
(2003) 02 AHC CK 0138

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22557 of 2001

Azadi Bachao Andolan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Constitution of India, 1950 — Article 21, 300A
Land Acquisition Act, 1894 — Section 4, 6

Citation : AIR 2003 All 290 : (2003) 5 AWC 3786

Hon'ble Judges : Sudhir Narain, J; Lakshmi Bihari, J

Bench : Division Bench

Advocate : R.K. Jain and K.K. Roy, for the Appellant; A.K. Singh and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The petitioners seek to quash Notifications dated 3-3-2000 and 1-3-2001 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (in short the Act) and further a declaration that the Act is ultra vires to the Constitution of India as it is violative of Article 21 of the Constitution.

2. The facts leading to the filing of this writ petition is that Bharat Petroleum Corporation Ltd. submitted a plan to set up a Petroleum Refinery in Uttar Pradesh in order to satisfy the growing demand of petroleum products like petrol, M.S. Diesel, Kerosene, cooking gas etc. to the State Government and requested for acquisition of land near Shankargarh in Allahabad District of Uttar Pradesh which was classified as backward area. The State Government approved the proposal and issued notification u/s 4 read with Section 17(4) of the Act which was published in official gazette on 3-3-2000 indicating that the land was required for planned industrial development. Bharat Petroleum Corporation respondent No. 2, was required to deposit balance of 80% of the amount of the estimated cost of acquisition. The Corporation deposited a sum of Rs. 7.185 crores vide demand draft dated 23-1-2001. The Government issued notification u/s 6 of the Act

published in the official gazette on 1-3-2001 acquiring 2036 acres of land situate in eight villages.

3. The petition has been filed by petitioners No. 1, 2 and 3 as public interest litigation and petitioners 4 to 43 are tenure holders of the land which has been acquired under the notification. The main thrust of the submission of the learned counsel for the petitioners is that after the petitioners are evicted from the land, they will be deprived of their land, house in which they are living and will be jobless. This amounts to deprivation of life provided under Article 21 of the Constitution of India. It is contended that meaning of life under Article 21 of the Constitution includes the right to livelihood as held in *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180. The Court observed as under :--

".....the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be distinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life....."

4. In *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others*, the Apex Court directed Ahmedabad Municipal Corporation to frame a scheme for providing housing accommodation to rural poor or urban poor. In para 25 of the judgment it was observed that when the State, namely, Union of India or the appropriate State Government or the local bodies implement these schemes for housing accommodation of the Scheduled Castes and Scheduled Tribes or any other schemes, they should, in compliance with mandates of Articles 46, 39 and 38, annually provide housing accommodation to them within the allocated budget and effectively and sincerely implement them using the allocations for the respective schemes so that the right to residence to them would become a reality and meaningful and the budget allocation should not either be diverted or used for any other scheme meant for other weaker sections of the society.

5. The core question is whether the person who is sought to be evicted has a right for alternative land, accommodation or job when his land has been acquired under the provisions of the Land Acquisition Act. The validity of provisions of

Land Acquisition Act was challenged before the Apex Court. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, , the validity of Act was challenged on the ground that it is violative of Articles 31(2) and 19(1)(f) of the Constitution. The contention was repelled with the following observation :--

"The argument, however, is that the protection which the Act enjoys is only to this extent that even though any of its provisions be in conflict with Article 31(2) the Act cannot be challenged on that ground; the protection does not however extend to other provisions of Part III of the Constitution, such as Article 19(1)(f). As we understand the decision in *Bhanji Munji's case*, 1955-1 SCR 777 : AIR 1955 SC 41, what this Court has held is that for a right under Article 19(1)(f) to hold property to be available to a person, he must have the property with respect to which he can assert such right. If the right to the possession of the property is taken away by law protected by Article 31(5)(a), Article 19(1) is not attracted."

6. The matter again came up for consideration in *Smt. Ratni Devi and Another Vs. Chief Commissioner, Delhi and Others*, the Court noted that the contention that piece meal acquisition under notification u/s 4 of the Act is bad was repelled on the ground that in fact it amounts to challenge to the adequacy of compensation u/s 23 of the Act. The Act is protected under Article 31(5) of the Constitution, where acquisition is for public purpose and reasonableness is presumed for such public purpose.

7. In *Bai Malimabu and Others Vs. State of Gujarat and Others*, , the constitutional validity of Section 4 of the Land Acquisition Act was attacked on the ground that it was confiscatory in nature and it sought to deprive the appellants of their valuable lands thus Violating their fundamental rights guaranteed under Article 19(1) of the Constitution. The Court relied upon the earlier decisions in *Smt. Ratni Devi and Another Vs. Chief Commissioner, Delhi and Others*, and repelled the contention of the appellants.

8. Learned counsel for the petitioners urged that these cases were decided before the amendment of the Constitution by the Constitution (44th Amendment) Act, 1978 which came into force with effect from 20-6-1979 by which Article 31 of the Constitution as well as Article 19(1)(f) were omitted and Article 300A was inserted which reads as under :--

"300-A. Persons not to be deprived of property save by authority of law.-- No person shall be deprived of his property save by authority of law."

9. Clause (1) of Article 31 omitted by the aforesaid Constitution (44th amendment) Act, 1978 was as follows :

"31. Compulsory acquisition of property (1) No person shall be deprived of his property save by authority of law,"

10. Sub-clause (2) provided for payment of compensation for land compulsorily acquired which is not relevant.

11. It will be seen that old Article 31(1) was identical to the new Article 300A.

12. After the aforesaid amendment the validity of Land Acquisition Act was again challenged in Chameli Singh and others etc. Vs. State of U.P. and another, , on the ground that the acquisition of land under Land Acquisition Act is violative of Article 21 of the Constitution of India as the acquisition amounts to deprivation of right to livelihood. The Court repelled the contention on the ground that when the State exercises its power of eminent domain for public purpose and acquires land, it is for the larger public purpose. The Court observed as under :--

"In every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose. For compulsory nature of acquisition, Sub-section (2) of Section 23 provides payment of solatium to the owner who declines to voluntarily part with the possession of land. Acquisition in accordance with the procedure is a valid exercise of the power. It would not, therefore, amount to deprivation of right to livelihood. Section 23(1) provides compensation for the acquired land at the prices prevailing as on the date of publishing Section 4(1) notification, to be quantified at later stages of proceedings. For dispensation or dislocation interest is payable u/s 23(1-A) as additional amount and interest under Sections 31 and 28 of the Act to recompensate the loss of right to enjoyment of the property from the date of notification u/s 23(1-A) and from the date of possession till compensation is deposited. It would thus be clear that the plea of deprivation of right to livelihood under Article 21 is unsustainable."

13. In Ram Jiyawan v. State of U.P., AIR 1994 All 38, the validity of the Act was challenged on the ground that it is violative of Article 14 of the Constitution. The Court referring to the provisions of Article 330-A of the Constitution held that land can be acquired under the provisions of law as envisaged under Article 300A of the Constitution of India which itself provides that the person can be deprived of his property under a law. It only prohibits that no person can be deprived of his property save by authority of law which means if there is any law, he can be deprived of his right to property. The Land Acquisition Act is the law. The Act, therefore, fulfils the constitutional obligation. The contention regarding validity of the Act again came up for consideration in Narmada Bachao Andolan Vs. Union of India and Others, wherein it was held that the displacement of tribal and other persons would not per se result in violation of their fundamental or other rights.

14. The learned counsel for the petitioners urged that the provisions of Land Acquisition Act provides for compensation to the person whose property has been acquired under the Act and the matters to be considered in determining the compensation are contained u/s 23 of the Act. It is only monetary compensation but such a monetary compensation is futile when a man has lost his land, house or job because of the compulsory acquisition, He will not get from money paid to

him what he has lost and in absence of any provision providing for rehabilitation, security for job etc, the determination of compensation on the principles laid down u/s 23 of the Act is ultra vires to Article 21 of the Constitution of India. He has referred to various articles written by the social activists and published in various journals. The Ministry of Rural Development, Government of India drafted document titled "National Policy for Rehabilitation of persons displaced as a consequence of acquisition of Land."

It was only a policy. The copy of the national policy has been annexed as Annexure-4 to the writ petition. The principles governing rehabilitation reads as under :--

"Principles Governing Rehabilitation

(i) The old principle of compensation alone in lieu of the land must be abandoned. This maxim is no more tenable in view of the requirements of the present day society. Nor is it able to satisfy the minimum legitimate aspirations of the project affected persons.

(ii) The policy of rehabilitation should henceforth be governed by the principle of total rehabilitation. Rehabilitation would not only extend to financial compensations or providing means of livelihood but it should be multi-dimensional. It shall include social, economic, educational, environmental, physical, occupational and cultural aspects as well.

(iii) The aim should be to minimise hardship of displaced persons during the process of rehabilitation. Resettlement must provide for an improved resource base so that the displaced in their new place can have access to not only shelter but also food and income generating systems, communications and social infrastructure not inferior to that of their original habitat within a reasonable period of time.

(iv) The rehabilitation package must be integrated with the project itself. The rehabilitation cost, like that of land acquisition, should be a part of the project cost included in the initial stages of the project.

(v) There should be no displacement without the rehabilitation having been completed. Even if the people were required to shift, it should be with their full understanding and consent.

(vi) The settlement site and the resource base should be large enough to accommodate the natural growth in population and to generate incomes to provide for a progressive rise in standards of living.

(vii) For smooth and effective resettlement, principle of geographical continuity, cultural homogeneity and ready adaptability must be accepted in choosing and planning resettlement units and sites especially while resettling tribal communities.

(viii) The displaced community individually and collectively must be fully

compensated for all losses. This includes lands, trees, houses, wages, livelihood community properties, community amenities and services, access to natural resources etc. Fulllest compensation should be construed in terms of payment of cash. The approval should be to enable the displaced people and communities to recreate in the new place all that they have lost.

(ix) Where the displaced are resettled among already settled communities they must be resettled in such a manner that they are integrated with the, host community on the basis of equality, mutual respect and understanding. This must be consistent with the desire of each community to preserve its own identity and culture.

(x) The wishes of the displaced persons must be taken into account in formulation and implementation of the rehabilitation project. It is necessary for this to organize them and to give a proper representation to their representative in all the stages involved.

(xi) A phased chain of Well planned actions is called for rather than sporadic ad-hoc and time step and a participatory process, involving the representatives of people in the planning and execution of development plans at appropriate levels is required. All phases of planning, education and monitoring must involve the representatives of affected people.

Land for Land Basis

(i) Land for land on one to one basis would have been the ideal solution for the displaced persons. It may not, however, be always feasible. A major part of the corpus of Govt. land already stands distributed. Acquisition of land for this purpose would mean further displacement. Hence, the Implementation Committee of the Project/State Govt. should provide land to such displaced persons, who have been exclusively dependant upon agriculture on a proportionate basis, to the extent feasible, with preference to the members of the Scheduled Caste/Scheduled Tribes, and other weaker sections of the society.

(ii) In view of the regional and State specific variations in the land ownership pattern and productivity etc. it shall not be possible to lay down uniform norms for allotment of land for the country as a whole. It shall be for the respective State Govts. to determine as to whether land for land is to be given and in what proportions.

(iii) Where land is provided to displaced persons, the following principles may be followed.

(a) There may be persons cultivating lands belonging to other landholders in the capacity of tenant or of the Govt., who have not been brought into the records-of-rights. Such persons should also be given land provided the possession has not been taken over exclusively for the purpose of reaping benefits from the rehabilitation package. The State Govt. shall lay down policies after going into the merits of each case.

(b) The minimum amount of land to be provided should be determined by the following factors.

(a) irrigability/non-irrigability

(b) productivity

(c) price index of the region for resettlement.

(c) The maximum limit for land-holding should be governed by the ceiling limits for the particular lands in the region of resettlement or as provided by the State Govt.

(d) The agricultural land to be allotted should be such as is ready for cultivation and if not the cost of land development must be borne by the project authorities.

(e) Land to be allotted for agricultural or residential purposes to the project affected persons should be free from encumbrances.

15. The Human Rights Commission also recommended providing for rehabilitation package. It was as under :--

The Commission considered the request contained in the petition carefully and agreed with the view that the settlement and rehabilitation of persons displaced through the acquisition of land for various projects should form part of the provisions of the Land Acquisition Act itself, or be the subject of appropriate separate legislation. The Commission was additionally of the view that the Government should, while adopting a comprehensive policy, provide for that policy to itself be incorporated into appropriate legislation within a specified time frame. The Commission also decided to invite the Secretary, Ministry of Rural Development, to meet with the Commission. In order to inform the Ministry of its view on the subject. The Secretary, Ministry of Rural Development, accompanied by other senior officers of the Ministry, met with the Commission on 13 February 2001. During the ensuing discussions, the Commission emphasized that it was desirable to incorporate the resettlement and rehabilitation package in the Land Acquisition. Act itself and advanced the following reason and ideas :

(i) ILO Convention 107, to which India is a party, provides for the protection of the rights of indigenous and tribal people.

(ii) Incorporation of the rehabilitation and resettlement (R & R) package in the law will ensure the R & R of Project. Affected People in a systematic manner.

(iii) The provision of an R fit R package in the law itself would help to avoid litigation, at times frivolous, in such matters, and this in turn would help to avoid delays and cost overruns in projects.

(iv) Once the R & R package is provided in the law, there would be uniformity in dealing with cases by the Courts; this would prevent lack of uniformity in the handling of such cases and interference by the Courts.

16. The core question is what the law is and what the law ought to be. The Land Acquisition Act cannot be held to be ultra vires to the Constitution of India as it is a law under Article 300A of the Constitution and it is not ultra vires to the Constitution of India because no person has fundamental right to the property and when the land is acquired, provision of Article 21 of the Constitution is not attracted as held in Chameli Singh's case (AIR 1996 SC 1051) (supra). It is for the Government to provide for rehabilitation package when the land is sought to be acquired. If a person is evicted from his land because of acquisition under the Land Acquisition Act, he can be provided land which is under the ownership and control of the Government but if to rehabilitate him another person's land is acquired, it will create another complication. The legislature may, in such circumstances, provide the land to evicted persons of which Government itself is the owner. The land of the Gaon Sabha, for example, is allotted to various persons u/s 197 of the U.P. Zamindari Abolition and Land Reforms Act, the persons, who are evicted because of acquisition of land, can be given preference for allotment of such land. As regards providing for the jobs, necessary scheme may be drawn for providing such persons who become jobless because of the acquisition of land.

17. In paragraph 11 of the counter-affidavit filed on behalf of the Bharat Petroleum Corporation the D.O. letter of the Government of Uttar Pradesh dated February 5, 1993 has been referred to, which lays down certain norms which are to be satisfied before acquiring any land. The State Government lays down certain conditions which are to be observed by the acquiring body before granting approval for acquisition. In paragraph 23 of the counter-affidavit filed on behalf of the State it has been stated that the Government of Uttar Pradesh from time to time has issued Government Orders providing for rehabilitation of the families displaced in consequence of the acquisition proceedings and there is an understanding also with the Corporation that it shall follow Government Orders for providing jobs whose land has been acquired. The Government Order dated 29th February 1996 has been annexed as Annexure-11 to the said counter-affidavit which provides that the Government shall take steps for rehabilitation of those persons who have been evicted from their land and necessary steps shall be taken for providing job to the persons who have become jobless due to acquisition. There is no reason that the Government shall not follow its own orders.

18. In the counter-affidavit it has been disclosed that total private land sought to be acquired was 2036.69 acres. Out of the aforesaid area 675 acres consists of agricultural land whereas 1361.639 acres is in the shape of non-agricultural land. Total number of land-owners who are going to be affected by land acquisition is 705. Out of this 705 land-owners, 352 are agriculturists whereas 353 are non-agriculturists. Bharat Petroleum Corporation has yet not obtained possession of the land in question.

19. In view of the above observations, the writ petition is dismissed.