

(2009) 10 SC CK 0036

In the Supreme Court Of India

Case No : Civil Appeal No. 6864 of 2009 (Arising out of S.L.P. (C) No. 14302 of 2008)

Babu Ram and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Land Acquisition Act, 1894 — Section 11, 17, 17(1), 17(2), 17(4)

Citation : (2010) 1 AWC 68 Supp : (2009) 57 BLJR 3125 : (2009) 13 JT 99 : (2010) 157 PLR 232 : (2009) 13 SCALE 162 : (2009) 10 SCC 115 : (2009) 14 SCR 1111 : (2009) 9 UJ 4308

Hon'ble Judges : Cyriac Joseph, J;Altamas kabir, J

Bench : Division Bench

Advocate : Pradeep Kr. Ghosh, Chetan Sharma, Abhijeet Chatterjee, Rana Mukherjee, Shimpay Garg, Arman Sharma, Suboth K. Pattan and Dharmendra Kumar Sinha, for the Appellant; Manoj Swarup, Akshat Goel, Ajay Kumar, Rukhsana Chaudhary and Nilofar Qureshi, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—Leave granted.

2. The appellants herein are residents of Narwana, District Jind, in the State of Haryana and claim to be the owners of land measuring 34 Kanals 2 Marlas situated at Jind Patiala Road near the Railway Crossing, Narwana, adjoining the New Grain Market at Narwana. Subsequent to the acquisition of certain lands in the said area in 1995, the State of Haryana issued another Notification dated 23rd November, 2005, bearing No. 12/8/05-PH 1, u/s 4 read with Section 17(2) (c) of the Land Acquisition Act, 1894 (hereinafter referred to as the "L.A. Act"), for construction of a Sewage Treatment Plant. In the said Notification, it was indicated that the land was required on an urgent basis within the meaning of Sub-section (4) of Section 17 of the L.A. Act, thereby excluding the application of Section 5A of the said Act. According to appellants while invoking the emergent

provisions u/s 17 of the aforesaid Act, no reason was indicated to exclude the operation of Section 5A of the Act. The said Notification u/s 4 was followed by another Notification dated 2nd January, 2006 u/s 6 of the L.A. Act. In the said Notification it also was made clear that the Land Acquisition Collector-cum-District Revenue Officer, Jind, Haryana proposed to take possession of the land in question as the land was to be acquired urgently.

3. Aggrieved by the decision of the State Government to acquire the land for construction of the Sewage Treatment Plant, the Mitaso Educational Society Narwana, filed a suit against the State of Haryana to restrain the defendant therein, including the State of Haryana from constructing the Sewage Treatment Plant in front of the school and on 15th February, 2006, an interim order was passed in the suit restraining the defendants from constructing the said Plant as the same was likely to be a health-hazard for the inhabitants of the locality. In yet another civil suit filed by one Jagroop against the State of Haryana, the Additional Civil Judge, Senior Division, Narwana, restrained the defendants by its order dated 12th April, 2006 from constructing the Sewage Treatment Plant.

4. Having been denied the opportunity of filing an objection u/s 5A of the L.A. Act, the appellants also filed a writ petition in the Punjab & Haryana High Court challenging the two Notifications under Sections 4 and 6 of the L.A. Act on several grounds. One of the grounds taken was that the lands in question could not be used for the installation of a Sewage Treatment Plant owing to its close proximity to the residential colony, the New Grain Market and a school in the adjoining plots. Furthermore, an earlier Notification issued under Sections 4 and 6 of the L.A. Act in the year 1995 had also been challenged in Civil Writ Petition No. 1222 of 1997 before the High Court, wherein an order of status quo was passed on 28th January, 1997. It has been submitted that the said writ petition is still pending disposal in the said High Court. In the subsequent writ petition out of which this appeal arises, the appellants herein, inter alia, prayed for quashing of the two Notifications dated 23rd November, 2005 and 2nd January, 2006 issued u/s 4 read with Clause (c) of Sub-section (2) of Section 17 and Section 6 of the L.A. Act, 1894 on the ground that the same were arbitrary and contrary to the provisions of the Act. A prayer was also made for a writ in the nature of Mandamus to direct the respondents in the writ petition not to dispossess the appellants herein from the land in question.

5. The writ petition was taken up for hearing on 14th February, 2008. Negating the contention of the appellants/writ petitioners that they had been wrongly deprived of their right to file an objection to the proposed acquisition of their lands u/s 5A of the L.A. Act, the Writ Court came to the conclusion that the provisions of Section 4 read with Section 17 had been religiously observed and followed by the Notification u/s 6, pursuant to which Award was announced on 23rd May, 2006.

6. While dismissing the writ petition, the High Court sought to distinguish the decision of this Court in Union of India (UOI) and Others Vs. Mukesh Hans etc.,

which had been cited on behalf of the writ petitioners/appellants herein in support of their contention that the right given to a land owner or person interested in the land was not an empty formality but a substantive right which could not be taken away, except for good and valid reason within the limitations prescribed u/s 17(4) of the L.A. Act, 1894. In the said decision, this Court had pointed out that mere existence of an urgency or unforeseen emergency was not sufficient in itself to dispense with the provisions of Section 5A of the aforesaid Act. The said right could be dispensed with only after the appropriate Government forms an opinion that along with the existence of urgency u/s 17(1) or unforeseen emergency u/s 17(2), there was also a need to dispense with the provisions of Section 5A.

7. The SLP (now Civil Appeal) has been filed by the appellants questioning the dismissal of their writ petition.

8. Appearing in support of the appeal, learned Senior Advocate Mr. Pradip Ghosh, submitted that the present acquisition proceeding was the second phase of acquisition of land purportedly for the purpose of setting up a Sewage Treatment Plant (STP). He submitted that similar Notifications under Sections 4 and 6 of the L.A. Act, 1894 had been published in 1995-96 for acquisition of land, measuring 42 acres, 2 kanals, 8.75 marlas, belonging to the appellants and adjoining the lands now sought to be acquired under the Notification dated 23rd November, 2005 issued u/s 4 read with Sections 17(2)(c) and 17(4) of the aforesaid Act, for the selfsame purpose.

9. As will be evident from the aforesaid Notification, the provisions of Section 5A were dispensed with. Thereafter, on 2nd January, 2006, a Notification u/s 6 of the Act was issued indicating the intention of the Respondent No. 2 to take possession of the land immediately. The said Notification was followed by a Notification u/s 9 dated 5th May, 2006 mentioning that the Award of the acquisition would be pronounced on 23rd May, 2006. Mr. Ghosh submitted that in view of the said Notification u/s 9 of the above Act, the appellants were advised to file a suit before the Civil Judge (Senior Division), Narwana, to restrain the respondents from constructing a STP as the same would be a health hazard for the inhabitants of the locality. Such suit was filed on 15th February, 2006. Subsequently, another suit for the same reliefs was filed by one Jagroop on 12th April, 2006, before the learned Additional District Judge (Senior Division), Narwana, who was pleased to restrain the respondents from constructing the STP. In addition to the above, the appellants filed Writ Petition CWP No. 8332 of 2006 before the Punjab and Haryana High Court, praying for quashing of the Notification dated 23rd November, 2005 and for restraining the respondents from dispossessing the writ petitioners. It is out of the final disposal of the said writ petition that the present appeal has arisen.

10. Initially, the High Court directed the parties to maintain status quo with regard to the writ petitioners' lands. Subsequently, as indicated hereinabove, the writ petition was dismissed on 14th April, 2008.

11. Mr. Ghosh submitted that no urgency of such compelling nature had been disclosed by the respondents that warranted the invoking of Section 17(4) of the L.A. Act, 1894. On the other hand, by denying the appellants the opportunity of filing objections u/s 5A of the L.A. Act, 1894, the respondents had tried to play down the fact that the STP was being constructed next to a school and grain market which would prove to be a health- hazard, not only for the students of the school, but for the inhabitants of the area in general.

12. In addition, Mr. Ghosh also submitted that in the plan which had been prepared by the Town Planning Department, it had been shown that the lands to be acquired were to be used for residential and commercial purposes and another plot had been earmarked for the Sewage Treatment Plant. The change of user and the setting up of a STP would severely prejudice the local inhabitants.

13. In support of his submissions that certain parameters have to be followed by the acquiring authorities for the purpose of invoking the provisions of Section 17(4) of the L.A. Act, Mr. Ghosh firstly referred to the decision of this Court in Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, wherein while dealing with a similar situation, this Court observed as follows:

16. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down u/s 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry u/s 5A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause u/s 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry u/s 5A of the Act could be completed. In other words, if power u/s 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the

part of the State administration.

Referring to two other decisions of this Court in (1) State of Punjab and Another Vs. Gurdial Singh and Others, ; and (2) Om Prakash and Another Vs. State of U.P. and Others, this Court also observed that it was fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. In fact, in Om Prakash's case (supra), this Court went one step further in observing that according to the decision in Gurdial Singh's case (supra), enquiry u/s 5A is not merely statutory, but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution.

14. Various other decisions in the same vein were cited by Mr. Ghosh which only go to reiterate the propositions laid down in the above-mentioned cases.

15. It was lastly submitted by Mr. Ghosh that in the Written Statement filed on behalf of the respondents herein before the Punjab & Haryana High Court in the Writ Petition filed by the appellants, nothing has been disclosed with regard to urgency which prompted the said respondents to take recourse to the provisions of Section 17(4) of the L.A. Act, 1894. On the other hand, in paragraph 6 of the said Written Statement it has been sought to be mentioned that if the appellants herein had any grievance with regard to the impugned Notification u/s 4, it was the duty of the appellants to have filed objections. It was further stated that having failed to file objections, the appellants had waived their right since the respondents had never denied the appellants their right to file objections. Mr. Ghosh submitted that such a stand clearly reveals the non-application of mind by the concerned authorities since invocation of Section 17(4) of the L.A. Act prevented the appellants from filing objections. Mr. Ghosh submitted that the respondents ought not to have dealt with the matter in such a perfunctory manner since the appellants had no other forum to vindicate their grievances relating to the compulsory acquisition of their lands.

16. Appearing for the State of Haryana, Mr. Manoj Swarup, learned Advocate, denied the allegations of malafides made on behalf of the appellants and contended that it was, in fact, the appellants who were guilty of having suppressed the extremely relevant fact that they had filed a Civil Suit in respect of the self-same cause of action in the Court of the Additional Civil Judge (Senior Division), Narwana, in which they had prayed for a decree of permanent injunction to restrain the respondents herein from constructing the STP in any direction near the school run by the appellants in the name and style of 'Chaudhary Devi Lal Memorial Public School, Uklana Road, Narwana. Mr. Swarup submitted that although the Written Statement filed on behalf of the Respondent Nos. 1 and 2 had been amended, the same was not placed on the record and only the unamended Written Statement was filed. Mr. Swarup then contented that, in fact, the Written Statement had never been amended, but an Additional Written Statement had been filed on account of amendment effected to the writ petition. From paragraph 6 of the Additional Written Statement, Mr. Swarup pointed out that not one but three STPs were planned at different locations at

Narwana for which three different sites had been acquired. The STP forming the subject matter of the present appeal is, in effect, only one of them. The decision to set up such a STP was the result of accumulation of sewage water which had the ultimate effect of polluting the ground water. It was submitted that the site in question for the construction of the STP had been selected after a thorough survey of the area in which the land in question was found to be most suitable. Mr. Swarup urged that the decision to set up STPs in Narwana was in response to a public demand for the laying down of a Sewage Treatment Plant since the local inhabitants were facing great difficulty in dealing with the accumulation of sewage water. It was submitted that the interests of a few as represented by the appellants, would have to give way to the larger public interest to benefit the entire population of the area.

17. It was also submitted by Mr. Swarup that the suit in question had been withdrawn after objections had been taken by the respondents, but no liberty had been asked for or taken for commencing a fresh proceeding on the same cause of action. Mr. Swarup also questioned the locus standi of the school to file a suit in respect of the land belonging to the appellants.

18. In conclusion, Mr. Swarup referred to the decision of this Court in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, which dealt with the question of delay in challenging the notice issued under the Land Acquisition Act, 1894. In the said decision, this Court held that long after the Award had been passed in the L.A. proceedings and compensation had been made over to the Requiring Authority, a writ petition challenging the notices issued under Sections 4 and 6 of the L.A. Act was not maintainable. Mr. Swarup urged that in the facts and circumstances of the case, no interference was called for with the decision of the High Court.

19. From the submissions advanced on behalf of the parties and the materials on record, two points emerge for decision in the instant appeal. The first point to be considered is whether the provisions of Section 17(4) of the L.A. Act, 1894, had been validly invoked by the respondents for the purpose of acquiring the lands in question for the Sewage Treatment Plant. The other point which is linked with the first point is whether the choice of site for setting up the STP would prove to be hazardous for the inhabitants of Narwana.

20. If an opportunity had been given to file objections to the proposed acquisition, the second question would have been resolved while deciding the objections u/s 5A of the L.A. Act, 1894. Unfortunately, the provisions of Section 17(4) were invoked in relation to a project which could have serious consequences to the health of the general public of the area. Although, it has been urged on behalf of the respondents that the decision to set up the three Sewage Treatment Plants at Narwana was in response to a public demand to install sewage drains and the present site had been chosen to be the most suitable for a STP, it has not been denied that the proposed STP is to be situated in the vicinity of a school and grain market which are both hubs of community

activities.

21. In the present case, we are not concerned with technicalities but the likelihood of a health- hazard to the inhabitants of the area if the STP was set up in the acquired site. The stand taken by the respondent that the appellants could have filed objections to the proposed acquisition is difficult to appreciate since the right to file such objections had, in fact, been taken away by invoking the provisions of Section 17(4) of the L.A. Act. Such a stand taken on behalf of the respondent authorities only serve to strengthen the case of the appellants that an opportunity should have been given to them to file objections to the proposed acquisition. As indicated hereinabove in the various cases cited by Mr. Pradip Ghosh and, in particular, the decision in Krishan Lal Arneja's case (supra), in which reference has been made to the observations made by this Court in Om Prakash's case (supra), it has been emphasized that a right u/s 5A is not merely statutory but also has the flavour of fundamental rights under Articles 14 and 19 of the Constitution. Such observations had been made in reference to an observation made in the earlier decision in Gurdial Singh's case (supra) and keeping in mind the fact that right to property was no longer a fundamental right, an observation was made that even if the right to property was no longer a fundamental right, the observations relating to Article 14 would continue to apply in full force with regard to Section 5A of the L.A. Act.

22. The observations made both in Gurdial Singh's case (supra) and in Om Prakash's case (supra) assign a great deal of importance to the right of a citizen to file objections u/s 5A of the L.A. Act when his lands are being taken over under the provisions of the said Act. That in the said decisions, such right was elevated to the status of a fundamental right, is in itself sufficient to indicate that great care had to be taken by the authorities before resorting to Section 17(4) of the L.A. Act. and that they had to satisfy themselves that there was an urgency of such nature as indicated in Section 17(2) of the Act, which could brook no delay whatsoever.

23. Since Section 5A of the L.A. Act had been dispensed with, the stage u/s 9 was arrived at within six months from the date of the notice issued u/s 4 and 17(2)(c) of the L.A. Act. While such notice was issued on 23rd November, 2005, the Award u/s 11 was made on 23rd May, 2006. During this period, the appellants filed a suit, and, thereafter, withdrew the same and filed a writ petition in an attempt to protect their constitutional right to the property. It cannot, therefore, be said that there was either any negligence or lapse or delay on the part of the appellants.

24. The only other aspect of the matter which requires consideration is whether the lands in question have already been utilized for the Sewage Treatment Plant. From the averments made and photographs which were brought to our notice, it appears that the site is still lying unutilized. In such circumstances, we consider it only proper that the appellants should get an opportunity to file their objections to the proposed acquisition u/s 5A of the L.A. Act and the respondents

would be at liberty to take consequential steps after disposal of the same.

25. We, accordingly, dispose of the appeal by directing that notwithstanding the invocation of Section 17(2)(c) of the L.A. Act in its application to the States of Punjab and Haryana, the appellants will be at liberty to file objections u/s 5A of the L.A. Act within a month from the date before the concerned authority, who will, thereafter, dispose of the same upon giving the objectors, if any, an opportunity of hearing and placing their respective cases.

26. The learned Advocate for the appellants is directed to communicate this order to the L.A. Collector-cum-District Revenue Officer, Jind, Haryana, within a week from date.

27. There will be no order as to costs.