

(1984) 09 MP CK 0015

In the Madhya Pradesh High Court

Case No : M.P. No"s. 718 and 725 of 1983

Chandmal and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-09-1984

Acts Referred:

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

Citation : AIR 1985 MP 125

Hon'ble Judges : R.K. Vijayvargiya, J;P.D. Mulye, J

Bench : Division Bench

Advocate : S.L. Garg and R.S. Garg, for the Appellant; A.M. Mathur and R.G. Waghmare and S.R. Joshi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Mulye, J.—This order shall also govern the disposal of M. P. No. 718 of 83 (Rameshchandra v. State of M.P.).

2. Both these petitioners have filed these writ petitions under Article 226 of the Constitution, arising out of proceedings under the Land Acquisition Act, whereby their lands situated in village Pithampur, District Dhar are being compulsorily acquired by the State Government for the establishment of industrial area. Respondent 1 is the State of M.P. respondent No. 2 is the Collector and District Magistrate, Dhar; respondent 3 is the Land Acquisition Officer, Directorate of Industries M. P. Bhopal; respondent 4 is the General Manager, District Industries Centre, Dhar; respondent 5 is the M.P. Audyogik Kendra Vikas Nigam (Indore) Ltd; and respondent 6 is M/s. Bajaj Tempo Ltd. Poona.

3. The facts giving rise to these petitions may be stated, in brief, thus: The State of Madhya Pradesh is industrially a backward state. The Govt. of India decided to industrialise the backward districts of the various States so that these backward districts are provided with employment potentials and the industrialisation may remove the economic backwardness of these areas. The industrialisation of

backward districts will give various facilities like road, power, employment and economic betterment of the people of these backward areas and with special emphasis to the tribal areas. Accordingly the State of Madhya Pradesh wanted to set up Pithampur Industrial Area (Estate) in the No industry and backward district of Dhar. For this purpose the State of M.P. set up four M. P. Audyogik Kendra Vikas Nigams subsidiaries of the Madhya Pradesh Audyogik Vikas Nigam. The main function of M. P. Audyogik Kendra Vikas Nigam is to acquire, develop and distribute lands to the industrialist entrepreneurs from any part of the country who want to set up industries in the backward areas of the State of Madhya Pradesh. The four M. P. Audyogik Kendra Vikas Nigams are at Indore, Rewa, Raipur and Jabalpur, which are entrusted with the industrial development of backward areas specially.

4. The Government of India classified backward districts into categories A, B and C. The "A" category is the most backward and gets maximum incentives from the Government of India and the State Government. "A" category includes No Industry districts. The Government of India covered 18 districts as "No Industry Districts" but of 23 backward districts that are recognised as most backward districts by the Government of Madhya Pradesh. These 18 districts include Dhar and Jhabua. Out of these 18 No Industry Districts Dhar and Jhabua districts come under the M.P. Audyogik Kendra Vikas Nigam (Indore) Ltd., Indore.

5. The Government of India in order to encourage industrialists by way of policy is giving permission/licences/D.G.T.D. (Director General Technical Development) registration in No Industry Districts for which they have announced maximum concessions for industries in No Industry Districts in various ways which are set out by the respondents 1 to 5 in para 5 of their returns as also the concessions which will be given by the State of M. P. which are mentioned in para 6 of their returns. These concession/incentives are announced by the Government of India and the Government of Madhya Pradesh for inducing, attracting and encouraging the industrialists entrepreneurs from outside the State of M. P. to invest and set up industries in the No Industry districts/backward districts of Madhya Pradesh and to implement the aforesaid policy of rapid industrialisation of the No Industry districts the State Government decided to establish Industrial Estates at Meghnagar in Jhabua district and at Pithampur in Dhar district.

6. It is in this background that the big industrialists entrepreneurs like respondent 6 M/s. Bajaj Tempo Limited, Poona and others submitted their application for setting up their industries in the Industrial Area at Pithampur, district Dhar for which purpose after a careful study and consultation the State Government decided to acquire land for setting up Industrial Estate at Pithampur and accordingly a notification DA 9-12-81 u/s 4(1) of the Land Acquisition Act was issued and published in the Government gazette on 8-1-82 (Annex. R-3) declaring an intention initially to acquire an area of 48.819 hectares of land for this purpose. In order to expedite the setting up of industries at Pithampur a meeting was held in the Chairmanship of the Chief Secretary on 24th March,

1983 wherein it was decided that since the Industries Department had committed to make available land to the industrialists, as early as possible, a notification u/s 17(1) of the Land Acquisition Act should be issued Accordingly a Notification D/- 15th June, 83 was published in the Government Gazette dated 17th June, 83 under Sections 6 and 17(1) of the Land Acquisition Act (Annex. R-5) declaring that by this notification the State Govt. proposes to exercise its power u/s 17(1) of the Act and provisions of Section 5A of the said Act will be made inapplicable to the said acquisition as this was a case of emergency.

7. The petitioners have, therefore, by these writ petitions, challenged the compulsory acquisition of their lands on the following grounds :

- (a) There was no case of emergency :
- (b) That in fact the compulsory acquisition is for the Company and not for establishment of an Industrial Area and consequently the provisions of Sections 39 to 42 of the Land Acquisition Act have not been followed :
- (c) That the compensation for the compulsory acquisition of these lands is not being paid by the State Government, but by the Company;
- (d) That no notice was given to the petitioners;
- (e) That there has been a discrimination in acquiring the lands of the petitioners because the land of some other persons in the same area which was also proposed to be acquired for this purpose has been released on the basis of the applications filed by them and that there has been colourable exercise of power.

It was, therefore, contended that on all these grounds the proceedings for compulsory acquisition of the lands of the petitioners be quashed and that the possession of these lands may not be taken over from the petitioners.

8. The respondents 1 to 5 in para 15 of their returns have given the reasons for the expediency on their part, the same being urgent on the ground that the permission/licenses/ registrations issued by the Government of India to big industrialist are time bound; that the licences in many cases have been issued in the early part of 1983 and if the complete investment is not made within a period of two years and the industry is not set up in time, the licences will expire; that in other States also the Government of India had declared No Industry Districts; that if the Government of M. P. is not able to make the land available to these big industrialists entrepreneurs to whom licences have already been issued to set up industries in Pithampura (No Industry District of Dhar) and the requisite subsidy of the Central Govt. and the State Government is not given to them then they might change their minds and may set up industries in any other State where such facilities are readily available and, therefore, in order to make these lands available at the earliest to such industrialists entrepreneurs to whom letters of intent/licences have been issued by the Government of India and who are anxious to set up their factories in Pithampur, it became necessary for the State Government to act with great speed. Another factor for speeding up the

acquisition of land for making available to the proposed industries is that the amount of Rs. 2 crores for development of Pithampur Industrial Estate in Dhar district is limited to two years and according to the Press Note issued by the Government of India on 27-4-83 the period of concessions given on 1-4-83 will expire on 31-3-85 and if during this period the investment is not completed the State will be deprived of the Central Government assistance. All these facts have been supported by an affidavit given by Shri J. P. Dubey, Land Acquisition Officer, Directorate of Industries, M. P. Bhopal which were not controverted or challenged before us by the learned counsel for the petitioners. Similarly Yeshwant Kumar Nagrath, Managing Director, M. P. Audyogik Kendra Vikas Nigam (Indore) Ltd; Shri Jayant Madhukar Phadke, Mahaprabandhak, Jilla Udyog Kendra, Dhar, Shri Jagdish Singh Sharma, Addl. Tahsildar Dhar, Shri Naresh Sharma, Asstt. Engineer, M. P. Audyogik Kendra Vikas Nigam (Indore) Ltd., have also filed their affidavits to that effect supported by the annexures R-1 to R-25.

9. It cannot be disputed that the district of Dhar is backward and the general interest of the public requires industrial development to be made so that not only some of the people living there were given employment but also their living standard was upgraded.

10. The learned counsel for the petitioners urged that the power of dispensation u/s 5A of the Land Acquisition Act has been capriciously used for the purpose of depriving the tenure-holders of the right to file objections and as there was no such urgency which could justify the waiving of Section 5A, the notification issued under S.6 was invalid. Relying on the judgment of the Supreme Court reported in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, learned counsel for the petitioners further urged that for dispensing with Section 5A the authority was required to apply his mind to the question as to whether there was urgency of such a nature that even summary proceedings were to be eliminated. He urged that it is not just existence of urgency, but need to dispense with enquiry u/s 5 was required to be considered and as it was not done, dispensation of Section 5A was unjustified.

11. It cannot be doubted that enquiry u/s 5 affords an opportunity to the tenure-holders or others whose lands are going to be acquired for showing that the need of the government could be satisfied by acquiring some other land, but the question as to whether the enquiry should be dispensed with is primarily and fundamentally a matter of subjective satisfaction of the State Government. The decision of the State Government whether urgency exists cannot be questioned in any Court, provided the government applies mind and acts in good faith. Prima facie, the government is the best judge for determining which is the more suitable site for achieving the purpose for which acquisition has been started. It is only in a case of mala fide exercise of power that the Court can interfere. But the petitioners have failed to satisfy us that the proposed acquisition for development of industrial area amounts to mala fide exercise of power or a colourable exercise of power. We are not able to appreciate how the notifications

are serving any collateral object.

12. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, it has been observed that (para 36)-

"If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be final subject, however to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final."

12A. No material has been placed before us on behalf of the petitioners that these exercise of the power by the Government is colourable in this sense. The Government has the power to issue notifications for a public purpose. Public purpose is bound to vary with the times and the prevailing conditions in a given locality, and, therefore, it would not be a practical proposition even to attempt a comprehensive definition. There can be no doubt that the phrase "public purpose" has not a static connotation which is fixed for all times. There can also be no doubt that it is not possible to lay down a definition of what public purpose is, particularly as the concept of public purpose may change from time to time. There is also no doubt, however, that public purpose involves in it an element of general interest of the community and whatever furthers the general interest must be regarded as a public purpose. It is in the light of this concept of public purpose which is not static and is changing from time to time and in which there must always be an element of general interest of the community that we have to look in the definition of public purpose as mentioned in the said Act.

13. In the present case the purpose of acquisition was to establish an industrial estate which normally takes a long time to accomplish. In the Supreme Court decision reported in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, in which it was emphasised that the question of urgency will partly depend on the inherent nature of the acquisition and in the next place on the nature of urgency i.e. whether the urgency is of such a nature that even the summary proceedings u/s 5A should be dispensed with. It was, therefore, incumbent upon the authorities to place the relevant facts before the Court to satisfy it to show that it was such a case of urgency. In our opinion in the present case the respondents have satisfactorily explained the time taken in concluding the formalities necessary before issuance of the notifications under Sections 4 and 6 of the Land Acquisition Act. Further, in our opinion, the State Government did not act arbitrarily in excluding the application of Section 5A of the Land

Acquisition Act.

14. Section 4 of the Land Acquisition Act, which deals with preliminary proceedings, preceding intended acquisition consists of two parts. The first part comprising Sub-sections (1), (2), (3) and (4) makes provision for the State Government to cause the land, intended to be acquired, to be surveyed, with a view to ascertaining if it is suitable for the public purpose for which it is needed, and to find out the particulars of the person interested in such land. It enables the State Government to make an order authorising and requiring an officer subordinate to it to conduct the necessary inquiry and survey- Persons having interest in the land are found to be affected by such enquiry and survey in one way or the other. Having regard to their interest in relation to such enquiry and survey, the legislature has made it mandatory on the State Govt, to publish its order made u/s 4(1) in the same manner as a public notice is required to be published in accordance with the provisions of Section 45(4). It is significant to note that no individual notice is required to be served at this stage. If, however, the authorised officer finds subsequently that the requisite enquiry and survey cannot be made without entering into any building or upon enclosed court or garden attached to a dwelling house and the occupier thereof does not give his consent to such entry he must as required by the proviso to Section 4(1) give the occupier seven days' notice of his intention to so enter.

15. The second part of Section 4, comprising Sub-section (5) consisting of two clauses, comes into play on receipt of report of the authorised officer u/s 4(4) of the Act by the Collector. If the State Govt. dispenses with compliance with the requirements of Section 5A in accordance with the provisions of Section 17(4) of the Act, the requirement of giving notice to interested persons u/s 4(5)(i) and publishing of public notice u/s 4(5)(ii) must ipso facto, be taken to have been dispensed with. At any rate, there is no point in giving or publishing such a notice if objections from the interested persons thus notified are not to be entertained, heard and decided u/s 5A as a condition precedent for making the declaration u/s 6 that the land is required for a public purpose. As pointed out above, it has been held by the decisions reported in *Jage Ram and Others Vs. State of Haryana and Others*, and *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, that whether the case was one of urgency or not the State was the best judge thereof, as in such a case the opinion of the State Government that there was urgency is entitled to weight, if not conclusive. A perusal of the Annexures filed by the respondents would at once bring out how desperately this land was needed for the establishment of an industrial area. There is, therefore, no warrant for this Court to question the recital in the notification that there was urgency for this acquisition within the purview of Section 17(1). In the Supreme Court decision reported in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, it has further been held that an order or notification containing a recital, technically correct on the face of it raises a presumption u/s 114(c) of the Evidence Act that the recital is correct and that such recital may obviate the need to look further regarding the fact of its

correctness. Their Lordships pointed out that the original and the stable onus of proof under Sections 101 and 102, Evidence Act lies on that person who desires the Court to give judgment in his favour and who would fail if no evidence at all were given on either side and that such burden cannot be shifted by the use of Section 106 of the Evidence Act. No material has been placed on record by the petitioners to discharge their original and stable onus to prove that this was not a case of urgency within the purview of Section 17 of the said Act. Further in *Jage Ram and Others Vs. State of Haryana and Others*, it has been observed that the mere fact that the State Government concerned was lethargic at an earlier stage of the proceedings of acquisition of land is not relevant for deciding the question whether there was urgency or not. However, we are constrained to observe that such like delays in our bureaucracy though regrettable, are not uncommon even in matters with brook no delay. One should not therefore readily conclude from such delays that in fact there was no urgency.

16. The learned counsel for the petitioners further contended that in fact the notification DA 15th June, 1983, which was published in the Government Gazette D/- 17th June 1983 under Sections 6 and 17(1) of the Land Acquisition Act, does not give any reasons of urgency nor any averment that the land is waste or arable land. It is no doubt true that these words "waste or arable land" has not been specifically used in the said notification, but it is difficult to agree with the submission of the learned counsel for the petitioner, considering the facts and circumstances of the case, that the State Government did not apply its mind at all as to whether the land is waste or arable land. Admittedly the lands owned by the petitioners are agricultural lands. Thus, they are included as arable lands as has been held in the decision reported in *Prem Bai Vs. The State of M.P. and Others*.

17. So far as the submission of the learned counsel for the petitioners that they had no notice or knowledge of the purpose of acquisition cannot be accepted for the simple reason that the petitioners had also filed civil suits challenging the acquisition and have also claimed compensation. Therefore, no prejudice in any way has been caused to the petitioners (Please see *State of M.P. and Others Vs. Smt. Sugandhi and Others*).

18. The further contention of the learned counsel for the petitioners that the compulsory acquisition of these lands is for the company M/s. Bajaj Tempo Ltd, and not for the establishment of an industrial area as also the argument that the compensation for the compulsory acquisition of these lands is not being paid by the State Government but by the Company has to be rejected outright in absence of any material placed on record by the petitioners especially when the respondents 1 to 5 have emphatically stated in their returns supported by affidavits that the said acquisition is not for a specific company or companies but actually it is for the development of an Industrial Area (Estate), which work shall be carried out by the M. P. Audyogik Kendra Vikas Nigam (Indore) Ltd. and that the compensation is being paid by the State Government. The respondent 6 M/s.

Bsjaj Tempo Ltd. has also nowhere admitted that for this compulsory acquisition they have paid any money or that they are going to pay the amount of compensation [Please see Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others, .

19. The learned counsel for the petitioners further contended that there has been discrimination in acquiring the lands of the petitioners because the land of some other persons in the same area which was also proposed to be acquired for this purpose has been released on the basis of the applications filed by them. However, the learned counsel for the petitioners frankly submitted that so far as they are concerned they never filed any such application before the authorities concerned. Therefore, in absence of any such application having been filed by them, question of discrimination does not arise.

20. In the result we see no merit in both these petitions which are dismissed with costs. Counsel's fee Rs. 250/- in each case.