(1962) 03 BOM CK 0015

In the Bombay High Court

Case No : Special Civil Application No. 254 of 1961

Chandrabhagabai Udhaorao APPELLANT

Vs

Commissioner, Nagpur Division RESPONDENT

Date of Decision : 02-03-1962

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 5A

Citation : (1962) 64 BOMLR 454

Hon'ble Judges : Kotval, J;Abhyankar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Abhyankar, J.—Petitioner No. 1 is a Bhumiswami of S. No. 76, area 35.20 acres, land-revenue Rs. 26, of village Chincholi. Petitioners Nos. 2 and 3 are Bhmniswamis of S. No. 68, area 19.6 acres, land-revenue Rs. 21-10-6, of same village. They have come to this Court with a request for quashing the notification issued by respondent No. 1, the Commissioner of this Division, acting u/s 4 of the Land Acquisition Act, declaring that 4 acres and 2 gunthas out of S. No. 68 and 2 acres and 38 gunthas out of S. No. 76 are proposed, to be acquired for extension of Gaothan for flood sufferers. It appears that in the month of July in the year 1960, river Arunawati which flows through village Chincholi and by the side of Gaothan and other survey numbers flooded a part of the existing Gaothan area, thus dislocating some of the residents. It is alleged that about six houses were washed away and 35 other persons suffered considerable damage to their structures. A proposal was, therefore, mooted for acquiring land for rehabilitation of these persons on some other suitable sites. Ultimately, the Commissioner issued this notification. The notification also states that the acquisition was necessary to be made urgently and, therefore, the provision of Section 5A of the Land Acquisition Act which permitted objections to be raised and considered was being dispensed with u/s 17(4) of the Act. The petitioners, therefore, had no opportunity to make grievance before the Acquiring Officers to suggest that there were other unoccupied or more suitable lands providing house sites and that it was not necessary to acquire their property.

2. The contention of the petitioners is that besides the present Gaothan land there are ear-marked lands which are unoccupied and of extensive dimensions available in the village. Survey No. 1 and S. No. 67 which are contiguous to the present Gaothan are two of such sites which are C Class lands and, therefore, Government unoccupied lands. Besides there are other lands which are also F Class lands measuring about 22 acres and a further area of 69 acres from I Glass and, all of which are unoccupied lands. The petitioners'' argument is that, in view of the availability of these lands it was not open to the respondents to proceed to acquire any part of their agricultural land which was under cultivation unless it was established that the area reserved for abadi was insufficient or that other unoccupied land was not available to the Government. It is an admitted position that the acquisition which is proposed is for the extension of the Gaothan, that is, the abadi of village Chincholi.

3. The respondents in their return have made a general statement in para. 18 to the effect that it was proposed to acquire the land in dispute "after considering the suitability of all the other lands, occupied or unoccupied which were in sight" and thus the provisions of Section 226 of the M.P. Land Revenue Code had been taken into consideration. It has been repeatedly held, in this Court that before the revenue authorities can proceed to acquire any land for the purpose of extension of abadi they must comply with the provisions of Section 226(1) and (2) of the M.P. Land Revenue Code. There is no averment in the return as to which authority, if any, has formed the opinion, that the area at present reserved for abadi was insufficient. There is no specific mention of any authority having come to the conclusion that unoccupied land for purposes of abadi is not available for the extension of abadi. When this was pointed out to the learned Assistant Government Pleader, appearing for the State, he has produced before us a report alleged to have been submitted by the Land Acquisition Officer to the Commissioner. Now, the provisions of Sections 226(1) and (2) of the M.P. Land Revenue Code required that the decision whether the area reserved for abadi is insufficient has to be taken by the Deputy Commissioner of the district. We have not been shown any authority under which the Land Acquisition Officer could substitute his opinion for that of the Deputy Commissioner in purporting to comply with the provisions of Section 226(I). It is further to be seen that under Sub-section (2) of Section 226, it has to be established that no other unoccupied land is available for purposes of abadi. In this connection, S. No. 1 and S. No. 67 are admittedly other unoccupied lands besides other unoccupied lands to which reference has been made in the petition as well as the return. Now, the petitioners have made available before us a sketch showing the Gaothan, the position of the river and each survey number. The Gaothan of Chincholi is shown in red colour and by its side river Arunawati flows; to the north of this Gaothan, are S. Nos. 1 arid 67. Survey Nos. 76 and 68 from which a portion is proposed to be acquired are also contiguous to S. No. 67 and S. No. 1 which are unoccupied

lands and in fact divided by a road passing by the boundary of these fields and going to the river. It is stated in para. 16 of the return as follows:

...Survey numbers 1 and 67 are equally unsuitable as this area is also affected by the flood and the villagers are unwilling to go over to the that area also...

4. Now, all the averments in the return are stated to have been made from information received from official record, according to the affidavit sworn in support of the return. We gave an opportunity to the learned Assistant Government Header to place before us any record which showed a finding after enquiry that these two S. Nos. 1 and 67 were unsuitable because they were liable to be affected by floods and the villagers were unwilling to go and reside there. Except the report submitted by the Land Acquisition Officer it was not possible for the Assistant Government Pleader to point to any other report. But that report also does not make any mention of the fact that any area in either of these two Survey numbers is unsuitable on account of being affected by floods or that the villagers were unwilling to go over to that area. As far as we can see, if survey numbers 1 and 67 are vulnerable to floods there is no reason why survey numbers 76 and 68 cannot be said to be equally vulnerable to goods. When these two survey numbers are expressly reserved as unoccupied ''C'' Class lands, we do not see why a few villagers who are required to be rehabilitated as a result of the previous flood could not be provided with sites on the un-occupied lands available. Be that as it may, we are satisfied that respondent No. 1 has failed to establish in this case that the provisions of Section 226(1) and (2) of the M.P. Land Revenue Code have been complied with. Those provisions required the Deputy Commissioner of the District or any person authorised under law by him to record a finding that the abadi is insufficient and further that there is no other unoccupied land available for the purposes of abadi. This is not shown to have been done in this case. We are also not satisfied that the reasons given in para. 16 of the return as to the unsuitability of Survey Numbers 1 and 67 are based on any enquiry or material on record. Thus, as already held in the previous decision of this Court in Ramrao Rodba v. State of Maharashtra (1960) Special Civil Application No. 165 of 1990, decided by Kotval and Badkas JJ., on December 15, 1960 (Unrep.) the notification proposing to acquire land out of S. Nos. 68 and 76 of village Chincholi cannot be sustained and is liable to be quashed for non-compliance with the provisions of Section 226(1) and (2) of the M.P. Land Revenue Code.

5. The result is that the petition is allowed, and the notification No. C.14656-LAQ-SR Yeotnial-87-1960 dated June 22, 1961, is hereby quashed. The petitioners will be entitled to their costs. This will of course not prevent acquisition of any land necessary for the purposes of extension of Gaothan after due compliance with the provisions of law if the State chooses to take any.