazette of 31 March, 1961.

In that notification land intended to be acquired was described as "Hatital village excluding 0.41 acre of survey Nos. 7/10, 7/13 and 106" and its area was stated to be 15.36 acres. The petitioners challenged the validity of these notifications under Sections 4 and 6 by filing an application in this Court under Articles 226 and 227 of the Constitution. That application (M. P. No. 205 of 1961) was granted by us on 10th October, 1961, in respect of the notification issued u/s 6 of the Act on 22nd March, 1961, and that notification was quashed by us on the ground that it was altogether vague and that it did not at all give any idea as to the specific land intended to be acquired.

The validity of the notification issued u/s 4 of the Act of 18th July, 1958, was, however, upheld by us and that notification was maintained. Thereafter, consequent to the quashing of the notification dated 22nd March, 1961, issued u/s 6 Government issued on 20th November, 1961, a fresh notification u/s 6 of the Act. That notification mentioned land intended to be acquired as situated in Circle No. 753, village Hatital, tahsil, Jabalpur, and gave full particulars of the khasara Nos. and the acreage covering the land under acquisition. "The public purpose of the acquisition was stated "to be the construction of "houses.

3. The petitioners assail the validity of the notifications dated 18th July 1958 and 20 November, 1961, on the grounds that the acquisition was neither valid nor for any public purpose; that assuming that under the M. P. Housing Board Act the Board could acquire land for a housing scheme, the notifications in question were not valid inasmuch as the Board had not framed any housing scheme and the framing of a housing scheme under the Act after obtaining prior sanction of the State Government was a condition precedent for the acquisition of any land needed by the Board; that the notification which had been issued u/s 4 of the Act on 18th July, 1958, had exhausted itself when the State Government issued a notification u/s 6 of the Act on 22nd March, 1961, which was quashed by this "Court; and that a fresh notification u/s 6 could not therefore be issued by Government without first issuing a fresh notification u/s 4 also.

4. In our judgment, there is no force in any of these contentions. The Housing Board constituted under the M. P. Housing Board Act is a corporate body, which u/s 3(3) of that Act is deemed to be a local authority for the purposes of the Land Acquisition Act, 1894. The notification issued on 18th July, 1958, distinctly mentioned that the land was needed for the Mahakoshal Housing Board, which was a Board constituted under the M. P. Housing Board Act, 1950, The public purpose stated in that notification was construction of houses. The notification dated 18th July, 1958, was thus in relation to the acquisition, of land needed by a Board constituted under the Act of 1950. It is true that on the extension of the M. P. Housing Board Act, 1950, to the entire State on 1st May, 1959. a new Board under the name "The M. P. Housing Board" was constituted. But a Board

constituted under the Act, being a corporate body, any change in its constitution or name cannot render ineffective a notification issued under Section. 4 for the acquisition of land for a Board as known and constituted under the Act of 1950 at the time of the issue of that notification. The notification issued on 18th July, 1958, enures for the benefit of the M. P. Housing Board constituted on 1st May, 1959, which body is nothing but a body succeeding to all the rights and liabilities of its predecessor Board, viz., the Mahakoshal Housing Board.

It is not disputed that the compensation to be awarded for the intended acquisition is to be paid partly out of public revenues and partly out funds controlled and managed by the Board, which is a local authority. The acquisition, as stated in the impugned notification, is for construction of houses. This object is clearly a public purpose. As has been repeatedly stated by the Supreme Court in many cases, the concept of public purpose is not static. It varies from time to time and according to the circumstances of thought prevailing in the country. It is not possible to define what a public purpose is. But there can be no doubt that when there is acute shortage of houses and accommodation, the provision of those sites for relieving congestion is a public purpose. It may be that the land acquired and the houses constructed thereon may benefit a section of the public. Nonetheless, the acquisition would be for a public purpose as by the acquisition of the land and construction of houses the public generally will be benefited.

In this connexion it would be sufficient to refer to a decision of the Madras High Court in *P. Thambiran Padayachi and Others Vs. The State of Madras and Others*, where Venkatarama Aiyar, J., has held, after full analysis of the legal concept of "public purpose" and a detailed examination of various authorities, that the acquisition of land for enabling a co-operative housing society to construct houses is an acquisition for a public purpose. That apart, u/s 3(f) of the Act as amended in our State, the expression "public purpose" includes the provision of land for residential purposes. It cannot therefore be contended with any degree of force that the acquisition of land for the respondent-Board for the purpose of constructing houses is not an acquisition for a public purpose.

5. In support of his contention that the framing of a housing scheme by the Board is a condition precedent to the acquisition of any land under the Act, Shri Sen, learned counsel for the petitioners, referred us to Sections 15, 16 and 17 of the M. P. Housing Board Act, 1950, and contended that those provisions showed that unless and until a housing scheme was actually framed by the Board after obtaining the prior approval of Government no land could be acquired for the Board. It was said that acquisition of land would be necessary only for the execution of housing scheme, and if there was no scheme then no question of execution of a non-existing scheme or the acquisition of any land for that purpose would arise.

We do not find anything in Sections 15, 16 and 17 of the M. P. Housing Board Act, 1950, lending support to the argument submitted by the learned counsel for the petitioners. Section 15 (1) only provides that subject to the provisions of the

Act of 1950 and subject to the control of the State Government the Board may undertake works in any area for the framing and execution of such housing scheme as it may consider necessary. Section 15 (2) lays down what the Board may do for expediting and cheapening construction of buildings. It is plain that there is nothing in Section 15 making the framing of a scheme a condition precedent to the acquisition of the land needed by the Board in connexion with a programme of construction of buildings. The next section deals with the matters for which provision may be made by the Board in any housing scheme. Section 17 is concerned with preparation and submission to the Government by the Board of an annual housing programme, budget, establishment, etc. These two provisions also do not prescribe the framing of a scheme as a condition precedent to any acquisition of land needed by the Board for implementing any scheme of building houses which the Board may frame.

Clause (a) of Section 16, no doubt, says that the housing scheme may provide for the acquisition of any property necessary for or affected by the execution of the scheme. But merely because a housing scheme may provide for this, matter it does not follow that a housing scheme should be actually framed before any acquisition of land can be embarked upon. Indeed, if in a housing scheme the details of the acquisition of land, its situation, location, compensation or price to be paid, are to be mentioned in the scheme, then clearly they cannot be stated in the scheme unless and until it is definitely known which land will be available to the Board by acquisition, purchase, exchange or otherwise, and the price which the Board will have to pay for the land.

6. The petitioners' contention that the notification issued on 18th July, 1958, exhausted itself on the issue of a notification on 22nd March, 1961, u/s 6 is founded on a decision of a Division Bench of this Court in Vishnu Prasad Sharma and Others Vs. State of Madhya Pradesh and Others, . In that case a notification u/s 4(1) of the Act for the acquisition of certain lands situated in a village was issued, and this was followed by a notification u/s 6 and by acquisition of some land in the village. Then another notification was issued u/s 6 for the acquisition of additional land in the village, which was covered by the notification issued u/s 4 but which was not acquired by the earlier notification issued u/s 6. It was in these circumstances that the Division Bench, relying on Corporation of Calcutta Vs. Omeda Khatun Bewa, , held that the Land Acquisition Act did not permit piecemeal acquisition, and that if by a declaration made u/s & following a notification under Section. 4 some land specified under the notification issued u/s 4 is not acquired, then land abandoned cannot be acquired by the mere issue of a notification u/s 6 without is-suiag a fresh notification u/s 4.

There is a material difference between the present case and the case of Vishnu Prasad Sharma and Others Vs. State of Madhya Pradesh and Others, . The present case is not one of piecemeal acquisition. Here, after the issue of a notification u/s 4, there was no completed acquisition at all. What happened was that the notification issued u/s 6 of the Act was quashed by us in M. P. No. 205 of

1961 on 10th October, 1961, and thereupon a fresh notification u/s 6 was issued on 20th November, 1961. It may be noted that by our decision dated 10th October, 1961, the validity of the notification dated 18th July, 1958, issued u/s 4 was upheld and that notification was maintained.

If we had taken the view that on the issue of a notification u/s 6 on 22nd March, 1961, the notification u/s 4 exhausted itself, then we would have quashed that notification also while quashing the notification dated 22nd March, 1961, issued u/s 6 of the Act. But we did not do so. On the other hand, we expressly pointed out on the strength of Babu Barkya Thakur Vs. The State of Bombay and Others, that the purpose of a notification u/s 4 was only to enable the authorities to carry out a preliminary investigation for deciding upon the suitability of land to be acquired for the purpose for which it was needed, and that there, was no ground on which the notification u/s 4 could be assailed or quashed. The notifications u/s 4 being of an exploratory nature the argument that in a case such as the one before us it exhausted itself after the issue of a notification u/s 6 cannot be accepted.

7. For all these reasons, this petition is dismissed with costs of opponent No. 1, the State of Madhya Pradesh. Counsel's fee is fixed at Rs. 100/-. The outstanding amount of security shall be refunded to the petitioners, after deduction of costs.