
(1990) 04 OHC CK 0028
In the Orissa High Court
Case No : O.J.C. No. 545 of 1983

Chandramani Sahu and Others	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 18-04-1990

Acts Referred:

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

Citation : AIR 1991 Ori 205

Hon'ble Judges : P.C. Misra, J;A. Pasayat, J

Bench : Division Bench

Advocate : Indrajeet Mohanty, for the Appellant; N.C. Panigrahi, Additional Government Advocate, R.K. Rath and B.K. Nayak, for the Respondent

Final Decision : Allowed

Judgement

Pasayat, J.—Petitioners, twenty-one in number, have filed this writ application assailing the action taken by the State of Orissa and its functionaries in issuing notifications under Sections 4, 17 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act").

2. The factual position shorn of unnecessary details is as follows :

A notification dated 3-2-1981 was published in the Orissa Gazette Extraordinary on 11-3-1981 notifying intention of the State to acquire 25.904 acres of land for construction of Industrial Estate at village Panakalapalli near Berhampur in the district of Ganjam. On the same day a notification was issued under purported exercise of powers under Section. 17(4) of the Act notifying dispensation of the procedure laid down u/s 5A of the Act, by resort to the emergency powers conferred under the said provision. Subsequently a declaration u/s 6 was made to the effect that the land was required for public purpose. The said notification dated 31-8-1982 was published in the Orissa Gazette Extraordinary on 14-9-1982. The afore described three notifications annexed as Annexures 1, 2 and 3 to the writ application are impugned.

3. The main plank of challenge by the petitioners is that issuance of declaration u/s 6 after about one and half years of notification u/s 4, clearly establishes lack of any urgency and therefore, the resort to the emergency provision is mala fide and not warranted in the circumstances of the case. The action, therefore, is interdicted and the proceeding itself was rendered otiose. It was also urged with some amount of vehemence that no emergency existed justifying resort to the emergency provisions. On behalf of the State, however, it has been urged that the State and its functionaries having satisfactorily established the desirability of resort to the emergency provisions and having indicated the circumstances for which there was some unintended delay in publication of the notification u/s 6, the actions cannot be faulted.

4. Having heard the learned counsel for the parties, we are of the view that the State has not justified resort to Section 17(4) in the facts of the case. The use of emergency powers cannot be a usual feature and only in extraordinary circumstances the same can be applied. It is only where the emergency is of such a nature that it would not brook a delay of 30 days, the time requisite for filing an objection, that the emergency provisions can be resorted to. The State has to justify, if questioned, that any delay would have frustrated the purpose for which the acquisition was sought to be made and/or that great prejudice and inconvenience would have been caused. A valuable right is conferred by Section 5A and a person whose land is sought to be acquired has a right to make representation. If the State wants to take away this valuable right of participation, it has to justify its action by showing existence of emergent situations. The emergency provisions cannot be applied casually. The purpose for which a party is granted an opportunity of filing its objections is manifold in an appropriate case it can establish absence of public purpose and even suggest alternative sites. See AIR 1965 Mad 328 : Periyathambi Mudaliar v. Special Tahsildar (L.A.) Planning Scheme, Coimbatore. While it cannot be gainsaid that it depends upon subjective satisfaction of the State Government as to in which cases the emergency provisions are to be applied, yet the Court can consider whether the situations warranted resort to the emergency provisions. It can also consider whether such emergent situations existed when enquiry u/s 5A was dispensed with. Authorities have to indicate basis for the conclusion that there was an urgency which necessitated elimination of summary proceedings u/s 5A. It is not just the existence of urgency, but the need to dispense with hearing of objections u/s 5A, which has to be established by the authorities. In the instant case, nothing has been shown to us as to how and on what material the authorities were satisfied that such an emergent situation existed. As rightly contended on behalf of the petitioners, the very fact that the notification u/s 6 was issued after a considerable time betrays the stand taken by the State about existence of such urgency. The plea of the State and its functionaries in the return filed is that a considerable time was consumed for making detailed enquiry about the market value of the land to be acquired, and moving the appropriate authorities for sanction of the same for awarding compensation to

the land owners and that on 9-11-1982, Government in the Revenue Department issued orders u/s 7 directing the Collector to take order for acquisition of the land and also communicated approval of a sum of Rs. 2,94,430.28 towards compensation of the land, as sanctioned by the Administrative Department. However, since no funds were placed by the Requisitioning Officer with the Land Acquisition Officer, the latter moved the former on 30-11-1982 to place necessary funds with him. We may point out here that it has not been indicated as to what transpired between 11-3-1981 and 14-9-1982; except stating about delay in ascertaining the market value of the land to be acquired. It is hardly a plausible reason for dispensing with right of objection available u/s 5A. A bald statement without details is hardly a justification for exercise of emergency powers. Action if any taken after publication of the notification on 14-9-1982 u/s 6 is hardly of consequence. The State was required to justify the existence of emergent situation as well as need for dispensation of enquiry u/s 5A at the time of issuance of the notification u/s 17(4). No material whatsoever in this regard has been placed before us. We, therefore, have no hesitation in holding that no justifiable ground existed for invocation of the emergency provisions u/s 17(4).

5. The other question that remains to be considered is the consequential reliefs to which the petitioners are entitled. It has been submitted before us that in some cases the parties have been relegated to the stage of the notification u/s 4 with opportunity to file objection. We, however, find that a time imperative is provided in Section 5A and an objection if any has to be filed within thirty days from the date of publication of the notification u/s 4(1). This absolute requirement of filing objection within the statutory fixed time, is not available to be extended. We, therefore, deem it proper to quash the notification under Sections 4(1) and 17(1), and consequently the declaration u/s 6 as contained in Annexures 1, 2 and 3 respectively. A view similar to that taken by us was adopted by the Gujarat High Court in the case of Natwarlal Jerambhai Patel Vs. State of Gujarat and Others, . It would, however, be open to the appropriate authorities to issue fresh notifications if so considered necessary, and to proceed in accordance with law.

6. In the result, the writ application succeeds and the notifications as contained in Annexures 1 to 3 are quashed. No costs.

P.C. Misra, J.

7. I agree