

(2008) 04 MP CK 0046
In the Madhya Pradesh High Court

Devi Prasad Singh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6
NATIONAL HIGHWAYS ACT, 1956 — Section 3A
National Highways Authority of India Act, 1988 — Section 16, 3C, 3D, 3G

Citation : (2008) ILR (MP) 2189 : (2008) 3 MPHT 471

Hon'ble Judges : A.K. Patnaik, C.J.; Shantanu Kemkar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Patnaik, C.J.—This is the appeal filed u/s 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 against the order dated 14-12-2007 passed by the learned Single Judge in W.P. No. 3883 of 2007.

2. The appellant is a farmer and owns agricultural land measuring area 0.640 hectare in Khasra No. 1/1, 0.316 hectare in Khasra No. 1/2, 0.680 hectares in Khasra Nos. 159/1 and 159/2, 1.247 hectares in Khasra No. 185, 4.85 hectares in Khasra No. 185/2, and area 4.281 hectares in Khasra No. 188/2 in Village Paloha, Tehsil Kareli, District Narsinghpur, M.P. The appellant has five sons and a daughter (widow) who are all dependent on agriculture for their livelihood.

3. The Central Government issued a notification dated 18-3-2005 under Sub-section (1) of Section 3A of the National Highways Act, 1956 (for short "the Act of 1956") declaring its intention to acquire the land mentioned in the Schedule thereto for the public purposes of building (widening), maintenance, management and operation of National Highway No. 26 (including construction of bypasses). The notification stated that any person interested in the land may raise objections to the acquisition of the land. The land measuring 0.376 hectare in Khasra No. 185 and the land measuring 4.281 hectares in Khasra No. 188/2

owned by the appellant were included in the Schedule to the notification. The appellant raised objections before the Competent Authority stating that if the valuable irrigated agricultural land was acquired by the Competent Authority, it would deprive the appellant and his family members of their only means of livelihood. The appellant also stated in the objections that the land was actually being acquired not for the National Highway but for commercial activities like restaurants, repair shops etc. and such commercial activities can be undertaken on the vacant Government land in Khasra No. 158/2 to 158/2 measuring 5.414 hectares located only a few meters away from the land of the appellant. Despite the objections of the appellant, the Central Government issued a notification dated 24-8-2005 u/s 3D of the Act of 1956 declaring that the land specified in the Schedule including the land of the appellant shall vest absolutely in the Central Government free from all the encumbrances.

4. The appellant filed Writ Petition No. 3383 of 2007 in this Court praying for a mandamus directing the respondents to acquire the land of the appellant in equal quantum as acquired from other farmers for widening of National Highway No. 26 and not to acquire whole of the land in Khasra No. 188/2 measuring 4.281 hectares and also praying for appropriate compensation calculated as per the market value of the land as well as the crops standing on the land. During the pendency of the writ petition, the appellant amended the writ petition and by the amendment prayed for quashing of the notification dated 24-8-2005 issued u/s 3D of the Act of 1956. After considering the pleadings in the writ petition filed by the appellant and the return filed by the respondent Nos. 1,2 and 3 and after hearing the learned Counsel for the parties, the learned Single Judge dismissed the writ petition by the impugned order dated 14-12-2007.

5. In the impugned order, the learned Single Judge held that in Competent Authority Vs. Barangore Jute Factory and Others, , cited by the learned Counsel for the appellant, the question whether acquisition of land for motels/shops/petrol pumps etc. will be covered u/s 3A of the Act of 1956 was not decided by the Supreme Court and left open. According to the learned Single Judge, however, providing such amenities falls within the purview of operation of National Highway because for a four lanes or six lanes highway, it is necessary to provide these amenities. The learned Single Judge further held in the impugned order that the amenities were proposed at crossing of two National Highways within a radius of one kilometer and if the respondents for this purpose have selected the land of the appellant, no fault could be found. Regarding compensation, the learned Single Judge held that if the appellant was aggrieved by the quantum of compensation awarded for the land, he could refer the matter for arbitration under Sub-section (5) of Section 3G of the Act of 1956.

6. Ms. Neelam Goel, learned Counsel for the appellant submitted that Section 3A of the Act of 1956 only empowers the Central Government to acquire land for building, maintenance, management and operation of National Highway or part thereof. She submitted that the notification dated 18-3-2005 issued u/s 3A of the

Act of 1956 also stated that the land described in the Schedule to the notification including the land of the appellant was required for building (widening), maintenance, management and operation of National Highway No. 26 (including construction of bypasses), but the land of the appellant was being acquired not for the widening of the National Highway but for providing fuel and service facility, restaurants, motels etc., which are commercial purposes. She vehemently argued that the acquisition of land of the appellant for such commercial purposes is ultra vires the Act of 1956.

7. Mr. Dharmendra Sharma, learned Assistant Solicitor General appearing for the respondent No. 4, on the other hand, submitted relying on the additional reply filed on behalf of the respondent No. 4 in W.P. No. 3883 of 2007 that the land of the appellant is in Village Paloha and at this village, two National Highways, namely NH-12 (Jabalpur to Bhopal) and NH-26 (North South Corridor connecting Kashmir to Kanyakumari) join and this junction is known as Rajmarg Choraha and was ideally situated for different amenities for the travelling public. He submitted that as per the policy of the Ministry of Shipping, Road Transport and Highways, four/six lanes Highways must provide basic amenities like fuel services, restaurants, dormitory, trauma center, repair shops, spare parts shops and bays for parking of different categories of vehicles. He referred to Section 16 of the National Highways Authority of India Act, 1988 (for short "the Act of 1988") to show that the functions of the National Highway Authority of India include establishment and maintenance of hotels, motels, restaurants and rest rooms and providing different amenities and facilities for the users of the National Highway at or near the highways. He submitted that thus acquisition of the land of the appellant for purposes of providing such amenities and facilities necessary for the travelling public is also permissible under Sections 3A and 3D of the Act of 1956. He further submitted that the appellant has not challenged the notification dated 18-3-2005 issued u/s 3A but has only challenged the notification dated 24-8-2005 issued u/s 3D of the Act of 1956 and this is also one of the grounds on which the learned Single Judge dismissed the writ petition of the appellant.

8. We do not think that it was necessary for the appellant to challenge the notification dated 18-3-2005 issued u/s 3A of the Act of 1956 because by the notification dated 18-3-2005 u/s 3A of the Act of 1956, the Central Government only evinced its intention to acquire the land of the appellant for the purposes mentioned in the notification and called for objections by persons having interest in the land. It is by the notification dated 24-8-2005 issued u/s 3D of the Act of 1956 that the land of the appellant was acquired by the Central Government free from all encumbrances. Hence, the finding of the learned Single Judge and the contention of Mr. Sharma that the appellant cannot question the acquisition of his land because he has not challenged the notification dated 18-3-2005 issued u/s 3A of the Act of 1956 is misconceived.

9. Sections 3A and 3D of the Act of 1956 as well as the notification dated

18-3-2005 without the schedule are extracted herein below:

3-A. Power to acquire land, etc.-

(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under Sub-section (1) shall give a brief description of the land.

(3) The Competent Authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3-D. Declaration of acquisition.-

(1) Where no objection under Sub-section (1) of Section 3C has been made to the Competent Authority within the period specified therein or where the Competent Authority has disallowed the objection under Sub-section (2) of that section, the Competent Authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in Sub-section (1) of Section 3A.

(2) On the publication of the declaration under Sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under Sub-section (1) of Section 3A for its acquisition but no declaration under Sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that, in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under Sub-section (1) of Section 3A is stayed by an order of a Court shall be excluded.

(4) A declaration made by the Central Government under Sub-section (1) shall not be called in question in any Court or by any other Authority.

Ministry of Shipping, Road Transport and Highways (Department of Road Transport and Highways) Notification

New Delhi, the 18th March, 2005 S.O.368 (E)-In exercise of the powers conferred by Sub-section (1) of Section 3A of the National Highways Act, 1956 (48 of 1956) (hereinafter referred to as "the said Act"), the Central Government, after being satisfied that for the public purpose the land, the brief description of which is given in the Schedule below, is required for building (widening), maintenance, management and operation of National Highway No. 26 (including construction of

by passes) in Tendukheda, Gadarwara, Kareli, Narsinghpur Tehsils on the stretch of land from km. 287.000 to km. 379.000 in Narsinghpur District, in the State of Madhya Pradesh, hereby declares its intention to acquire the said land for the aforesaid purpose.

Any person interested in the said land may, within twenty-one days from the date of publication of this notification in the Official Gazette, raise objections to the use of the said land for the aforesaid purpose, under Sub-section (1) of Section 3C of the said Act.

Every such objection shall be made to the Competent Authority, namely, the Joint Collector, District Narsinghpur, in the State of Madhya Pradesh, in writing and shall set out the grounds thereof and the Competent Authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the Competent Authority thinks necessary, by order, either allow or disallow the objections.

Any order made by the Competent Authority under Sub-section (2) of Section 3C of the said Act shall be final.

The land plans and other details of land covered under this notification are available and can be inspected by the interested persons at the office of the Competent Authority.

10. It will be clear from the language of Sections 3A and 3D of the Act of 1956 quoted above that land can be acquired u/s 3A and 3D of the Act of 1956 for the public purposes of building, maintenance, management and operation of a National Highway or part thereof. A reading of the notification dated 18-3-2005 issued under Sub-section (1) of Section 3A of the Act of 1956 extracted above would also show that the lands described in Schedule to the notification were sought to be acquired for the public purposes of building (widening), maintenance, management and operation of National Highway No. 26 (including construction of bypasses).

11. One of the settled principles of interpretation is that words used in a statute must be construed in its context and the word "context" would mean not only the statute in which the word is used but also other *pan materia* statutes made at different times. To quote from "Principles of Statutory Interpretation" by Justice G.P. Singh, 11th Edition 2008 (pages 287 and 288):

It has already been seen that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context permits reference to other statutes in *pari materia*, i.e., statutes, dealing with the same subject matter or forming part of the same system. VISCOUNT SIMONDS in a passage already noticed conceived it to be a right and duty to construe every word of a statute in its context and he used the word context in its widest sense including "other statutes in *pari materia*". As stated by Lord Mansfield: "Where

there are different statutes in pari materia though made in different time, or even expired, and not referring to each other, they shall be taken and construed together, as one system and as explanatory of each other.

Hence, the expression "building, maintenance or operation of National Highway" used in Section 3A of the Act of 1956 as well as the notification dated 18-3-2005 will have to be construed in its context and the "context" will include not only the provisions of the Act of 1956 but also the provisions of the Act of 1988, which inter alia deals with the functions of the National Highway Authority.

12. Sub-section (1) of Section 16 of the Act of 1988 provides that subject to rules made by the Central Government in this behalf, it shall be the function of the National Highway Authority to develop, maintain and manage National Highway. Sub-section (2) Clauses (b) and (f) of Section 16 of the Act of 1988, which is relevant for deciding this case is quoted herein below:

16. Functions of the Authority.-

*** ***(2) Without prejudice to the generality of the provisions contained in Sub-section (1), the Authority may, for the discharge of its functions-

a) *** ***(b) construct offices or workshops and establish and maintain hotels, motels, restaurants and rest-rooms at or near the highways vested in, or entrusted to, it;

(c) *** ***(d) *** ***(e) *** ***(f) provide such facilities and amenities for the users of the Highways vested in, or entrusted to, it as are, in the opinion of the Authority, necessary for the smooth flow of traffic on such highways;

(g) *** ***(h) *** ***(i) *** ***(j) *** ***(k) *** ***(l) *** ***(m) *** ***(n) *** ***(o) *** ***(p) *** ***(q) *** ***(r) *** ***(s) *** ***(t) *** ***(u) *** ***(v) *** ***(w) *** ***(x) *** ***(y) *** ***(z) *** ***(aa) *** ***(ab) *** ***(ac) *** ***(ad) *** ***(ae) *** ***(af) *** ***(ag) *** ***(ah) *** ***(ai) *** ***(aj) *** ***(ak) *** ***(al) *** ***(am) *** ***(an) *** ***(ao) *** ***(ap) *** ***(aq) *** ***(ar) *** ***(as) *** ***(at) *** ***(au) *** ***(av) *** ***(aw) *** ***(ax) *** ***(ay) *** ***(az) *** ***(ba) *** ***(bb) *** ***(bc) *** ***(bd) *** ***(be) *** ***(bf) *** ***(bg) *** ***(bh) *** ***(bi) *** ***(bj) *** ***(bk) *** ***(bl) *** ***(bm) *** ***(bn) *** ***(bo) *** ***(bp) *** ***(bq) *** ***(br) *** ***(bs) *** ***(bt) *** ***(bu) *** ***(bv) *** ***(bw) *** ***(bx) *** ***(by) *** ***(bz) *** ***(ca) *** ***(cb) *** ***(cc) *** ***(cd) *** ***(ce) *** ***(cf) *** ***(cg) *** ***(ch) *** ***(ci) *** ***(cj) *** ***(ck) *** ***(cl) *** ***(cm) *** 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Thus, establishment and maintenance of hotels, motels, restaurants and rest-rooms at or near the Highways and providing facilities and amenities for the users of the Highways vested in the National Highway Authority, which, in the opinion of Authority, are necessary for the users of the National Highway. Accordingly, acquisition of land under Sections 3A and 3D of the Act of 1956 for National Highways is permissible not only for the objects of building, maintenance, management and operation of National Highways or part thereof but for all purposes ancillary or incidental to such objects, such as establishment and maintenance of hotels, motels, restaurants, rest rooms at or near the Highways and facilities and amenities for users of the National Highways.

13. A similar question arose before the Calcutta High Court in Sudhangshu Sekhar Maity and Others Vs. State of West Bengal and Others, . In the notifications issued u/s 4 and Section 6 of the Land Acquisition Act, 1894, the purpose for which land was proposed to be acquired was stated to be "the establishment of Haldia Dock", but the land was being acquired for other purposes without which the Dock could not be established, i.e., for construction

of railway, establishment of factories, storage houses, installation of electricity, establishment of offices of the State and Central Governments and hospital, quarters for the staff, internal road, port township, oil refinery, fertilizer, sewage and rehabilitation etc. It was contended that the land sought to be acquired were for collateral purposes under the garb of establishment of dock and, therefore, the notifications issued under Sections 4 and 6 of the Land Acquisition Act should be set aside. The Division Bench of the Calcutta High Court rejected the contention and held that the dominant purpose for which the acquisition proceedings were started was establishment of Haldia Dock and that the Dock for its subsistence has necessarily to rely on a number of other activities and undertakings for which also lands would be required and these activities and undertakings can justly be described as purposes allied or incidental to the establishment of Dock. Similarly, the dominant purpose for which lands of the appellant and of others described in the Schedule to the notification dated 25-3-2005 issued u/s 3A of the Act of 1956 have been acquired is building (widening), maintenance and operation of National Highway No. 26 and since amenities and facilities including restaurant and motels for the users of the National Highway are only ancillary or incidental to this dominant purpose, the acquisition of the land of the appellant was not ultra vires the Act of 1956.

14. Ms. Goel next submitted that instead of acquiring the land of the appellant, Government land lying adjacent to the land of the appellant could have been acquired for the purpose of providing such amenities and facilities for the users of the National Highway. Mr. Sharma, learned Counsel for the respondent No. 4, on the other hand, submitted that the Government land is located 2.5 kilometers away from the junction of the two National Highways and was also not vacant but was occupied by the residents of the area, a village road, an electrical sub-station, a temple, a bus stop and a nala.

15. The learned Single Judge has held in Paragraph 7 of the impugned order that of the Government land, houses, temple and electrical transformer were located and a nala was also flowing and the land was not comparatively suitable for the purpose of acquisition for building the National Highway and providing amenities and facilities to its users and also that the land was located 2.5 kilometers away from the junction. In our considered opinion, however, it is not for the Court but for the Central Government to decide considering all relevant factors which particular land is to be acquired for the purposes mentioned in Section 3A of the Act of 1956 and if the Central Government has taken a view that the Government land located 2.5 kilometers away from the junction and occupied by houses, temples, electrical transformer etc. was not suitable and instead the land of the appellant was suitable for acquisition for establishing different amenities and facilities for the public travelling on the National Highway, the High Court in exercise of its power of judicial review under Article 226 of the Constitution cannot go into the question and decide that Central Government should have acquired the Government land instead of the land of the appellant. No other contention was raised by the appellant. In the result, the writ appeal is

dismissed, but considering the facts and circumstances of the case, the parties shall bear their respective costs.