
(2003) 04 MP CK 0018
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4865 of 2002

Beena Bai Bhate

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 16-04-2003

Acts Referred:

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 14, 17A, 18, 18(1), 18(2)

Citation : (2003) 3 MPLJ 477

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : A.G. Dhande with Sudeep Chatterjee, for the Appellant; Shashank Shekar, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Petitioner in this writ petition seeks quashment of order P/13 passed by the State Government on 24-7-2002 and further to release lands of the petitioner from the intending acquisition and to declare the entire proceedings of intending acquisition to be illegal and contrary to law.

2. It is averred in the petition that the petitioner is a Bhuswami of certain lands admeasuring 20.27 acres situated at Khandwa Taraf Kunbi, Tehsil Khandwa, Distt. East Nimar. A draft development plan P/3 was published u/s 18(1) of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973. Petitioner came to know that in the draft development plan, some portion of her land was also included and the intention was for making land available for Navchandi Mela. Petitioner submitted objection P/4 on 27-3-2000. It was pointed out that the land is ancestral land and petitioner had already executed a will duly registered intending to transfer the same to her sons and grand sons. There is sufficient land available and there is no necessity to acquire Land for Navchandi Mela purpose. The said Temple has been constructed in the residential locality of Tilak Nagar, Devshree, Gayatri Colony and Luv-Kush Nagar etc. It is averred that a Committee was constituted

consisting of member of Parliament, Members of Legislative Assembly, Mayor, President Zila Panchayat, Sarpanch Gram Panchayat and Collector. The committee considered the objections and decided that the land was not required and the objections of the petitioner and others were accepted. Resolution P/5 dated 26-5-2000 was passed by the Committee. Petitioner submits that resolution cannot be superseded and in spite of resolution the land of the petitioner has been included in the development plan, gazette notification P/6 has been made for that purpose. The land comprises in Survey No. 386, 388, 339, 392 have been included. Development plan P/6 has been prepared. Petitioner filed review petition P/8 u/s 23A of the Adhinyam. It is contended by the petitioner that before modifying the plan or inclusion of the land in the proposed acquisition she was entitled for proper hearing. Government ought to have taken action u/s 23A as land is not required. The land acquisition officer has confirmed the amount of compensation in respect of land of Village Khandwa Taraf Kunbi, bearing Khasra No. 394/1, 394/2, 394/5, 394/6, 394/7, 384/8, 394/10, and 394/11. The petitioner assails the action on the ground that the objection was accepted by the Committee and the land of the petitioner was released from acquisition, as such it was not permissible to initiate proceedings behind the back of the petitioner. The proceedings are in colourable exercise of power. Initially the proposal was for 16 acres of land and out of that, in front of temple, five acres has already been acquired. The intending acquisition is between the residential colonies and, therefore, all the people in that area are likely to be affected adversely. The State Government has erred in passing the order P/13 on frivolous grounds and the entire acquisition appears to be for extending the favour to Bhagat Gangaram Baba, which cannot be said to be for a public purpose.

3. Shri A.G. Dhande, learned senior counsel appearing for the petitioner has submitted that once objection was decided in favour of the petitioner before taking any adverse action it was necessary to afford opportunity to the petitioner. Petitioner remained under impression that his land has been released as per the resolution of the Committee. Thus, the decision of the State Govt, in notifying the land for acquisition in the development scheme as per the gazette notification P/6 issued u/s 19 of the Adhinyam, is bad in law. The purpose cannot be said to be a public purpose. Land of the petitioner is not required. Thus, notification P/6 issued u/s 19 is bad in law. He also assailed the order P/13, passed by State Government. He submitted that the matter has not been properly dealt with by the State Government. The State Government ought to have made the recommendation for modification of the plan.

4. Shri Shashank Shekar, learned counsel appearing for the Respondents has submitted that the order P/13 is proper. The action is proper, there is no categorical resolution in favour of petitioner to release the land of the Committee. There was difference of opinion between the Govt, officials and people representatives with respect to the inclusion of the land in the development scheme and minutes of the discussion of the Committee, P/5 which

cannot be said to be final and binding on State Government and is simply recommendatory in nature, and the State Government is the only competent authority to make any modification in plan on consideration of the recommendation of the Committee. As apparent from P/6, notification issued in the gazette, it is mentioned that the report of the Director was considered carefully which was submitted u/s 18(2) of the Adhiniyam and the modification which was proposed by the State Government was published in the gazette as required u/s 19(2) of the Adhiniyam and notice was published in the gazette dated 29-11-2000 and the State Government have not received any objection on issuance of this modification. Thereafter the State Government has taken the decision u/s 19(3) to confirm the modification mentioned in the above notice and to approve the development plan and gazette notification was ordered to be issued u/s 19(4) of the Adhiniyam. Thus, there is no infirmity in the development plan. No interference is called for and the acquisition is not colourable exercise of power and the inclusion in the development plan is for a "public purpose" of holding fair of Navchandi.

5. Primary submission raised by learned counsel for the petitioner is that there is release in favour of the petitioner as per Minute P/5 of Committee. Perusal of the P/5 shows that necessity was felt by the Govt. Officials of the land in question. It is mentioned in the recommendation part of the Committees resolution P/5 that as per Govt. Officials the land in question is necessary for the purpose of fair. Hence, the land is necessitated for the purpose of Navchandi Mela. It is also mentioned in the recommendation part that the elected representatives were of the view that there was no necessity of Mela Ground.

6. Thus, the submission raised that there was decision P/5 rendered by the Committee in favour of the petitioner is incorrect on facts. The recommendation of the Committee is also not final, conclusive and binding as apparent from the scheme of the Adhiniyam. Section 18 deals with publication of draft development plan. On receipt of the report from the Convener of the Committee under Sub-section (3) of section 17-A, the Director shall consider the report of the Committee and in consultation with the committee constituted under Sub-section (1) of section 17-A publish the draft development plan prepared u/s 14 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or places where the copies may be inspected, inviting objections and suggestions in writing from any person with respect thereto, within thirty days from the date of publication of such notice, such notice shall specify in regard to the draft development plan. Sub-section (3) of section 18 provides that the Director to submit all the documents and plans so received along with his comments, to the State Government. Thus, it is clear from provision of section 18 that intention of the Committee u/s 17-A is only recommendatory in nature. Section 19 thereafter comes into play. Section 19 of the Adhiniyam provides that the State Government may either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a

fresh plan in accordance with such directions as the State Government may deem appropriate. Inviting of objections is not contemplated u/s 19(1). However, in the instant case certain modifications were proposed in the draft statement submitted by the Director, as such the same was published for inviting objections as provided under Sub-section (2) of section 19 of the Adhiniyam. It is mentioned in the gazette notification P/6 that such objections were invited as per the gazette notification, a notice was published inviting objections on 29-11-2000 and the State Government have not received any objections/suggestions to the modification u/s 19(3) and has ordered publication u/s 19(4) of the Adhiniyam.

7. It is clear from the above provisions that the committee considered the objections. Recommendation P/5 was made, no definite opinion was formed with respect to petitioner's land. Govt. Officials considered the land to be absolutely necessary for the purpose of fair, elected people's representative opined, there is no necessity for land acquisition for the purpose of Mela Ground, The decision has been taken by the State Government not to accept the objection of the petitioner and the State Govt, has accepted the view of the Govt. Officials. I find nothing illegal in that. As required u/s 17-A and 18 objections have been invited, they have been considered. Decision has been duly taken by the State Government, which is final authority in such a matter. Submission of the petitioner is that the petitioner ought to have been heard by the State Government afresh, is not the requirement, even otherwise when the State Govt, has proposed modification under Sub-section (2) of section 19, no objections were submitted is the fact mentioned in Notification P/6. Proposal with respect to the land of petitioner was existing in the original development plan, which was published and on which objections were earlier invited. Petitioner has not filed any fresh objections before the State Govt. The objections submitted before Committee were forwarded to State which have not been accepted by State Government. In any case, the State Govt. has acted in accordance with the provisions of law and I find that the scheme cannot be said to be colourable exercise of power as contended by the petitioner. Land is required for public purpose for holding fair. Procedure provided under sections 17-A, 18 and 19 has been duly followed. I find nothing illegal. No illegality is found in the action.

8. Last submission of learned counsel for the petitioner is that the Order P-13 is not proper and legal. As a matter of fact the petitioner had applied for review u/s 23/23A. Section 23A provides that the State Government may, on his own motion or if so required by the development authority may undertake a review and evaluation of the development plan, it was not a case of "urgent necessity"/ exigency; requirement to attract section 23A were not existing hence, invocation of section 23A was not warranted. Section 23 provides for review of development plan or zoning plan by Director on his own motion or if so required by State Government Director shall undertake review, no such special ground was made out to direct review of plan by Director. I find no case made out to warrant review of development plan. Similar grounds were reiterated by the petitioner which were earlier raised. Hence, I find that rejection of the prayer for review

calls for no interference.

9. Resultantly, writ petition is devoid of merit and is dismissed.