

(1989) 07 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12884 of 1989

Brij Bhushan Goswami

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-07-1989

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 5A, 6

Citation : (1989) 2 AWC 1288

Hon'ble Judges : V.K. Khanna, J;R.A. Sharma, J

Bench : Division Bench

Advocate : P.N. Dubey, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—For the planned Industrial Development in district Mathura through the Uttar Pradesh State, Industrial Development Corporation Ltd , Kanpur, the Government of Uttar Pradesh issued a Notification dated 14-10-1988 u/s 4 read with Section 17(4) of the Land Acquisition Act (here-in-after referred to as the Act). This Notification was published in the U.P. Gazette Extra Ordinary on 15-10-1988 and was also published in two Daily news papers of Hindi on 12-11-1988 and 30-11-1988. By this Notification large number of plots including three plots of the Petitioner were proposed to be acquired for the aforesaid purpose. As the Government was of the opinion that the provisions of Section 17(1) of the Act were applicable to the said land, as it was required urgently for the Planned Industrial Development in district Mathura, it directed to dispense with the inquiry u/s 5-A of the Act. The Government, on 1-4-1989 issued the Notification u/s 6 of the Act. Thereafter notices were issued to the Petitioner on 19-6-1989.

2. The Petitioner has challenged the Notification dated 14-10-1988 u/s 4, Notification dated 1-4-1989 u/s 6 Land notices dated 19-6-1989 u/s 9(3) of the Act. The Petitioner has primarily challenged the Notification u/s 4 of the Act on the ground that inquiry u/s 5-A of the Act should not have been dispensed with,

as it was not a case of urgency. The Petitioner has supported this argument on the following three grounds; (i) correspondence and negotiation before the Notification u/s 4 of the Act, (ii) gap of time between the Notifications under Sections 4 and 6 of the Act and (iii) Planned Industrial Development is an ordinary purpose, and as such Section 17(4) of the Act should not be applied.

3. From the perusal of the writ petition, it appears that the Uttar Pradesh State Industrial Development Corporation Ltd., was negotiating with the villagers in question from 1985-87 and was also making correspondence with the State for necessary Notifications under the Act. Petitioner's contention is that about a year has been wasted in negotiation and correspondence before the Notification u/s 4 of the Act, as such it cannot be said that the matter of acquisition was of any urgency. We cannot agree with this submission. The Supreme Court in the case of *Deepak Pahwa v. Lt. Governor of Delhi* AIR 1984 SC 1921 has laid down that pre-notification delay would not render invocation of urgency provisions bad and illegal.

4. So far as the second argument relating to the gap of time between the two Notifications under Sections 4 and 6 of the Act are concerned, we are of the opinion that there is no delay in issuing the Notification u/s 6 of the Act. Notification u/s 4 of the Act was published in U.P. Gazette on 15-10-1988 and it was published in the news papers of 12-11-1988 and 30-11-1988. Notification u/s 6 of the Act, as such, was published on 1-4-1989, which was just after four months counted from 30-11-1988. Period of four months taken by the Government for publishing the Notification u/s 6 of the Act cannot be said to be unreasonable.

5. So far as the third argument to the effect that the Planned Industrial Development cannot be said to be the public purpose, which required urgent action is concerned, it also lacks force. Unemployment is increasing day by day and position is becoming acute and unless State can quickly provide avenues for employment the whole social order might be adversely affected. Establishment of Industries is one of the important means for providing employment to the people. Industrial development, as such, is one of the public purposes, which are to be executed with utmost urgency so as to provide opportunities for employment and reduce the social tension in the society. A Division Bench of this Court in the case of *Rajbali v. State of Uttar Pradesh* AIR 1983 All. 78, has upheld dispensing of the inquiry u/s 5-A of the Act for the purposes of Planned Industrial Development by holding that general interest of the public requires industrial development to be made so that not only some of the people living there are given employment but also their living standard may be upgraded. Thus, the Government was fully justified in applying the provisions of Section 17(4) of the Act and thereby dispensing with the inquiry u/s 5-A of the Act.

6. Before parting with the case, it is also necessary to notice that the Petitioner is guilty of delay and laches in filing the writ petition. The notification u/s 4 of the Act, which has been challenged by means of this writ petition, was published on

15-10-1988 and the Petitioner has filed this writ petition in July, 1989. In the meantime the Government has also issued Notification u/s 6 of the Act on 1-4-1989. The Petitioner did not challenge Notification u/s 4 of the Act before issuance of Notification u/s 6 of the Act. The writ petition was not filed by the Petitioner even after the issuance of Notification u/s 6 of the Act. It was only after the notice u/s 9(3) of the Act was issued to the Petitioner that the Petitioner has filed this writ petition. Before issuing notice u/s 9(3) of the Act, the Government must have directed the Collector u/s 7 of the Act to take order for acquisition of the land in dispute and the Collector u/s 8 of the Act must have caused the land to be marked out and measured and thereafter the public notices u/s 9(1) of the Act must have been issued. When the acquisition was complete in all respects and every step had been taken by the State, the Petitioner has filed this writ petition at a very late stage. It is true that a valid Notification u/s 4 of the Act is a condition precedent for acquiring the property; but then the Notification u/s 4 of the Act has to be challenged within a reasonable time. No body can be permitted to challenge the Notification u/s 4 of the Act after the Government has completed the acquisition proceedings on the basis that the Notification u/s 4 is valid. If writ petition are entertained against a Notification u/s 4 of the Act at such a late stage, it would be putting the premium on dilatory tactics. The, writ petition is thus liable to be dismissed on this ground also,

7. For the reasons given above, the writ petition lacks merit and is dismissed.