
(1952) 10 AHC CK 0016
In the Allahabad High Court
Case No : Misc. Writ No. 7878 of 1951

Brij Nath Sarin

APPELLANT

Vs

Uttar Pradesh Government and Another

RESPONDENT

Date of Decision : 27-10-1952

Acts Referred:

Constitution of India, 1950 — Article 13, 31, 31(2), 31(5), 363
Land Acquisition Act, 1894 — Section 48(1), 5A, 6, 6(3)

Citation : AIR 1953 All 182 : (1953) 23 AWR 283

Hon'ble Judges : Chaturvedi, J; Agarwala, J

Bench : Division Bench

Advocate : N.P. Asthana, for the Appellant; Jagnandan Lal and Standing Counsel for Opposite Party (Nos. 2 and 1 respectively), for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is an application praying that a writ of mandamus or certiorari restraining the opposite party from proceeding with the acquisition of the applicant's land may be issued and the proceedings may be quashed as being "ultra vires", without jurisdiction and an abuse of the provisions of the Land Acquisition Act.

2. The dispute in the case relates to a dilapidated house (or as the opposite party alleges a vacant piece of land) bearing old assessment No. 767 and present assessment No. 802 situate in Satghara Chatta Bazar, in the city of Mathura. The opposite party No. 2, the Provincial Arya Pratinidhi Sabha, wanted to acquire the disputed property to commemorate the memory of Swami Birja Nand, the Guru of Swami Daya Nand, the founder of the Arya Samaj, by building a library and a Yagyashala. On 4th October 1,948 a notification was issued by the Local Government u/s 4, Land Acquisition Act, 1894, inviting objections u/s 5-A of the said Act. The notification mentioned the fact that the land was needed for a company and the purpose specified was for "constructing a public library and a Yagyashala by the Provincial Arya Pratinidhi Sabha." The applicant filed

objections u/s 5-A, Land Acquisition Act stating that the land was not needed for any public purpose and that it was being acquired for the purpose of propaganda of Arya Samaj in a purely Sanatan Dharma locality where there were many Sanatan Dharmi temples. It appears that thereafter the Provincial Government, by a notification dated 27th April 1950, withdrew the notification which they had issued earlier u/s 4, Land Acquisition Act. It stated:

"Whereas the land designated below was needed for a public purpose and a notification No. C-3967/XV-609-47, dated 4th October 1948, was issued to that effect u/s 4(1), Land Acquisition Act, 1894, for its acquisition;

And whereas the aforesaid land is no more needed for a public purpose;

Now therefore the Governor of the Uttar Pradesh is in exercise of the powers conferred by Sub-section (1) of Section 48 of the said Act, pleased to withdraw from the acquisition and is further pleased to cancel the aforesaid notification."

3. It appears that later the opposite party No. 2 through one Sri Karan Singh Chonkar, a Municipal Commissioner of Mathura applied to the Government to reconsider its decision withdrawing the previous notification u/s 4. This time the purpose for which the land was sought to be acquired was restricted merely to its being utilised for the building of a public library. The use of the land for the construction of a Yagyashala, as was mentioned in the previous application, was given up. The Collector, no doubt, reported to the Government that in his opinion the acquisition was not for a public purpose but was for a sectarian purpose, namely, that of the Arya Samaj. The Government, however, seems to have reconsidered the matter and under instructions from the Government the Collector wrote to the applicant either to come to some mutual agreement with the Arya Pratinidhi Sabha within a week or ten days in connection with the sale of the land or else the Government would be compelled to restart proceedings for the acquisition of the land under the Land Acquisition Act. The applicant not having agreed to the suggestion of the Collector, the Government of Uttar Pradesh restarted acquisition proceedings and issued a fresh notification u/s 4, Land Acquisition Act on 23rd June 1951 which is published in the U. P. Gazette dated 30th June 1951. An objection was again raised by the applicant to the acquisition. It was, however, decided against him and ultimately u/s 6, Land Acquisition Act a notification was issued declaring that the land was needed for a public purpose. This was on 19th January 1952.

4. The applicant filed a suit in the court of the Civil Judge of Mathura for a permanent injunction restraining the Government from proceeding to acquire the land. He also made an application for the issue of a temporary injunction restraining the Government from acquiring the land. That application having been rejected, he has made the present application for the issue of writs as already stated.

5. Three points have been raised by learned counsel for the applicant. It has been urged, in the first place, that the State Government having decided u/s 5-A

that the land was not needed for a public purpose by its notification dated 27th April 1950, which has been quoted above, it was not open to the State Government to restart acquisition proceedings for the land in question. This contention has no force. In the first place, the notification of 27th April 1950 does not purport to decide objections u/s 5-A in favour of the applicant. It merely withdraws the notification that had been issued u/s 4, Land Acquisition Act by virtue of the power vested in it u/s 48(1) of the Act. Indeed, so far as the notification u/s 4 is concerned, the notification of 27th April asserts that the land in dispute was "needed for a public purpose". But it says that it is "no more needed" for such purpose and for that reason the notification was being withdrawn. We do not read the notification of 27th April as a decision in favour of the applicant on the contention raised by him that the land which was sought to be acquired in the notification issued u/s 4 was not, in fact, needed for a public purpose.

6. In the second place, it is open to the Government to restart acquisition proceedings in view of different considerations prevailing at the time. As already stated, the first application of the Arya Pratinidhi Sabha was to acquire the land not only for the purpose of building a public library but also for a Yagyashala. It is not necessary for us to decide whether the acquisition of land for a Yagyashala is or is not for a public purpose. The second application made by the Arya Pratinidhi Sabha was for acquisition of the land for the purpose of building a public library alone. This, it has been conceded before us, no doubt, would be a public purpose. It was obvious, therefore, that the Government was entitled to reconsider its previous decision withdrawing the earlier notification u/s 4. We do not think that the State Government was in any way debarred from restarting the land acquisition proceedings after the notification of 27th April had been issued by them.

7. It was next contended that the acquisition was really not for the building of a public library but for the purpose of propagating the tenets of the Arya Samajist faith and that this was not a public purpose. It was further contended that the second application of the Arya Pratinidhi Sabha was merely a camouflage, that the object of building a Yagyashala which had been set forth in the first application had not really been given up, and that the State Government also had not acted bona fide in the matter. We have no evidence before us on the basis of which we can hold that the Arya Pratinidhi Sabha did not intend to do what they stated in the second application, nor have we any evidence on the record to show that the Government was moved by non-bona fide motives.

8. Lastly, it was contended that this Court can go into the question whether the land was being, in fact, acquired for a public purpose or not. It was urged that the declaration of the State Government u/s 6 was not conclusive because Section 6(3) which makes the order conclusive has now become invalid or void in view of Article 13 read with Article 31(2) of the Constitution. In our opinion, this contention has no force. Section 6(3), Land Acquisition Act makes a declaration

of the State Government declaring a particular acquisition to be for a public purpose conclusive and if the section is valid, the Courts are debarred from going into the question whether the purpose of the acquisition was public or not. Article 13, no doubt, makes all existing laws invalid in so far as they contravene any of the provisions of Part III of the Constitution. Article 31(1) lays down:

"No person shall be deprived of his property save by authority of law." Sub-clause (2) then lays down: "No property, moveable or Immovable including any interest in, or in any company owning, any commercial or industrial undertaking shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

If this clause had stood alone, it would certainly make the purpose of the acquisition justiciable and the Courts would be entitled to go into the question whether the acquisition was for a public purpose or not. Any law to the contrary would, by virtue of Article 13, be void to the extent to which it was contrary to the provisions of Article 31(2). But there is an exception to Clause (2) of Article 31 and this exception is contained in Clause (5) of the same Article, which lays down:

"Nothing in Clause (2) shall affect-

(a) the provisions of any existing law other than a law to which the provisions of Clause (6) apply."

Clause (6) applies to laws which were enacted not more than 18 months before the commencement of the Constitution. The Land Acquisition Act having been enacted in 1894 is not governed by Clause (6). It is no doubt an existing law as defined in Article 263. From the operation of Clause (2) of Article 31 "existing laws" even though, contrary to the provisions of that clause, have been exempted by virtue of Clause (5).

9. The result, therefore, is that Section 6(3), Land Acquisition Act still retains its full vigour and vitality and has not been rendered void or invalid by Article 13.

10. In support of his contention learned counsel referred us to a decision of the Calcutta High Court in -- " West Bengal Settlement Kanungoe Co-operative Credit Society Ltd. Vs. Mrs. Bella Banerjee and Others, . That was a case which related to an Act which had been passed within 18 months of the commencement of the Constitution and, therefore, fell within the purview of Clause (6) of Article 31. Clause (5) did not apply to that case and was, therefore, not considered by the Court.

11. Reference was next made to a recent decision of the Supreme Court in -- " The State of Bihar Vs. Sir Kameshwar Singh, . This case also refers to Acts which were all passed after the commencement of the Constitution.

12. The result, therefore, is that there is no force in this application and we dismiss it with costs to both the opposite parties. The stay order dated 19th February 1952 is discharged.