

(1976) 01 AHC CK 0025

In the Allahabad High Court

Case No : Writ Petition No"s. 180, 1234, 1626 and 1629 of 1974

Brij Mohan and Others

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 19-01-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 5A, 6

Citation : AIR 1976 All 237

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

Bench : Single Bench

Advocate : Ch. Akhtar Husain and V.N. Seth, for the Appellant; Umesh Chandra, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Misra, J.—In all these four Writ Petitions acquisition of certain plots under the Land Acquisition Act, 1894 for a public purpose viz., construction of Sarda Sahayak Feeder Channel in district Rae Bareli is challenged. Since identical questions arise in these petitions it is desirable to dispose them of by one judgment.

2. Writ Petition No. 180 of 1974 was filed by five petitioners on 12-2-1974. Petitioners 1 to 3 are the Bhumidhars of Plot No. 616 and petitioners 1, 4 and 5 are Bhumidhars of plot No. 550 situate in village Deopuri, District Rae Bareli. A notification u/s 4(1) of the Land Acquisition Act dated 22-8-1973 was published in the U. P. Gazette dated 1-9-1973. The said plots are specified in the schedule to the said notification. In the body of the said notification it was stated that the land was needed for a public purpose, namely, for the construction of Sarda Sahayak Feeder Channel in District Rae Bareli. At the bottom of the notification also the said purpose is mentioned and it is also noted that the site plan could be inspected in the office of the Special Land Acquisition Officer, Rae Bareli. Thereafter notification dated 23-5-1974 u/s 6 of the Act was published in the U. P. Gazette dated 8-6-1974.

3. Writ Petition No. 1234 of 1974 has been filed by ten petitioners, who claim to be tenure-holders of a number of plots mentioned in paragraph 1 of the petition, situate in village Deopuri, District Rae Bareli. These plots are also covered by the aforesaid notifications dated 22-8-1973 and 23-5-1974. Writ Petition No. 1626 of 1974 has been filed by Twenty-one petitioners. The petitioners 1 to 18 are residents of village Kasrawan, tahsil Maharajganj, District Rae Bareli, while petitioners Nos. 20 and 21 are residents of village Bachhrawan, District Rae Bareli. They claim to have their cultivation in village Kasrawan and in the adjoining village Ganeshpur. A notification u/s 4(1) of the Land Acquisition Act dated 30-10-1973 in respect of village Kasrawan was issued and published in the U. P. Gazette dated 17-12-1973 and a notification u/s 6 of the Act was published in the U. P. Gazette dated 5-1-1974. Thereafter notices were issued to the petitioners and others on 1-8-1974 u/s 9 of the Act requiring them to file their claims for compensation by 16-8-1974.

4. Writ Petition No. 1629 of 1974 has been filed by sixteen petitioners who claim to be agricultural labourers and residents of villages Kachonda Nankari, Parigawan, Gohanna and Bhuwapur Junnardar in the District of Rae Bareli. A notification u/s 4 of the Land Acquisition Act was published in the U. P. Gazette dated 19-5-1973 for acquisition of the land in villages Jamalpur, Karaundi, Adampur, Parigawan and Bhuwapur Junardar and notification u/s 6 of the Act was published in the U. P. Gazette dated 28-8-1973.

5. Before dealing with the grounds on which the aforesaid notifications under Sections 4 and 6 of the Land Acquisition Act have been impugned facts and law relevant thereto may be briefly set out. The land has been acquired for the construction of Sarda Sahayak Feeder Channel in the District of Rae Bareli. It is a subsidiary canal of Sarda Canal which starts from Bahraich District and passing through various districts including Rae Bareli it goes on to Allahabad and other districts. The procedures adopted in fixing the final alignment of this feeder channel in the entire length as also in the area under dispute have been detailed in the counter-affidavit of Sri Devendra Pal Sharma, Assistant Engineer and in the supplementary counter-affidavit dated 10-12-1975 filed in Writ Petition No. 1234 of 1974 by Sri Kishore Chandra Singhal an Executive Engineer, Sarda Sahayak Khand-20 Rae Bareli. Initially a detailed survey was carried out at site by fixing an arbitrary reference line on the chadar sheet approximately along the line A-B shown in the sketch (Annexure "2" to Writ Petition No. 1234 of 1974) to help the fixing of the alignment correctly by doing cross levelling. A map of the site (Annexure D-I to Writ Petition No. 1234 of 1974) has been filed along with the counter affidavit of Devendra Pal Sharma on which the line of pillars has been drawn as G. H. The distance of line G-H is said to vary from 1 1/2 miles to H miles from Rae Bareli Distributory. The pillars were constructed along the line G-H (Annexure D-1) for carrying out detailed survey and studying the cross levels of the area. Level pillars were made 400 meters apart and then levels along these cross lines at intervals of 100 meters were taken. Since the project was to cost about 300 crores the precise levelling was got done by the expert

surveyors and Engineers of Survey of India during the period June 1972 to March 1973. Contours were then plotted on Chadar Sheet and trial alignments were marked on it. Surveys were carried out along the trial alignments and best suitable alignment was fixed as near and along the water shed as possible after making comparative studies of the alternative alignments. Final alignment was then approved by the Chief Engineer (Sarda). Various alternative L-sections were studied and the Chief Engineer after making spot inspection accorded his approval and directed for the preparation of one L-section and copy thereof. Hence a fair completed copy of L-section was prepared which was ultimately approved by the Chief Engineer on 21-10-1973 and a print thereof is Annexure D-3 of the same supplementary counter-affidavit dated 10-12-1975. This approved L-section contains details of fields through which the approved alignment runs. Some petitions from the cultivators of villages Kasrawan, Deopuri, Bahadarpur, Gujarpur etc., were received stressing construction of the feeder channel along the line G-H shown in Annexure D-1 and against the construction along the finally approved alignment. Hence comparative studies of the two alignments one pointed out by the cultivators along the reference line and the other approved by the Chief Engineer, Sarda were again made. The Supdt. Engineer, submitted his report to the Chief Engineer who after reviewing the matter upheld the alignment already fixed and approved by him and submitted his report to the Government (Annexure D-6 to the Writ petition 1234 of 1974) recommending rejection of the petitions and adherence to the alignment already fixed.

6. The principal contention of the petitioners is that the alignment shown by line G-H in Annexure D-1 to Writ Petition no. 1234 of 1974 was changed mala fide to the alignment shown by line J-K therein with a view to benefit Sri Om Prakash Assistant Engineer, opposite party No. 5 as well as the opposite parties 6 and 7 who are respectively a minor son and wife of Sri Prem Prakash another Assistant Engineer who had purchased land most of which fell inside the initial line G-H. It is said that after the land was surveyed by the officers of Survey of India another proposal was mooted out by the local Engineers including the Assistant Engineer, Sri Om Prakash for having the land purchased by opposite parties 5, 6 and 7 excluded from acquisition. It is also said that in the second proposal land of a relation of Badri Prasad, Siledar of Sarda Sahayak Canal District Rae Bareli was included with the result that Badri Prasad prevailed upon the local engineers to give up that proposal, and the Engineer then submitted a third scheme for constructing the said canal from inside village Kasarwan and that this scheme as ultimately approved by the Government. These allegations have been denied on behalf of the opposite parties who have asserted that the survey of the land was carried out by the Engineers of Survey of India who were entrusted with the job of fixing level pillars accurately and for that they were given an arbitrarily drawn up line on a map to fix level pillars along with the same. The alignment was to be fixed subsequently after levelling with the help of these pillars. The opposite parties have also contended that Sri Om Prakash has never been on the Sarda

Sahayak Canal in District Rae Bareilly and has not been associated with survey work for fixing the alignment of Sarda Sahayak Feeder Channel in the villages in question. They have also denied that the alignment was changed with a view to give benefit to opposite parties 5, 6 and 7. According to them no alignment was fixed by the Officers of Survey of India, hence the allegation that some other proposal was made by the local Engineers was incorrect. There was nothing like first, second or third proposal as alleged by the petitioners. In fact, after carrying out detailed survey and after avoiding village Abadi, temples, mosques, graveyards etc. an alignment was fixed first by local Engineers. That alignment was thereafter inspected by the Superintending Engineer and was ultimately approved by the Chief Engineer, Thus the alignment was finally determined entirely on the basis of technical merits and not with a view to help the opposite parties 5, 6 and 7.

In my view, the petitioners have failed to make out that the alignment was changed for giving benefit to opposite parties 5, 6 and 7. Only one alignment was finalised by the Department. Other alignment or alignments referred to in the petitions were only reference to longitudinal lines laid on Chadar Sheets and at site to plot the topographical features on Chadar Sheet and help in fixing the best alignment as near the water shed as possible. This was done after detailed technical studies and survey of alternatives. The final alignment was approved by the Chief Engineer (Sarda) which specifies even the field numbers all along the approved L-section precluding any possibility of any change in the alignment at lower level. It is not established that the Chief Engineer (Sarda) was in any way influenced by Sri Om Prakash and Sri Prem Prakash, Assistant Engineers in determining the final alignment. In fact, no case of mala fides has been made out against the Chief Engineer (Sarda). The final alignment was determined in the manner stated herein above and it is difficult to accept that a deviation in the alignment was made with a view to exclude the land of opposite parties 5, 6 and 7 of Writ Petition No. 1234 of 1974.

Sri Kishore Chandra Singhal in para, 3 of his supplementary counter-affidavit dated 10-12-1975 has mentioned the procedure which is normally followed in carrying out the survey work and fixing alignment of canals. This procedure is laid down in a book captioned "Fundamental of Irrigation Engineering" 1967 Edn. written by Sri Bharat Singh Professor, University of Roorkee, Roorkee. The procedure is as follows:

(i) The entire commanded area of the project is marked on chadar sheets. Chadar sheets are combined tracings on cloth of village Shajras which are used in Tahsil and other revenue records. The sheets are then required to be completed for topographical details not available on them but essential for planning of an irrigation scheme. The topographical details involve plotting of longitudinal and cross levels, contouring, marking drainage line and marking of water sheds,

(ii) A longitudinal line is run in the approximate anticipated alignment avoiding

village abadies, grave yards, temples, mosques, etc., and roughly the shortest line between the important points to be connected. Cross lines are marked on the sheet approximately at right angles to the longitudinal line at suitable intervals depending upon the configuration of the land. Levelling is thereafter done along this arbitrarily fixed longitudinal and cross lines and the spot levels so taken are recorded. To help carry out accurate levelling, bench marks are fixed accurately along the longitudinal line of suitable intervals connecting the same to the G. T. S. bench marks available at important places in the area. These spots levels are then plotted on the Chadar Sheet.

(iii) With the help of these spot levels, the area is contoured by drawing lines along same levels.

(iv) Important drainage lines are marked on the sheet by carrying out field to field survey and noting the direction of flow of rain water in the various fields. These drainage lines are marked on the Chadar Sheets with blue arrows.

(v) With these features plotted on the Chadar Sheet main and subsidiary water sheds are marked on it Water shed are lines running along the highest ground in the area and are dividing lines for the drainages.

(vi) With the help of these contours and water sheds trial alignment of channel are marked on the Chadar Sheet keeping the alignment in general as near and along the water shed as possible avoiding village abadies, temples, mosques, graveyards etc. The alignment of main canal connecting two fixed points may not be able to follow the water shed at many places and may intercept the drainages also in view of limitations of admissible curves. The trial alignments, fixed on Chadar Sheets, ere then tallied at site by field to field survey, readjusted to suit local impediments not existing on Chadar Sheet and then finally fixed to tally at site and on Chadar Sheet. Comparative merits and demerits of these trial alignments are considered both on technical and economical grounds and then a final alignment is fixed up which is best from all points of view."

It is stated on behalf of the opposite parties that the above procedure was followed in fixing the alignment of Feeder Channel in question. No other procedure was brought to my notice on behalf of the petitioners. Manifestly the final alignment was made on the basis of technical survey of the area by the authorities concerned. There is, therefore, no merit in the contention that the final alignment was made with a view to give benefit to Sri Om Prakash, Asst. Engr, or to the wife and son of Sri Prem Prakash. Assistant Engineer, or to cause harm to any of the petitioners, or that it was not for public purpose. It is also not possible to accept the contention that any hope or promise was held out that the alignment of the Feeder Channel shall run along the line A, B shown in the sketch, Annexure 2 to Writ Petition No. 1234 of 1974. The contention of the petitioners that the change in alignment from the said line A, B was a colourable exercise of power is equally unfounded in view of the facts stated earlier.

7. It was next contended on behalf of the petitioners that some of the petitioners

had filed their objections u/s 5-A of the Land Acquisition Act but the Collector gave them no hearing, hence the declaration u/s 6 of the Act was illegal and invalid. On behalf of the opposite parties it was submitted that the said objections u/s 5-A, having been filed beyond the period prescribed by law, were not entertainable and were not liable to be considered. It is not disputed that the objections u/s 5-A of the Land Acquisition Act were filed long after the expiry of the period prescribed by law.

8. Section 5-A of the Act provides that any person interested in any land which has been notified u/s 4(1) as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the notification object to the acquisition of the land or of any land in the locality as the case may be. In *Navneet Ram Batra Vs. State of Uttar Pradesh and Others*, it was held by the Supreme Court that "where the land proposed to be acquired is specifically mentioned in the notification it is only the person interested in that land who is entitled to be heard u/s 5-A". Thus a person having no right and interest in the land sought to be acquired has no locus standi to file an objection and question the validity of the acquisition of the land. An objection u/s 5-A of the Act is required to be filed within thirty days after the issue of the notification u/s 4, Sub-section (1) and if it is filed after the expiry of that period it need not be considered. In *State of Mysore Vs. Abdul Razak Sahib*, the Supreme Court laid down:

"Section 5-A empowers the interested person to object to the acquisition of any land but his objection should be filed within thirty days from the date of the issue of the notification. Any objection filed thereafter need not be considered* as the same is filed after the time stipulated in Section 5-A(1)."

9. The Special Land Acquisition Officer, in his counter affidavit in Writ Petition No. 1234 of 1974 has stated that the objections filed by the petitioners 4, 5, 8 and 9 on 1-11-1973 being time barred were liable to be rejected and were therefore not entertained. He submitted his report u/s 5-A to the Government mentioning therein that the objections were barred by time. The Government after considering that report issued a notification u/s 6 of the Act. All the objections were admittedly filed u/s 5-A of the Act long after the expiry of the period of thirty days of the issue of the notification u/s 4(1) of the Act. That being so, the objections were not maintainable and as held in *State of Mysore Vs. Abdul Razak Sahib*, need not have been considered. In this view of the matter it is not open to the petitioner to impugn the declaration made u/s 6 of the Act and the notification issued thereunder on the ground that they were not heard and their objections were not considered.

10. It may be noticed at this stage that the petitioners in Writ Petition No. 1626 of 1974 have not stated as to which land of theirs had been acquired. It is settled law that where the land proposed to be acquired is specifically mentioned in the notification it is only the person interested in that land who is entitled to be heard u/s 5-A, and a person who is not interested in the land acquired has no

right to question the validity of the notification made under Sections 4 and 6 of the Act. The petitioners in Writ Petition No. 1626 of 1974 having failed to disclose their interest in the land acquired have no locus standi to maintain their petition.

11. It was next urged that Plot No. 743 of which the petitioner No, 6 in Writ Petition No. 1234 of 1974 was Sirdar has not been included in any of the notifications, hence he should not be dispossessed from that plot and his crop standing thereon should not be destroyed. It is not disputed by the State that Plot No. 743 was not specified in the schedule to the notification u/s 4 of the Act or in the schedule to the notification u/s 6 of the Act. In paragraph 25 of the counter affidavit filed by Sri Devendra Pal Sharma dated 9-10-1975 it is stated that no work had been started in Plot No. 743 in village Deopuri and that the work in connection with the Feeder Channel shall be commenced in village Deopuri after completing the entire acquisition proceedings. In view of this undertaking the petition even with regard to Plot No. 743 has to fail. No other point was urged. In the result the Writ Petitions Nos. 180 of 1974, 1234 of 1974, 1626 of 1974 and 1629 of 1974 are dismissed. However, in the circumstances of the case, the parties shall bear their own costs.