
(1977) 07 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3499 of 1976

Babu Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-07-1977

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(1A)

Citation : AIR 1977 All 464

Hon'ble Judges : P.N. Bakshi, J;N.D. Ojha, J

Bench : Division Bench

Advocate : P.M. Gupta and V.K. Burman, for the Appellant; A.P. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—This writ petition was instituted initially by nine persons challenging the proceedings for acquisition of certain land under the Land Acquisition Act. The writ petition was dismissed on 20th September, 1976, Subsequently on an application being made by some of the petitioners the order dismissing the writ petition was recalled on 1st November, 1976. As against the petitioners 1, 2 and 7, however, the said order was not recalled and was allowed to stand. Consequently the writ petition as at present is only on behalf of petitioners 3 to 6, 8 and 9. By this writ petition two notifications under Sections 4 and 6 of the Land Acquisition Act are sought to be quashed. A notification u/s 4 was initially issued on 8-1-1974 but on account of some technical defect it was subsequently cancelled and another notification was issued on 4th August, 1975. It was published in the Gazette on 15th November, 1975. The substance of the notification was also published and proclaimed in the locality and notices were issued to the persons affected individually also, Objections were invited. Some of the petitioners filed objections which were considered and thereafter report was submitted by the Land Acquisition Officer on 16th December, 1975, u/s 5A of the Act Thereafter a notification u/s 6 was issued on 25th May 1976, In the

notification u/s 4 as well as u/s 6 the purpose for which the land was sought to be acquired was mentioned to be the construction of New Market Yard for Krishi Utpadan Mandi Samiti. Hathras, District Aligarh. In the notification u/s 6 dated 25th May 1976 the provisions of Sections 17(1) and 17(1-A) as inserted by the State of Uttar Pradesh were also invoked. It was stated in the notification that the Governor after considering the report made u/s 5A of the Land Acquisition Act was satisfied that the land mentioned in the schedule was needed for a public purpose under planned development scheme, namely, for the construction of New Market Yard of Krishi Utpadan Mandi Samiti Hathras, District Aligarh.

2. Having heard counsel for the parties we are of the opinion that there is no substance in the writ petition. No infirmity was pointed out by the learned counsel for the petitioners in the notification issued u/s 4 of the Act. The only ground which was urged by him was that the notification u/s 6 in so far as it invoked the provisions of Section 17(1) and 17(1-A) was vitiated in law, because a portion of the land sought to be acquired could not be said to be waste or arable, inasmuch as certain constructions stood thereon. A perusal of Section 17(1) of the Act no doubt indicates that the provisions contained therein can be applied only in respect of waste or arable land. Had the matter ended there the contention of the petitioners may have had substance. In view of Section 17(1-A) of the Act, however, as inserted by the State of Uttar Pradesh, the said submission loses its force. Section 17(1-A) reads as under:

"The power to take possession under Sub-section (1) may also be exercised in the case of other than waste or arable land, where the land is acquired for or in connection with sanitary improvements or any kind of planned development."

Section 17(1) can as such be applied even in respect of land which is neither waste nor arable, if the land sought to be acquired is needed for planned development. On the facts brought to our notice in the instant case we are of the opinion that the land here is sought to be acquired for planned development. In this connection it will be useful to refer to the supplementary counter affidavit-III filed by Hari Har Swaroop, an Upper Division Assistant in Agriculture Section 8, Civil Secretariat, Lucknow. In paragraph 6 of this counter affidavit it has been said that the financial assistance for the construction and development of market yards for various Mandi Samitis is given by the Government of India, Ministry of Agriculture under their planned scheme. A reference has been made to a letter of the Government of India, a copy of which has been filed as Annexure 1 to the supplementary affidavit. That letter's No. is F. 11-21/75-GAD dated 16th/ 22nd October 1975 and it was written by the Government of India, Ministry of Agriculture and Irrigation. Department of Agriculture to the Agricultural Production Commissioners/Area Development Commissioners/ Administrators, Command Area Development Authorities/Development Commissioners, of States concerned, The subject of this letter was: "Fifth Five Year Plan-Scheme for the development of Selected regulated markets." In that letter it was, inter alia, mentioned that the President has been pleased to accord administrative approval

for the implementation of a scheme for the development of selected regulated markets during the Fifth Plan period. The States concerned were required to formulate proposals for markets under the above scheme in the command areas which had been included in the programme of command area development in the State during the Fifth Plan period and send the same urgently to the Department of Agriculture, Ministry of Agriculture and Irrigation Government of India. Paragraph 7 of the supplementary counter-affidavit aforesaid states that a letter was sent by the Joint Secretary (Agriculture) being D. O. No. 4728 (A)/XI-8-75 dated Lucknow June 28, 1976, to the Senior Marketing Officer, Government of India, Ministry of Agriculture and Irrigation, Department of Rural Development, Directorate of Marketing and Inspection. A copy of this letter has been filed as Annexure 2 to this Affidavit, It shows that this letter was in continuation of an earlier letter dated 19th December, 1975. By this letter schemes pertaining to command areas and backward areas in respect of market yards mentioned therein as prepared by the Director of Mandis, Uttar Pradesh, were forwarded to Government of India. The market yard which was to be constructed in respect of Krishi Utpadan Mandi Samiti, Hathras, district Aligarh is shown as serial No. 6 under the Ramganga Scheme, one of the two Command Area Schemes, enumerated in the said letter. The letter (Annexure 1 to the said supplementary counter-affidavit) sent by the Government of India is dated 16/22 October, 1975, and the letter referred to in Annexure 2 to the said supplementary counter-affidavit is dated December 19, 1975. The notification u/s 6 was issued on 25th May, 1976, i.e., after both these letters had been issued, It is thus apparent that on the date when the notification u/s 6 was issued there was already in existence a scheme for the construction of market yards by way of planned development under the Fifth Five Year Plan. Indeed the annexure attached to Annexure I to the aforesaid letter of the Government of India indicates that some assistance was being given in respect of the markets located in command areas, even under the Fourth Five Year Plan. No rejoinder-affidavit wherein the facts stated in the aforesaid supplementary counter-affidavit may have been rebutted has been brought to our notice by the counsel for the petitioners. So the facts stated therein remain uncontroverted and it does appear that the land in respect of which the impugned notifications had been issued is being acquired for planned development as contemplated by Section 17(1-A) of the Act referred to above.

3. In *Somdutt v. State of U. P.* (1976) 2 All LR 529 : AIR 1977 NOC 10 a question about the interpretation of the words "Planned Development" came up for consideration before a Division Bench of this Court. In that case some land was sought to be acquired for providing house sites to Harijans in pursuance of a Rural Housing Scheme which was being implemented in pursuance of the Fifth Five Year Plan. After referring to the dictionary meaning of the words "planned" and "development" it was held that keeping in view the nature of the scheme and the fact that the scheme was sponsored in the Fifth Five Year Plan, it was clear that the land was being acquired for planned development. With respect we are in agreement with the view taken in *Sorn Dutt's* case and on the facts

pointed out above, we have no hesitation to hold that the land in the instant case is sought to be acquired for planned development as contemplated by Section 17(1-A) of the Land Acquisition Act, as inserted by the State of U. P. In this view of the matter, the notification u/s 6 cannot be held to be vitiated as submitted by the counsel for the petitioners.

4. We accordingly find no merit in this writ petition, which is accordingly dismissed with costs.