
(1995) 03 MP CK 0026

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1198 of 1989

Bajnath Prasad and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-03-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(4), 4

Citation : (1995) J LJ 592 : (1995) 40 MPLJ 1026 : (1995) MPLJ 1026

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : R.D. Jain, for the Appellant; K.B. Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

T.S. Doabia, J.

The challenge in this petition is being made to acquisition proceedings initiated by issuing a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). This notification is dated 17th of February 1989. This was published in the M.P. Rajpatra of 22nd, of February 1989. Urgency provisions were invoked. The notification recites that the provisions of Section 5A are being dispensed with. Notification u/s 6 of the Act, was issued on 4th of August, 1989. The present petition was filed in October 1989. Interim order was passed directing the respondent Mandi to not to raise any construction on the land which was subject matter of acquisition.

The further factual recital in the writ petition is to the effect that the land is situated in a developing town having a population of more than 50,000. It is pleaded that merely mentioning the names of the village was not enough to identify the land in question. It has also been submitted that with regard to this very land earlier notifications were issued in 1985 and these were not pursued to their logical end. This fact is being mentioned with a view to stress that in fact there was no real urgency and the urgency provisions have been invoked mala

fide. It has also been mentioned in the petition that there exists a master plan in the area. It is stated that in the master plan the land is supposed to be used for residential purposes and setting up of a Mandi would come in conflict with the master plan. One more legal objection has been raised. This is with regard to the power of the Collector to invoke urgency provisions. According to the petitioner, vide notification Annexure P/12, the Collector was given the power to act on behalf of the State Government when notifications are to be issued under Sections 4, 5, 6 and 17 of the Act. It is however stated that by a latter notification issued on 24th of December 1983, the ambit and scope of the powers which were to be exercised by the Collector were restricted. It was indicated that in case, the land is required for a local authority, in which State had no interest, then it would be necessary to have prior approval of the Commissioner of the Division. This is Annexure P/15 on record. The State has however pointed out that such a sanction was accorded. This sanction was accorded in the month of February, 1989. This is sought to be countered by the petitioners by contending that the acquisition proceedings were taken earlier to the issuance of Annexure "S1". Notification u/s 4 as noticed above, was issued on 28th of February, 1989. On the basis of the above factual submission following arguments have been raised on behalf of the petitioners :

(i) that this was not a case where urgency provisions were required to be invoked.

(ii) the notification u/s 4 is vague as it does not identify the locality where the land is situated.

(iii) The Collector was not competent to invoke urgency provisions and he was empowered in this regard after a period of more than 6 months.

(iv) Construction is going to be raised in an area, which is meant for residential purpose.

The first argument with regard to invocation of urgency provisions be examined. It is not in dispute that earlier also the respondents had taken steps with a view to acquire this very land for this very purpose. Relevant notification was issued in the year 1985. These were not pursued to its logical end. Taking shelter behind this factual position it is argued that this acquisition was not for such purposes which could not brook a delay of 30 days.

There is merit in this contention of the learned counsel for the petitioner.

This question was dealt with in State of Punjab and Another Vs. Gurdial Singh and Others, While dealing with this aspect of the matter, it was observed as under:-

"It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness and denial of this administrative fairness is constitutional anathema except for good reasons.

Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Arts. 14 (and 19), burke an enquiry u/s 17 of the Act."

It was further observed :

"Where the Government sought to acquire particular land for establishing a grain market, then gave it up and selected another piece of land but ultimately acquisition of the latter was declared mala fide by the High Court and seven years thereafter the Government again sought to acquire the same land under emergency powers u/s 17 it could not be said that the invoking of the section is justified."

The Punjab and Haryana High Court relying on the aforesaid observation made by the Supreme Court in the case of Kartar Singh v. The State of Haryana 1986 PLJ 464 quashed the notification invoking urgency provisions u/s 17(4) of the Act. In the above case, the land was sought to be acquired for constructing godowns for Food Corporation of India.

The need was held to be not urgent. It was held that need for constructing godowns for Food Corporation of India is not such a pressing or urgent need which could not brook delay of 30 days.

The above decisions of the Supreme Court and the Punjab and Haryana High Court were again noticed in the case of Harpal Singh and others Vs. State of Punjab and others, Acquisition was quashed. It was observed :-

"The position in the present case is also similar that when the State had taken so long for deciding to set up truck stand on the site in dispute, it could not be said that it could not wait for another period of 30 days to enable land-owners to file objections u/s 5A of the Act."

The present case is similar to the one which was decided by the Supreme Court of India and by two other decisions of the Punjab and Haryana High Court. The fact that earlier there was a notification issued in the year 1985 and the fact that the matter was not taken seriously by the respondent authorities cannot be ignored. It cannot be said that this was such a purpose which could not brook a delay of 30 days. On this short ground alone, resort to urgency provision is liable to be quashed.

The argument of the learned counsel for the petitioners that the Collector was not competent to invoke urgency provisions be also be noticed. The State Government having issued a notification dated 24th of December 1983 limiting the powers of the Collector to resort to urgency provisions and having conferred such a power later on 28th of August, 1989 makes the action of the Collector invoking the urgency provisions contrary to the very notification under which power was said to be exercised. The urgency provision was invoked by a functionary who was not legally authorised to exercise such a power. Thus looking from any point of view resort to urgency provisions cannot be sustained.

The argument with regard to the notification being vague has also merit. In fact what was said by the Supreme Court of India in the case of Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, would fully apply to the facts of the case. The notification which was being considered by the Supreme Court described the area as "Mandsaur" only. The Supreme Court was of the view that this description is not sufficient to identify the land. The fact that the city of Mandsaur was no more a small village was taken note of to hold that the locality was not properly described. In the present case, there is clear averment in the petition that the town of Bhind has a population of 50,000. Thus, whatever was said by the Supreme Court in the above case would apply to the facts of this case also. The observations made by the Supreme Court in the above case in para 12 fully apply to the fact of this case. This reads as under :-

"The description of the land in the notification issued under Sections 4(1) and 17(1) in our opinion, is very cryptic. Not only no Khasra numbers have been given, even the precise "locality" has not been indicated. Mere mention of Mandsaur, which is spread over an area of 25 sq. kms. and is divided into various municipal wards, against the "locality" is wholly insufficient description and the respondent or anyone else could not have come to know from that description whether 2298 hectares of land which was required for acquisition included the land belonging to him or not. The non-disclosure of the "locality" with precision, invalidates the notification and renders the publication of notice a meaningless formality.

It is also pertinent to mention that the Supreme Court took note of an earlier decision reported as Narendrajit Singh v. State of U.P. 1970(1) SCC 125. The observations made in this case can also be taken note of with a view to record a finding in favour of the petitioners. I am of the view that the facts of the above cases are similar to the facts of this case. The notification u/s 4 of the Act is liable to be quashed on this ground also.

The last argument of the learned counsel for the petitioners that the area meant for residential purpose could not be utilised for commercial purposes be also noticed. This plea is taken in para 10 of the petition. This is however controverted in the return. No rejoinder is filed. This being a disputed fact is not being gone into in this petition.

This petition is allowed. The acquisition u/s 4 of the Act is quashed.

Security, if deposited, be refunded to the petitioner.