
(1994) 09 MP CK 0050
In the Madhya Pradesh High Court
Case No : Writ Petition No. 10 of 1986

Bhoomandal Singh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-09-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 4, 5A

Citation : (1997) 1 MPLJ 547

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

Bench : Single Bench

Advocate : A.S. Rathore, for the Appellant; K.N. Gupta, Government Advocate, for the Respondent

Judgement

T.S. Doabia, J.

This is a petition under Articles 226 and 227 of the Constitution of India. This writ petition should succeed on the short ground that the State took almost one year to decide as to whether the land belonging to the petitioner should be acquired or not but did not think it proper to afford hearing u/s 5A of the Land Acquisition Act, 1894 (hereinafter referred to as the Act") to the land owner. The petition arises out of the following facts.

The petitioner is the owner of the land. His land was sought to be acquired for providing an approach road to a Kabristan. For this purpose, the Municipal Council made a request to the State Government for acquiring the land u/s 4 of the Act for the benefit of the Municipal Council (hereinafter referred to as the "Council"). In this petition it has been stated the Council felt the necessity of this land in the year 1983 but the final order with a view to acquire the land was taken in 1985. The averments made in para 9-B of the writ petition reads as under :-

"That, the need for acquisition was brought to the notice of the State Government by the Municipal Council in the year 1983. The authorities slept for

about 2 years. All of a sudden they have proceeded to make a declaration u/s 4 as also u/s 17(1) and (4) of the Act. The invoking of "Urgency" clause is not contemplated merely as a convenient way."

The averments so made have not been denied but all that has been stated is that the Collector made certain recommendations and that the matter was under consideration and therefore, some delay took place. The reply given by the State Government to para 9-B may be noticed as under :

"It is denied that the authorities slept for about 2 years and all of a sudden they have proceeded to make a declaration u/s 4 as also u/s 17(1) and (4) of the Act. It is submitted that the matter was in process. The Collector, District Guna vide his letter dated 19-4-1984 has requested the Commissioner, Gwalior Division, Gwalior for applying the urgency clause stating the reasons therein. A copy of the letter dated 19-4-1984 of the Collector, District Guna is annexed herewith and marked as Annexure R-9. On receipt of this letter from the Collector, the Commissioner, Gwalior Division, Gwalior after considering all the facts, circumstances and material on record, satisfied itself that there is an urgency and the urgency clause should be applied in the facts and circumstances, and accordingly the Commissioner, Gwalior Division, Gwalior vide his letter dated 19th July, 1985 has granted permission to apply the urgency clause in the matter. A copy of the letter dated 19th July, 1985 of the Commissioner, Gwalior Division, Gwalior is submitted herewith and marked as Annexure R-10. Consequently, the Collector, Guna who has been delegated the powers of Deputy Secretary, Revenue issued the notifications on 26-8-1985, and thus the notifications have rightly been issued after making all formalities and compliances and the provisions of Section 5A have rightly been dispensed with. The further contention of the petitioner that the invoking of "urgency" clause is not contemplated merely as a convenient way, being erroneous in view of the submissions made above, is denied."

It is settled law that urgency provision can be invoked only in those cases where it is not possible for the State Government or acquiring authority to wait for a long period or where the purpose is such as would not brook delay of more than thirty days. This matter was considered by the Supreme Court in the case of State of Punjab and Another Vs. Gurdial Singh and Others, and 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 Articles 14 (and 19), burke an enquiry u/s 17 of the Act."

It was further observed (para 16) :

"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."

Relying upon the aforesaid decision of the Supreme Court, Punjab and Haryana High Court quashed the notification invoking urgency provisions in a case reported as Kartar Singh v. The State of Haryana, 1986 P. L.J. 464.

Both the decisions are noted in the case of Harpal Singh and others Vs. State of Punjab and others, It was observed as under :

"....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."

In this case, the reply indicates that the Collector, District Guna sent a proposal on 19th April, 1984 and a decision was taken by the Commissioner on 19th July, 1985. Thus, it is apparent that it is not a case which could not brook the delay of thirty days. As such dispensing with the requirement of Section 5A of the Act was not proper and the declaration made u/s 17 of the Act dispensing with the requirement of Section 5A is held to be bad.

It may be seen that when this petition was taken up in motion hearing, a direction was given to maintain status quo and the petitioner continues to be in possession. This order was passed on 26th June, 1986. This petition is accordingly allowed and the declaration made u/s 17 of the Act invoking the urgency provision is set aside. It would be open to the State or the acquiring authority to take such further steps as may be deemed appropriate.