
(1995) 03 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5319 of 1993

Bhagwati Prasad and Anr.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17(4), 3(1)(viii), 4, 5A, 6
Land Acquisition Manual — Rule 69

Citation : (1995) 03 AHC CK 0043

Hon'ble Judges : R.A.Sharma, J and D.K.Seth, J

Final Decision : Dismissed

Judgement

D.K. Seth, J.—In this writ petition, the petitioners have challenged the notification issued under Sections 4 and 6 read with Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") on the ground that the said notification has been issued by the Secretary, Revenue and Waqf Department, Government of Uttar Pradesh, who is not authorised to issue the said notification in view of authorisation of the Director, Land Acquisition. It was further urged that there was no urgency for dispensing with the enquiry under Section 5A for the purpose of attracting the provisions of Section 17 of the Act. It was further alleged that the public purpose for which the land was acquired had already been completed on some other land. The said notifications were issued without any application of mind. The Director was never consulted before issuing the said notification or arriving at the decision for acquiring the said land. It was further alleged that the Gazette Notification was published after publication in the Newspaper and, therefore, there was no notification in the eye of law since Gazette Notification is required to precede the Newspaper publication.

2. In the counter affidavit filed by the respondents, a detailed history leading to the decision for acquiring the said land has been given. It has been pointed out that a new district Maharajganj was created by the State Government under a notification dated 30th September, 1989. With effect from the date of the said

notification, the said District was created on the basis of popular demand. In order to establish the Headquarter of the said District for the functioning of the land administration, site selection was necessary., For the purpose of selection of site, a Committee was constituted by the Government on 3rd February 1990. The said Committee was headed by the Commissioner, Gorakhpur Division. In the process of selecting site, the Chief Town Planner, Village Planner and concerned officials were deputed for examining several chunks of land and making spot enquiries. The Committee proposed the acquisition of 400 acres of land in village Satbhriya and Gaonariya Babu as most suitable. The said proposal was submitted on 19th January, 1991 to the State Government for approval by the Commissioner, Gorakhpur Division. It was also alleged that the selection of land was a time consuming one, since in view of several local pressure which were to be reconciled.

3. After the said plan was submitted, the State Government applied its mind and the proposal was partially modified deciding to acquire 138.91 acres of land in village Satbhriya and 179.70 acres of land in village Gaonaria Babu aggregating to 318.61 acres only. The site being situated on MaharajganjGorakhpur Marg having direct link with the Commissioner's Headquarter, it was found to be most suitable. Accordingly, the State Government issued an order on 25th April, 1991 informing the District Magistrate Maharajganj about the decision and requiring him to submit the proposal for issuance of notification under Section 4 and Section 6/17 of the Act,

4. In compliance with the Government Order, the Special Land Acquisition Officer, Gorakhpur, by his letter dated 19th August, 1991 requested the State Government for issuing notifications under Sections 4 and 6/17 of the Act. The District Magistrate, Maharajganj, also issued a similar letter on 2nd September 1991 to the State Government. These two letters were received by the Government on 21st August, 1991 and 6th September, 1991 respectively. Thereafter some other representations were also made opposing the said acquisition, on the basis whereof, the District Magistrate, Maharajganj was asked to submit his comment. The said objectors had pointed out various other difficulties as enumerated in paragraphs 14 and 15 of the counter affidavit. After applying his mind, the District Magistrate, Maharajganj was satisfied that the said site was most suitable but the area required was reduced to 284.23 acres. The matter of acquisition was also sent to the Planning Department for purposes of consideration by the Bhumi Upyog Parishad (Land Use Board) headed by the Chief Minister as its Chairman. The Land Use Board asked for certain informations which were provided by the District Magistrate, Maharajganj on 22nd February, 1992. After considering the same, the Land Use Board accorded its approval on 24th July, 1992. Thereafter the District Magistrate submitted the proposal in proper form for acquisition of land and for issuing necessary notifications by his letter dated 31st August, 1992 received by the State Government on 2nd September, 1992. The proposal was examined by the Law Department and was approved on 30th September, 1992. Thereafter the

notification dated 13th November 1992 was issued under Section 4 of the Act and was published in the Extraordinary Official Gazette dated 13th November, 1992, Thereafter the notification under Section 6 read with Section 17 of the said Act was issued on 4th February, 1993 in the Extraordinary official Gazette dated 4th February 1993. It was contended that in the situation prevailing, there was grave urgency for establishing the Headquarters of the District for which the dispensing with enquiry under Section 5A was justified. It was further contended that under the rules of business, the Secretary is entitled to take decision regarding acquisition of land and the power has been exercised by the Secretary under the rules of business framed under Article 166 of the Constitution of India. The Director is a subordinate to the Secretary who has been appointed for the sake of convenience. Rule 69 of the Land Acquisition Manual supported by G. O. No. 74(9)86114R13, dated 4th July, 1987 empowers the Revenue Department to deal with Land Acquisition matters. The Director is required to work under the full supervision of the Revenue Secretary, In any event the Government Order has not excluded the power of the Secretary of the Revenue Department. Along with the said counter affidavit, the relevant notifications have duly been annexed as Annexures "CA2" and "CA3".

5. The petitioners have filed their rejoinder affidavit to the said counter affidavit and denied the allegations made in the counter affidavit. A supplementary counter affidavit was filed seeking to elucidate the points already urged in the counter affidavit, to which a supplementary rejoinder affidavit was filed by the petitioner seeking to controvert the statements made in the supplementary counter affidavit.

6. We have heard the learned counsel appearing for the respective parties and have perused the pleading and the records.

7. It appears from the rejoinder affidavit and the supplementary rejoinder affidavit filed by the petitioners that the statements made in the counter affidavit and the supplementary counter affidavit have not been effectively controverted. It appears that before the Government arrived at the decision for acquiring the said land and formulating the proposal, there was application of mind on the part of the authority which acted through its limbs at different times as the Government functions. It is abundantly clear from the counter affidavit that at every stage, there was application of mind and all endeavours were made to find out the most suitable site and many experts were also involved in the process. The matter was considered and reconsidered at different stages and ultimately a final decision was arrived at. Therefore, the question that there was no application of mind, as pleaded in the writ petition, cannot be sustained on the facts and circumstances of the present case.

8. The second question that there was no public purpose cannot be sustained in the facts and circumstances of the case. Admittedly a new District of Maharajganj was established on popular demand. As soon as such a District is created, the establishment of Headquarter for the District is mandatory. The

construction of Headquarter of the District, by no stretch of imagination can be branded as nonpublic purpose. Therefore, the same also cannot be sustained.

9. That the purpose was a public purpose, there cannot be any doubt inasmuch as "public purpose" as defined in Section 3(f) (viii) includes the provision of any premises or building for locating a public office. The same was also supported in the case of *Madhya Pradesh Housing Board v. Mohd. Shafi and others*, JT 1992 (3) SC 523. In the said case, construction of residential accommodation for the officers of the Housing Board was also held to be public purpose.

10. The other point that the purpose has already been fulfilled, as pleaded in the writ petition itself, is an indirect admission that there was urgent public purpose, which could brook no delay. However, the alleged fulfilment of purpose cannot be said to be the fulfilment of the purpose as has been pleaded in the writ petition. In the counteraffidavit, it has been pointed out that the purpose has not been achieved in view of the interim order granted in the instant writ petition and in spite of taking over possession, the Headquarters could not be built on the lands in question. Therefore, ad hoc arrangement has been made to house the administration of the Headquarter of the District by making some alternative arrangement but that does not evaporate the purpose altogether. On the other hand it justifies. The urgency and the purpose still remains. It is for the authorities to consider how to use the said land for such purpose. As it appears from the pleadings that if the site is most suitable area for the Headquarter, in that event, the present accommodation could be required to be shifted, to the new site after the District Headquarter is established on completion of construction on the site itself. However, this is a matter for the authorities to consider to which this Court can not implant its own view. No sufficient material has been placed before us to come to the conclusion that the purpose for which the land was sought to be acquired has since been fulfilled or achieved as pleaded in the writ petition. For all these reasons, we are unable to accept the contention of the petitioners in this regard.

11. It is further contended by the petitioners that there was no urgency for dispensing with the enquiry under Section 5A of the Act and attracting Section 17(1) of the Act. The establishment of a District Headquarter with the creation of a new District is an extremely urgent matter which is to be accomplished at the earliest. If there is no Headquarter, the entire purpose of creating a new District would be frustrated. The administration of a District is a primary consideration. Such administration is to be housed in a properly constructed Headquarter. There cannot be any doubt about the urgency for establishment of such a Headquarter for a newly created District. To all such fact, the authorities were well aware and had applied their mind as it appears from the narration given in the counteraffidavit. In our view, the decision for dispensing with enquiry under Section 5A and attracting Section 17(1) of the Act is justified for the present purpose for which the land was sought to be acquired.

12. It is an admitted proposition and a settled principle of law that a

predecisional delay cannot nullify the question of urgency for the purposes of attracting Section 17(1) of the Act. The question of urgency depends on the facts of each individual case. The said question came up in the case of Vinod Kumar and others v. State of U. P. and others, 1990(2) AWC 1039. In the said case, the case of Narayan Govind Govate v. State of Maharashtra, AIR 1977 SC 183, was followed. It was held in the case of Narayan Govind Govate (supra) that it was open to the Court to examine as to whether the condition precedent for exercise of the power under Section 17(4) had been fulfilled or not. It was further held that the officer or the authority concerned has to apply its mind on the question as to whether there is any urgency or not and the question as to whether the enquiry under Section 5A of the Act can be eliminated or not depends upon the facts and circumstances of each case. In the case of Jai Gurdev Pracharak Sangh v. State of U.P., 1984 (Supplement) AWC 119, a Division Bench of this Court had occasion to interpret the provisions of Section 5A read with Section 17(4) of the Act. Hon"ble R. M. Sahai, J. delivering the judgment of the Court relying upon the decision in the case of Narayan Govind Govate (supra) was pleased to opine:

"Dispensing of procedure, Section 17 is no doubt in the discretion of the State Government. But on what material the opinion was formed and government, exercised this power can be examined by this Court to ascertain if the exercise of power was not arbitrary. But Rule of law being edifice of our society action of public authority has to be in accordance with law. Legislature has no doubt empowered the executive to dispense with filing of objection if it was of opinion that the land was needed urgently. But use of word "urgently" itself furnishes guidelines for exercise of the power. Urgency according to dictionary means "immediate", "very important" that which requires immediate attention. From its meaning it is apparent that its applicability has to vary. What may be very important in one set of circumstances may not be so in another. For instance, delay in construction of road or canal as compared to allotment of land for cinema or shopping complex may be more important and may require immediate attention. Acquiring of land for industrial development in a State or city is not only laudable objective but imperative for economic and social development. But the normal procedure of giving an individual his right to file objection should not be taken away merely because a decision has been taken to industrially develop a city. Invoking of urgency provision must precede existence of circumstances which require the State Government to take immediate action. If exercise of power under Section 17 is upheld only because a master plan had been prepared for a town or city even though there was no movement and nothing had been done even on neighbouring land acquired earlier, it would amount to conferring blanket power on executive to dispense with cherished right to filing objection."

13. Their Lordships, while delivering the Judgment in the case of Vinod Kumar (supra) had agreed with the decision in the case of Jai Gurdev Pracharak Sangh (supra). A similar view was also taken by another Division Bench of this Court in Ajadul Bux v. State of U. P., AIR 1982 Allahabad 435, and also in Smt. Maheshwari Devi v. State of U. P., 1987 All CJ 370. 14. In the case of Shyam

Nandan Prasad v. State of Bihar, JT 1993(4) SC 590, it was laid down by the Hon'ble Supreme Court that the right to object is not an absolute right and, therefore, the same can be dispensed with. In fact there must be a reconciliation of all the sections in order to give the provisions a harmonised effect. It has been laid down therein that the provision embodies a just and wholesome principle that a person whose property is being or is intended to be acquired should have the occasion to persuade the authorities concerned that his property be not touched for acquisition. This right is not absolute, however, if the appropriate Government, in its discretion, chooses to dispense with its applicability by invoking urgency provisions of Section 17 of the Act.

15. Further more in the case of Hansraj H. Jain v. State of Maharashtra, JT 1993(4) SC 360, it has been held that it is reasonably accepted that substantial time would be required for detailed planning for the development of the area. Whenever action taken was found to be lacking in bonafide and made in colourable exercise of the power, the Court did not hesitate to strike down unfair and unjust acquisition proceedings. In this case, there is nothing to show that there was lack in bona fide or that there was colourable exercise of power. On the other hand, from the counter affidavit, it appears that time was taken for settling the dispute in order to avoid the delay.

16. In the case of M/s. Garg Farms v. State of U. P., 1989(2) AWC 1137, it was held that if the Government had material on the basis of which it could have legitimately formed the opinion that the matter was one of urgency and the purpose being inherently such as did not brook any delay bound to be caused by inviting objections under Section 5A, the direction issued by the State Government under Section 17(4) that the provision of Section 5A shall not apply, cannot be invalidated merely on the ground that subsequent to the formation of that opinion, there was a gap of four months between the issue of notification under Section 4(1) and that under Section 6(1) of the Act. It was further held :

"The upshot is that the impugned notifications are not invalidated merely because the Collector caused. Public notice of the substance of the notification under the latter part of Section 4(1) to be made prior to the issue of the publication of the notification in the Gazette and in the newspapers."

17. In the case in hand, we have examined the facts pressed before us and are of opinion that there is a pressing need for establishment of Head quarter of a newly created District which is extremely urgent. For all the reasons given hereinbefore, we are, therefore, unable to agree with the contention of the petitioner that there was no urgency for dispensing with the necessity of enquiry under Section 5A. of the said Act. On the other hand, we are satisfied that there were justified reasons for attracting the provisions of Section 17 of the Act.

18. It was further contended that the Secretary, Revenue Department, had no jurisdiction to issue the notification. It was the Director who was empowered to issue the notification. Section 4(1) does not specify as to who shall issue the

notification. It only says that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette. Therefore, the notification is to be published by the Government which acts through its Secretaries or whomsoever is authorised to do so. In this case, the notification has been issued by the Secretary according to the rules of business as framed under Article 166 of the Constitution of India. Rule 69 of the Land Acquisition Manual prescribes that the Revenue Department of the State Government will be the nodal Department for land acquisition work of all the Departments of the Government and will, therefore, deal with all matters arising therefrom, including issue of notification under Section 4, disposal of objections under Section 5A, declaration under Section 6, allotment of funds, reference to Civil Court under Section 18, rehabilitation of displaced persons, settlement of relinquished land when no longer required and writ petitions etc. The Director, Land Acquisition who will also be ex officio Special Secretary in the Revenue Department, will deal with all work connected with publication of notification etc. at the level of the Government under the overall supervision of the Revenue Secretary. As Director he is authorised to correspond with the Government direct in routine matters and in respect of policy matters he shall submit reference to the Government through the Board of Revenue.

19. The above rule clearly suggests that the Director acts under the supervision of the Revenue Secretary relating to the publication of notification whereas the notification ought to be issued by the Revenue Department. The said Department is headed by the Secretary. The said rule does not exclude the Secretary from issuing the notification. On the other hand, from a plain reading thereof, it appears to us that the Director shall deal with the publication of notification whereas the notification is to be issued by the Department itself. Such notification can be issued by the Secretary himself or any other person so authorised by the said Department. Over and above, the notifications are issued by the Government under the seal of the Governor. In such cases, such notification can be issued by any officer authorised for the purpose under the seal of the Governor. However, we are not concerned with such proposition at the moment. Therefore, according to us, there was no infirmity in the publication of the relevant notifications by the Secretary, Revenue Department.

20. The other contention was that the Director was never consulted. Rule 69 of the Land Acquisition Manual does not prescribe that the Director has to be consulted in the matter of acquisition of land. He has been given authority to deal with works connected with the publication of the notification at the Government level and that too under the overall supervision of the Revenue Secretary. He was also authorised to correspond with the Government in routine matters directly, but in policy matters, he can only submit reference to the Government through the Board of Revenue. We do not find in the said provision that the Director is to be consulted whenever land is required to be acquired by the Government. The Government works in a collective process in which different

officers are involved. It cannot be said that if one such officer is not involved, the collective decision having the approval of higher authorities, as has been in the present case, cannot render the decision of proposal or the action infirm.

21. It is submitted on behalf of the petitioners that the Gazette notification was published after the Newspaper Notification. Section 4 (1) prescribes issue of notification in the Official Gazette and in two daily newspapers circulating in the locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality and the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification. In the present case, the Gazette Notification was issued under Section 4 (1) on 13th November, 1992 and was published in the Official Gazette dated 13th November, 1992. In Paragraph 21 of the counter affidavit, it was contended that the same was also published in daily "Rashtra Chinha" in its 23rd November, 1992 issue. It was also published in Dainik Jagran in its issue dated 25th November, 1992. According to Section 4, even if the publications are made on different dates, the last issue of notice and publication shall be construed to be the date of publication. Therefore, there is no substance in the contention of the petitioners that the Newspapers' publications were earlier than the Gazette Notification. Even then it was never the intention of the legislature and nowhere in the Act itself or the rules prescribed, we have been able to read that the Gazette Notification has to precede the Newspaper Notification. The legislature was well aware of the situation that the notification in different mediums may be published on different dates because of various reasons and, therefore, the last publication was to be taken to be the date of the publication of the notification. Therefore, even if the Gazette Notification is published after the Newspaper Notification, the same does not render the notification infructuous, illegal or void because the date of the notification would be the date of publication of the notification as indicated in Section 4 (1) being last of the dates of such publication and the giving of such public notice as provided under the said subsection. So far as the publication of notification under Section 6 is concerned, it is provided that the declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders. Under subsection (2) of Section 6, it is provided that every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality. The last of the dates of such publication and the giving of such public notice shall be the date of publication of the declaration. Therefore, in this case also, the same reasoning, as has been given hereinbefore in respect of publication of notification under Section 4 (1) of the Act, are attracted and applicable. Here also the notification under Section 6 was published in the Official Gazette dated 4th February, 1993, whereas the Newspaper

publication was made in "Swatantra Chetna" in its issue dated 12th February, 1993 and "Rashtra Chinha" in its issue dated 14th February, 1993. Therefore, we are unable to find any infirmity in the said publication, as contended by the learned counsel for the petitioners. We are unable to uphold that Section 4 (1) and the provision of Section 6 were not complied with.

22. In the case of M/s. Garg Farms and others v. State of U. P., (supra) it was held that the words used in Section 4 (1) clearly contemplate that the sequence of publication of the notification in three months is not material and its disturbance would not invalidate the notification. The said judgment was based on the principle decided in the case of Deepak Pahwa v. Lt. Governor of Delhi AIR 1984 SC 1721, wherein it was held that "publication in the Official Gazette and public notice in the locality are two vitul steps required to be taken under Section 4 (1) before proceeding to take the next steps of entering upon the land under Section 4 (2). The time factor is not a vital element of Section 4 (1) and there is no warrant for reading the words simultaneously or immediately thereafter into Section 4 (1) ?????. What is necessary is that the continuity of action should not appear to be broken by a deep gap. If there is publication in the Gazette and if there is public notice in the locality, the requirements of Section 4 (1) must be held to be satisfied unless the two are unlinked from each other by a gap of time so large as may lead one to the prima facie conclusion of lack of bona fides in the proceedings for acquisition."

Thus, however, was laid down on the basis of the provision as it stood before 1984 amendment which had introduced the time limit in the section itself.

23. In the present case at hand, we find that the link was never broken and there was continuity.

24. In the result, the writ petition fails and is hereby dismissed.