

(1963) 07 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 22 of 1963

Dhiroo Bhai

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 29-07-1963

Acts Referred:

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

Citation : (1965) JLJ 322 : (1965) MPLJ 208

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : A.D. Deoras, for the Appellant; H.S. Khaskalam, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Dixit, C.J.

By this application under Article 226 of the Constitution of India the Petitioner seeks a writ of certiorari for quashing a notification issued on 18th April 1958 u/s 6 of the Land Acquisition Act, 1894, for the acquisition of land measuring 410.53 acres situated in Khursipar village, Durg Tehsil, which includes some land belonging to him.

The material facts are that on 16th May 1949 a notification was issued by the Government u/s 4(1) of the Land Acquisition Act, 1894, (hereinafter referred to as the Act) and published in the Central Provinces and Berar Gazette dated 20th May 1949. It was stated in that notification that land located in nine villages enumerated in the Schedule to the notification, was likely to be needed for the construction of an iron and steel plant at Bhilai. This notification was followed by a notification issued on 1st September 1955 u/s 6 of the Act for the acquisition of lands "specified in the Schedule to the notification. The purpose for which the land was needed was stated to be the erection of an iron and steel plant. In the acquisition proceedings initiated pursuant to the above notification u/s 6, land

belonging to the Petitioner and located in Khursipar village was not acquired. Then on 18th April 1958 the Government issued another notification u/s 6 of the Act for the acquisition of 410.53 acres of land in village Khursipar for the Bhilai Steel Plant. This land included twenty-five acres of land belonging to the Petitioner and his brother, who is Respondent No. 4 in this petition. The Petitioner and his brother participated, and launched their objections, in the acquisition proceedings started after the issue of the notification dated the 18th April 1958. In those proceedings, when an award was made, the Petitioner and his brother filed an application u/s 18 of the Act, and the matter ultimately came up to this Court in First Appeal No. 272 of 1959, which was decided on 13th July 1962. In that appeal, a remand order was made by this Court and the matter is now pending before the First Additional District Judge of Durg.

The Petitioner now challenges in this petition, which was filed on 18th January 1963, the validity of the notification issued on 18th April 1958 mainly on the ground that as in the acquisition proceedings commenced pursuant to the notification issued on 1st September 1955 u/s 6 of the Act the land in question was not acquired, therefore, the notification issued earlier u/s 4 of the Act had exhausted itself and the Government had no power to issue on 18th April 1958 another notification u/s 6 of the Act for the acquisition of the land. In support of this contention, reliance is placed solely on a decision of a Division Bench of this Court in Vishnu Prasad v. State of M.P. (supra).

In our opinion, there is no substance in this contention. A similar contention was considered by us in the case of Trustees of Motidas Beragi Sadhu Ratlam Trust Board and Others Vs. Ramjatan Ramprasad Sonar and Others, , wherein we observed that as held by the Supreme Court in Barkya Thakur v. State of Bombay AIR 1980 S.C. 1203 , the purpose of a notification u/s 4 was only to enable the authorities to carry out a preliminary investigation for deciding upon the suitability of land to be acquired for the purpose for which it was needed and a notification issued u/s 4 could not be assailed or quashed on any ground, and that a notification u/s 4 being of an exploratory nature, the argument that the notification exhausts itself after the issue of a notification u/s 6 could not be accepted. Having regard to this pronouncement of the Supreme Court, the observation in the case of Vishnu Prasad Sharma and Others Vs. State of Madhya Pradesh and Others, , to the effect that there should not be any unreasonable time-lag between the issue of a notification u/s 4 and a notification, u/s 6 of the Act, and if following a notification u/s 4 a notification u/s 6 is issued, then another notification u/s 6 for the acquisition of land covered by the notification u/s 4 is void, cannot be regarded as a correct statement of law. It must be noted that the decision of the Calcutta High Court in Corporation of Calcutta Vs. Omeda Khatun Bewa, , on which reliance was placed by the learned Judges deciding the case of Vishnu Prasad (supra), does not lay down any such proposition. In the Calcutta case, while dealing with the question of piecemeal acquisition the learned Judges deciding the case first distinguished between different cases of piecemeal acquisition and said that the piecemeal acquisition, for which there

was no warrant in the Land Acquisition Act, was of the type which occurs when after the declaration u/s 6 the acquiring authority takes up only a portion of the land for immediate acquisition keeping the acquisition of the remainder in abeyance and seeks to resume the acquisition as respects the remainder or a portion of it at some future date. The learned Judges specifically emphasized that the question of delay was not really material, and the piecemeal acquisition, which was before them for consideration, was not justified as the Act contemplated only "one notice, one proceeding and one award to be given, taken and made regarding one holding and one ownership". (Italics ours) They further proceeded to say -

The real point in the objection against piecemeal acquisition, however, is not that it involves a plurality of awards, but that it involves a succession of awards, each relating to a portion of the same land held in the same ownership, for which there is no warrant in the Act.

Now is there any warrant for successive acquisitions by successive proceedings of different portions of the land covered by a declaration u/s 6, although such portions may belong to different owners.

There may be, and indeed have to be, separate award cases and separate enquiries with regard to claims concerning different parcels of land belonging to different owners where the land covered by declaration comprises such parcels. Such separate enquiries may also be needed in respect of separate holdings owned by the same person.

If the very important fact that in the Calcutta case only one notification u/s 6 of the Act was issued and it was after the termination of acquisition proceedings following it and after the rendering of an award in respect of certain lands specified in the notification that proceedings for the acquisition of further land were resumed on the strength of the same notification u/s 6, is borne in mind, then it is clear that the said case only lays down that if once acquisition proceedings are started following a declaration u/s 6 of the Act resulting in the making of an award or awards relating to the acquisition of land belonging to one owner or different owners, then on the strength of that notification u/s 6 proceedings for the acquisition of land covered by the notification u/s 6 but not acquired in the proceedings already held cannot be taken. The case is not an authority for the proposition that once following a declaration u/s 6 certain land included in the declaration made therein is acquired, then the remainder of the land cannot be acquired by taking proceedings after the issue of a fresh notification u/s 6 or that the earlier notification exhausts itself. In fact, in the Calcutta case (*supra*) the question of effectiveness of a notification issued in that case u/s 4 was not at all considered. We do not find anything in the Act which precludes the Government from issuing notification dated the 18th April 1958 u/s 6 of the Act for the acquisition of further land in village Khursipar in regard to which a notification had already been issued u/s 4.

There is also another ground on which the Petitioner is not entitled to any relief in these proceedings. It is this that this application was filed on 18th January 1963, some five years after the issue of the notification u/s 6 on 18th April 1958, and during all these years the Petitioner did not challenge the validity of the notification on the other hand he participated in the acquisition proceedings leading to First Appeal No. 272 of 1959, in which a remand order was made by this Court.

For all these reasons, the petition is dismissed with costs of opponent No. 1. Counsel's fee is fixed at Rs. 150. The outstanding amount of security deposit, after deduction of costs, shall be refunded to the Petitioner.