
(2002) 07 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 451 of 1987

Ashok Sahkari Grih Nirman Samiti, Bhopal	APPELLANT
Vs	
State of M.P. and others	RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 6

Citation : (2003) 1 MPLJ 278

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Rohit Arya, for the Appellant; Ashok Agrawal and Ku. Anjali Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioner Ashok Co-operative Housing Society has challenged the notifications issued u/s 4 and declaration u/s 6 respectively Annexure L and M acquiring the land for the housing scheme framed by M.P. Housing Board.

In the writ petition it is averred that petitioner is a co-operative society registered under M.P. Co-operative Societies Act. Society has been constituted for providing plots to the landless persons. 95% of the members are Government employees and 20 members are nominated from business categories. They belong to weaker section of the society. Society purchased 33.24 acres land at village Shahpur, tehsil Huzur, District Bhopal bearing Sy. Nos. 63/1, 64, 74, 163, 164, 166, 167, 169, 170, 171, 172, 194, 208-209, 210 and 222; the land was purchased by two sale deeds executed by Bhanwarji and Ghasia on 15-4-1964 and 14-5-1964 for a sum of Rs. 33,000/-. From the above land petitioner had developed a colony and about 140 plots have been distributed. From 1962 till 1972 Shri Babu Lal Shakya took over as the President of the petitioner/society and from 1972 to 1979, it remained under the administration of officer-in-charge

and election took place in 1981. The present President was elected from 1986. From 1984 to 1986 Shri P.R. Rishi was elected as President; no-one protected the interest of the society and erstwhile President Babu Lal used the funds of the society for his personal gains. In the year 1965 names of Purshottamdas, Bhagirath and Pyarelal were entered and the name of the society was deleted on 16.61 acres of land. M.P. Housing Board persuaded the State Government to acquire the Khasra Nos. 64, 74, 164 and 167 total area 5.482 hectares equal to 13.69 acres out of the said 16.61 acres of land. Declaration u/s 6 of the Land Acquisition Act was issued on 22-11-1983; no award could be passed within two years from the date of declaration issued u/s 6, therefore, the entire land acquisition proceedings came to an end in view of the provision of section 11A of the Land Acquisition Act. Petitioner represented that their lands should not be acquired. However, M.P. Housing Board constructed 8 bungalows over Sy. No. 163 and 166 which have been allotted to senior IAS officers; first land acquisition proceeding commenced on 22-11-1983 which came to an end thereafter fresh notification u/s 4 was issued on 26-12-1986; declaration (Annexure-M) u/s 6 has been issued on 9-1-1987. Petitioner submits that object of the Housing Board and the petitioner-society is the same/therefore, acquisition is bad; the flats are to be allotted by the Housing Board to the higher and middle income group. According to the scheme, 87 flats will be constructed in which only persons having income of Rs. 2,500/- or more per month can apply and 145 flats will be constructed in which persons having an income of Rs. 1500/- per month can apply. Respondents started proceedings in 1983 and did nothing for three years. Thus, the action is bad in law. By way of amendment, it was incorporated as a ground that there was no scheme framed by the Housing Board before the land acquisition was initiated by the appropriate Government. Babulal Shakya has illegally alienated the land which had been purchased by the registered sale deeds. Invocation of section 17 to dispense with the enquiry u/s 5A of the Act is bad in law. M.P. Housing Board is a local authority; acquisition is ultra vires of section 49 of M.P. Grih Nirman Mandal Adhiniyam. The land cannot be said to have been acquired for a public purpose as per section 3(f)(vi) of the Land Acquisition Act. The acquisition has been made to legalize the illegal construction raised on the land belonging to the petitioner-society. Petitioner has initiated the proceedings to correct the revenue entries.

Respondent No. 5 M.P. Housing Board in its return contends that the land is recorded in the ownership of Pyarelal, Purshottam, Bhagirath and Gulabchand all residents of Bhopal, therefore, society has no right to file the writ petition. Sale deeds were executed in their favour in the year 1967, therefore, the claim of the petitioner that the land belongs to them is baseless and unfounded. The land acquisition proceeding was started in December, 1983; the award could not be passed within a period of two years from the date of initial notification, thus, the proceedings lapsed; the possession of the aforesaid land was handed over to respondent, No. 5 u/s 17 of the Land Acquisition Act. The respondent No. 5 has developed portion of the lands on which they have constructed roads, sewerage

line and the whole of the area is connected with water line and electricity. However, as the award could not be passed within the time; acquisition was challenged by recorded Bhumiswamis Pyarelal and others by filing a civil suit; on lapse of notification fresh notification has been issued, interim compensation has been determined; the Housing Board has developed the area; sale deeds were executed 22 years before which have now been challenged by the petitioner-society; they have to get established their title first before the Civil Court; the respondent No. 5 has made a scheme; in that scheme a provision has also been made for the persons of higher income group; some of the plots have been leased out to the persons of that category; there is nothing unconstitutional in that. Scheme also provides for allotment to low income group and middle income group; there is no mala fide intention. The relevant housing scheme was made in the year 1983 and a reference was made to the State Government to acquire the land; accordingly the proceedings were started; invocation of urgency clause is proper; enquiry u/s 5A has been rightly dispensed with. Major portion of the housing scheme has already been taken up by the respondent No. 5 and the houses have been built upto plinth level which are meant for 1354 applicants who have made applications for 292 houses. Lot of investment has been made; several persons are waiting for the housing accommodation. Photographs have also been filed to show the level of construction raised. In the application for modification of interim order, it has been contended that activity for construction has been undertaken for 4-5 years after previous notification u/s 4 and declaration u/s 6 which was never objected to; now on issuance of fresh notification on lapse of previous one instant writ petition has been filed.

Shri Rohit Arya, learned counsel for petitioner submits that in the absence of scheme, it was not open to acquire the land for the purpose of M.P. Housing Board, thus, the acquisition as per notification u/s 4 is bad in law. Learned counsel further submitted that first notification was issued in the year 1983 which lapsed; the proceedings in question were initiated in the year 1986; thus, the dispensation of enquiry u/s 5A was wholly unwarranted, thus, the issuance of declaration u/s 6 is bad in law. Thirdly, he submits that 8 houses have been constructed without acquisition of the land and allotted to IAS officers, thus, action is tainted with mala fide. Housing Board owns 100 acres of land in the same vicinity, thus, the acquisition is wholly unwarranted.

Learned counsel for respondents No. 1 to 4 Shri Ashok Agarwal submitted that petitioners have no right to maintain the instant writ petition as sale deeds of the land in question were executed by Babulal in favour of Pyarelal and Ramgopal in the year 1967 which have not been challenged before any forum by the petitioner-society; petitioner-society is no more an owner and in the absence of challenge to the sale deeds executed by Babulal in favour of Payarelal and Ramgopal of the land in question and those purchasers having been recorded as owners, petitioners have no right to maintain the present writ petition. He further submitted that possession was taken under the previous notification; development activity was undertaken; the previous notification was not

challenged and after taking possession development has been done by the Housing Board; existence of scheme is not necessary for acquisition of the land under Land Acquisition Act; the provisions of Land Acquisition Act are independent and dispensation of enquiry cannot be faulted as acquisition for housing purpose is also one of the urgent purpose.

Ms. Anjali Banerjee, learned counsel for respondent No. 6 has supported the submissions raised by learned counsel for respondents No. 1 to 4.

Shri Ashok Lalwani, learned counsel appearing for the intervenors submitted that intervenors had purchased the land as such petitioners have no right to file the writ petition and challenge the notification as they are not the owners; sale deeds have not been challenged by the petitioner society.

The foremost submission of the learned counsel for petitioner is that in the absence of scheme for the housing purpose u/s 34 of M.P. Grih Nirman Mandal Adhiniyam, 1972 the acquisition is bad in law. Section 34 of the Act of 1972 provides that whenever the Board is of the opinion it may frame a scheme for the land development; such scheme shall specify the proposed lay out area to be developed and the purposes for which particular portions thereof are to be utilized. Section 49 of the Act of 1972 provides that Board may also take steps for compulsory requisition of any land or any interest thereon required for the execution of a housing scheme in the manner provided in Land Acquisition Act. u/s 49(1) of M.P. Griha Nirman Mandal Adhiniyam, 1972 the Board may also take steps for the compulsory requisition of any land or any interest therein required for the execution of a housing scheme in the manner provided in the Land Acquisition Act, and the acquisition of any land or any interest therein for the purposes of this Act shall be deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act. Sub-section (2) of section 49 provides that the Board shall be deemed to be the local authority for the purposes of Land Acquisition Act. In the instant case, the Housing Board has clearly averred in the writ petition that housing scheme was framed in the year 1983 and was placed before the Government which was approved. Since the Government has approved the acquisition for the housing scheme, it has to be taken that scheme was framed by the M.P. Housing Board. Thus, on facts the submission raised by learned counsel for the petitioner is not acceptable.

The definition of "public purpose" u/s 3(f) of the Land Acquisition Act includes the provision of land for planned development of land from public fund in pursuance of any scheme or policy of the Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned. Section 3(f)(v) includes the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State. u/s 3(f)(vi) the provision of land for carrying out any educational housing, health or slum

clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority or a society registered under the Societies Registration Act is also a public purpose. M.P. Housing Board is a local authority; housing scheme is a public purpose; thus, it cannot be said that acquisition is being made so as to defeat the object of the Act, nor it can be said that it contravenes any provision of the Land Acquisition Act.

In *State of Tamil Nadu and others vs. L. Krishnan and others*, AIR 1995 SCW 4390, it was held that notification u/s 4 can be issued even in the absence of final and effective scheme prepared by the Housing Board. Their Lordships held that it cannot be said that in no event can the land be acquired for the purpose of the Act/Board unless a final and effective scheme is framed by the Housing Board under the provisions of section 37 to 56. The said limitation applies only where the land is sought to be acquired avowedly for the purpose of execution of a housing or improvement scheme prepared by the Housing Board under Chapter VII of the Tamil Nadu Housing Board Act. In other words, unless the notification u/s 4 of the Land Acquisition Act expressly states that land proposed to be acquired is required for executing a housing or improvement scheme (i.e., a final and effective scheme) framed by the Housing Board under the provisions of the Tamil Nadu Housing Board Act, existence of scheme would not be a prerequisite for acquisition. The petitioner has further relied on *Mohammad Shaft vs. State of M.P. and others*, 1989 J.L.J. 501 to contend that if scheme is not in existence, land cannot be acquired which is not the case here; land is being acquired for the housing scheme. There is nothing to disbelieve the averments made by respondents in their return. This decision of Mohd. Shafi was taken in appeal before the Apex Court in *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others*, ; the decision was affirmed in appeal by the Apex Court but in the instant case on facts find that scheme was very much there; possession was taken and development work has already been done before the issue of the fresh notification u/s 4 of Land Acquisition Act and filing of this writ petition; hence the submission is not acceptable.

In *S.S. Darshan Vs. State of Karnataka and others*, , the Apex Court held that notification u/s 4 cannot be challenged on the ground that acquisition is for different purpose than the master plan. Para 11 is quoted below:-

11. The last submission of learned counsel for the appellant is that the user of the acquired land shown in the master plan being different, there cannot be a conversion of the user except in accordance with the provisions for making the change in the land use. It is not a case of change of user by the owner of the land but one of acquisition by the State under the provisions of the Land Acquisition Act, 1894. This argument also had no merit.

Learned counsel for the petitioner has submitted that first notification was issued in the year 1983 which lapsed, thus, the fresh notification was issued in the year 1986; the dispensation of the enquiry under the circumstances u/s 5A is bad in

law. He submits when the previous notification was allowed to be lapsed indicates that there was no urgency. In my opinion purpose for housing is an urgent purpose and housing is the national requirement. Simply by the fact that previous notification lapsed owing to non-passing of the award within the time fixed as per section 11A of the Land Acquisition Act the urgency of the purpose cannot be defeated. It is the specific case set up by respondent No. 5 M.P. Housing Board that possession was taken under the first notification; development work was undertaken for 3-4 years which was not objected to by the petitioner-society. The first notification issued u/s 4 and declaration u/s 6 were not challenged by filing a writ petition and it was only after lapse of the period fixed u/s 11A that civil suits were filed on the ground that since the award has not been passed within two years, notification lapsed as per section 11A. Thereafter on issuance of fresh notification the present writ petition has been filed. Thus, in my opinion, when the development work was already undertaken as reflected in the photographs and on petitioners' own showing 8 houses were already constructed; allotment had taken place under the first notification; invocation of the urgency clause u/s 17 and dispensing with the enquiry is absolutely proper in the facts and circumstances of the case and no fault can be found. Mind has been applied and question of urgency is that of satisfaction of the authority. In *S.S. Darshan vs. State of Karnataka* (supra) such an argument was repelled.

In *Bhagat Singh Vs. State of U.P. and Others*, it was held that invocation of urgency clause is matter of subjective satisfaction and purpose of acquisition is also one of the relevant consideration.

Learned counsel for the petitioner has relied upon *Bhoomandal Singh Vs. State of M.P. and Others*, . In that case authorities took time of two years to pass a final order to acquire the land which is not the factual situation obtainable in the instant case.

In *Chaitram Verma and Others Vs. Land Acquisition Officer, Raipur and Others*, ; there was failure to place the material on record to show the urgency of the cause espoused. In the instant case possession has already been taken under the first notification which lapsed; there is averment made as to the development made supported by the photographs by the housing board before the writ petition was filed.

Respondents have placed reliance on *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, in which it was held that possession once taken u/s 17 of the Land Acquisition Act, it is not open to the Government to withdraw from acquisition u/s 48; in such a case section 11A is not attracted/therefore, acquisition proceedings would not lapse on failure to make award within the period prescribed thereunder. Their Lordships further held that non-compliance of section 17(3A) regarding part payment of compensation before taking compensation would also not render the possession illegal and entitle the Government to withdraw from acquisition. In the instant case, as already

mentioned above, though the fresh notification has been issued u/s 4 but the fact remains that possession was already taken and the first notification was not challenged on the grounds present notification is being challenged; developments having been already done some houses also came up as per petitioners' own showing, petitioners, in my opinion, have no right to challenge the acquisition as their conduct is of acquiescence in the development work raised by the housing board.

In *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, acquisition of land for the residential tenements has been held to be a public purpose. On peculiar facts of that case their Lordships held that dispensation of enquiry u/s 5A was not proper.

In *State of Punjab and Another Vs. Gurdial Singh and Others*, there was enormous delay project was pending for several years; acquisition was made suddenly invoking section 17 which was held to be improper which is not the factual situation obtainable in the instant case. There is no delay in the instant case in taking the steps one after the other.

It cannot be said that acquisition is for mala fide purpose simply because there is provision for allotment of houses for higher income group also and housing board is having some other land. The acquisition is not vitiated on the aforesaid grounds.

In view of the aforesaid conclusions it is not necessary to dwell into the submission that whether petitioners have the right to file the writ petition as one Babulal who was the President of society has executed the sale deeds in favour of Pyarelal on 27-2-1967 for a sum of Rs. 17,000/- and in favour of Sri Ramgopal on 28-2-1967 for a consideration of Rs. 16,000/- of the land in question and their names have been recorded in the revenue papers. Without meaning to decide on the question of title, prima facie it appears that there is a serious cloud cast on the petitioners right to maintain the instant writ petition as sale deeds were executed in the year 1967 by Babulal in the capacity of his being President of Ashok Sahkari Grah Nirman Samiti; if he was not having any right or interest to alienate, the same ought to have been challenged in appropriate proceeding by the petitioner society. That having not been done, in my opinion, challenge to the acquisition is misconceived.

It is made clear that I have not expressed any final opinion on the title of the petitioner which has to be adjudicated and settled between intervenor and the petitioners before the appropriate forum.

Counsel for the petitioner has also raised the submission that in case the writ petition is not allowed, a direction may be given to the housing board to make allotment to the members of the petitioner-society,

It is for the members of the petitioner-society to approach the M.P. Housing Board in this regard; that prayer has to be considered by the housing board in

accordance with the rules.

Resultantly, I find no merit in the instant writ petition. It is dismissed.

In the facts and circumstances of the case, no order as to costs.