
(2009) 11 AHC CK 0030
In the Allahabad High Court

D.R. Tyagi (D) through L.Rs. and Others	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (2010) 2 AWC 2023

Hon'ble Judges : Virendra Singh, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Virendra Singh, JJ.—Heard Shri D.V. Singh, learned Counsel for the petitioner.

2. The substitution application of late Shri Daya Ram-petitioner No. 1 is allowed. The substitution application of late Shri Tej Singh petitioner No. 3 to the writ petition died on 26.8.1995 and filed on 18.3.1996 to bring his three sons Vijai Singh; Ishwar Chandra and Ramesh Chandra is also pending on record. The application was filed within reasonable time and is allowed. The applicants will be brought on record as heirs and legal representatives of the deceased. The substitution application of Shri Malkhan Singh respondent No. 4 died on 30.9.2001, bequeathing his properties to his daughter Smt. Rita-the applicant vide Will dated 27.8.2001 filed in the year 2001 is pending. The application was filed within reasonable time, and is also allowed.

3. By this writ petition the petitioners have prayed for setting aside the notifications dated 30.11.1989 issued under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (the Act) with the opinion of the State Government that the provisions of Sub-section (1) of Section 17 of the Act are applicable to the land, and invoking the provisions of Sub-section (4) of Section 17 of the Act dispensing with the enquiry u/s 5A ; and the notification dated 16.6.1990 under Sub-section (1) of Section 6 of the Act acquiring a plot No. 58M area 6 bigha 10

biswa in village Bhangel Begampur, Pargana and Tehsil Dadri, district Ghaziabad for the purposes of "planned industrial development" of district Ghaziabad through New Okhla Industrial Development Authority, Ghaziabad.

4. The petitioners are Joint owners of plot No. 58M with a total area of 6 bigha 17 biswa recorded as "abadi" in the revenue records. In paragraph 2 of the writ petition it is stated that they have their residential constructions of two pucca rooms, cattle shed and other constructions for keeping agricultural accessories. The constructions are existing since long and are being used by petitioners as abadi. These constructions were forcibly demolished by the N.O.I.D.A. authorities on 5.12.1989, inspite of specific orders of the High Court on 21.11.1989 that the N.O.I.D.A. will not interfere in the possession of the petitioners.

5. In paragraph 6 of the writ petition it is stated that N.O.I.D.A. is not taking any decision to establish any industry on the land sought to be acquired by the notifications and that there is no proposal of the getting up or establishing industries. There is no public purpose in acquiring the land. The master plan shows that the property in dispute is situate adjacent to the road going to Dadri known as Bangelpur Dadri road. In the master plan also industries are specified on the land acquired by the State Government. It is stated that the public purpose is extremely vague and thus the urgency clause applying Sub-section (1) of Section 17 and thereafter dispensing with enquiry u/s 5A, of invoking Sub-section (4) of Section 17 of the Act are not attracted. The entire exercise is mala fide. It is further submitted that while demarcating the area of the village the "Lal Dora" surrounding the village has been laid down arbitrarily. On the eastern side of the village a very small area land has been included the "Lal Dora", whereas towards southern side with some ulterior motive a major area has been included. It is stated that the "Lal Dora" has been sketched just from the boundary of plot No. 58 without including the whole area.

6. During the course of argument Shri D.V. Singh submits that the land owned by influential persons was saved by putting it artificially in the "Lal Dora". Only a small part of the land of plot No. 58 was included in "Lal Dora". The remaining portions consisting of abadi have been left out arbitrarily.

7. Shri D.V. Singh has relied upon the Judgment in Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, in submitting that the urgency clause could not be invoked by the respondents, and the enquiry u/s 5A could not be dispensed with. He submits that there was no material with the State Government to apply its mind for invoking such clause under Sub-section (4) of Section 17 of the Act, before exercising the powers to acquire the land. The law must provide for an opportunity of hearing against the proposed acquisition. Unless there is a public purpose as defined in Section 3(f), no acquisition of the land can be made. The word "may" in subsection (4) of Section 17 leaves no room of doubt that the applicability of Sub-section (4) of Section 17, is the discretionary power of the Government to dispense with the enquiry and that normally the owner of the property should not be deprived unless urgency is of

such nature that the Government is convinced that the holding of enquiry or hearing of the objections may be detrimental to the public interest.

8. The petitioners have filed an amendment application on 10.7.2007 for adding paragraphs 40A to 40E ; ground Nos. 10 and 11 and a prayer to direct the State Government to exempt the land of khasra No. 58, from the acquisition. The amendment application was allowed. It is stated that the petitioner has represented on 14.8.1992 to the State Government to exempt the land u/s 48 (1) of the Act and that the petitioner is still in possession of the land, and is using as abadi.

9. In the counter-affidavit of Shri Abdul Aziz, the Amin in the office of Special Land Acquisition Officer, N.O.I.D.A., Ghaziabad filed on 8.9.1992, it is stated in paragraph 7 that the N.O.I.D.A. has several schemes proposed on the land apart from roads, green belt, bus depot and residential colony for industrial workmen. The object of showing the land as green belt in the master plan was not to use it only for agriculture. As and when the land was required, it could be used for the schemes such as roads and bus depots. In *Kendriya Karamchari Evam Mitra Sahkari Avas Samiti Ltd. v. State of U.P. and Ors.* 1988 ALJ 1224, the Supreme Court has held that the land acquired by the State Government can be used for the public purpose other than the purpose for which it was acquired. The N.O.I.D.A. has prepared several schemes to be implemented in phases and is continuously carrying out development work. The proceedings of acquisitions have been completed.

10. In the counter-affidavit of Shri B.B. Kaul, Law Officer in the office of N.O.I.D.A., the N.O.I.D.A. has denied that there is any kuchcha or pucca constructions on the disputed site. The site was inspected on 11.3.1988, and that on that date, there was no trace of abadi. The land is situate far from abadi of the village. In paragraph 5 it is stated that since there was no constructions, the question of demolition does not arise. The disputed land is "khet" (agricultural field). In paragraphs 7, 10 and 15 it is stated by Shri V.B. Kaul as follows:

7. That the contents of paragraph 6 of the writ petition are denied. The total area of land sought to be acquired is about 57 acres (91 bigha 11 biswa) out of which 54 acres (--bigha 7 biswa 13 biswansi) is marked for green belt to check the pollution caused by adjoining heavy and small industries. 25 bigha 19 biswa 7 biswansi is marked for construction of residential colony of workman employed in the industrial units and for people of weaker section and 9 bigha is marked for Bus Depot. It is denied that New Okhla Industrial Development Authority has no scheme over the land sought to be acquired.

10. That the contents of paragraph 10 of the writ petition are denied. It is submitted that it is only agricultural land which is acquired for planned industrial, commercial and residential development of New Okhla Industrial Development Authority. The land covered under abadi is not acquired. The planned development is carried out only in the agricultural land and not in the abadi land.

15. That the contents of paragraph 25 of the writ petition are not correct as set out. The land of village abadt is excluded from the planned industrial development. The disputed land is an agricultural land and the question of inclusion of said land in Lal Dora does not arise.

11. In paragraph 22 of the counter-affidavit of Shri B.B. Kaul it is stated that the petitioner's representation in terms of the order of the High Court dated 21.11.1989 was disposed of on 4.1.1990.

12. In A.P. Sareen and others Vs. State of U.P. and others, the Supreme Court held that where the land is proposed to be acquired for planned development of town the urgency does not cease to exist on the ground of some delay in declaration u/s 6 of the Act. The notification dispensing with enquiry u/s 5A of the Act cannot be quashed on that account.

13. In Anand Buttons Ltd. Vs. State of Haryana and Others, the Supreme Court held that the exemption from acquisition cannot be claimed only on the ground that some constructions have been carried out on the land. The land with constructions can be acquired. Where the State Government decides not to acquire the constructed land or to exclude a thick abadt, it is a matter of policy of the State and not of law. If a unit has been exempted and has not been made party to the writ petition, the petitioners are not entitled to claim the same relief. Two wrongs do not make one right, and, therefore, there should be a positive content of legal action before discrimination is claimed.

14. In Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, Union of India v. Mukesh Hans AIR 2004 SC 4307 : 2004 (4) AWC 3318 (SC); Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, and 1st Land Acquisition Collector v. Nirodhi Prakash Ganguli 2002 (2) AWC 1131 (SC), it was held by the Supreme Court that the declaration u/s 6 is conclusive evidence of both the public purpose and invocation of urgency clause. Ordinarily the opportunity of hearing should be afforded to the person, who is being deprived of the land. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down u/s 5A in exceptional cases of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land. A public purpose however laudable, by itself is not sufficient to take aid of Section 17 to use the extraordinary powers as such powers deprive a land owner of his right in relation to immovable property to file objections for the proposed acquisition, and it also dispenses with the enquiry u/s 5A of the Act. The authority should have subjective satisfaction of the need for invoking urgency. u/s 17 of the Act keeping in mind the nature of the public purpose, the real urgency which the situation demands and the time factor, i.e., whether taking possession of the property can wait for a minimum period of enquiry u/s 5A, has to be seen. In other words the Supreme Court observed that the satisfaction should be recorded that if the power u/s 17 is not exercised, the very purpose for which the land is being acquired urgently will be frustrated or

defeated. Normally the urgency to acquire the land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly exceptional or extraordinary depending on situations such as due to earthquake, flood or some specific time bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with the law but in the absence of real or genuine urgency it may not be appropriate to deprive an aggrieved party of a fair and just opportunity. The State should act with due care and responsibility.

15. In *Essco Fabs Private Limited* (supra) it was held in paragraphs 38 to 42 as follows:

38. We find considerable force in the above argument of the learned Counsel for the appellants. The scheme of the Act is clear which provides for issuance of preliminary notification under Sub-section (1) of Section 4 of the Act empowering the appropriate Government to issue such notification for acquisition of land needed or likely to be needed for any public purpose. Since the property belongs to a private individual, unless there is a "public purpose" as defined in Clause (f) of Section 3 of the Act, no acquisition of land can be made.

39. It is in exercise of power of eminent domain that a sovereign may acquire property which does not belong to him. In the circumstances, as a general rule, before exercise of power of eminent domain, law must provide an opportunity of hearing against the proposed acquisition. Even without a specific provision to that effect, general law requires raising of objections by and affording opportunity of hearing to the owner of the property. The Land Acquisition (Amendment) Act, 1923 (Act 38 of 1923), however, expressly made such provision by inserting Section 5A in the Act.

40. It is, therefore, clear that after issuance of preliminary notification u/s 4 and before final notification u/s 6 of the Act, the appropriate Government is enjoined to hear the persons interested in the property before he is deprived of his ownership rights. But then there may be cases of "urgency" or "unforeseen emergency" which may brook no delay for acquisition of such property in larger public interest. The Legislature, therefore, thought it appropriate to deal with such cases of exceptional nature and in its wisdom enacted Section 17.

41. Whereas Sub-section (1) of Section 17 deals with cases of "urgency", Sub-section (2) of the said section covers cases of "sudden change in the channel of any navigable river or other unforeseen emergency". But even in such cases, i.e., cases of "urgency" or "unforeseen emergency", enquiry contemplated by Section 5A cannot ipso facto be dispensed with which is clear from Sub-section (4) of Section 17 of the Act.

42. Sub-section (4) of Section 17 is an enabling provision and it declares that if in the opinion of the appropriate Government, the provisions of Sub-sections (1) or (2) are applicable, it may direct that the provisions of Section 5A would not apply. It is, therefore, clear that the Legislature has contemplated that there may

be "urgencies" or "unforeseen emergencies" and in such cases, private properties may be acquired. But, it was also of the view that normally even in such cases, i.e., cases of urgencies or unforeseen emergencies, the owner of property should not be deprived of his right to property and possession thereof without following proper procedure of law as contemplated by Section 5A of the Act unless the urgency or emergency is of such a nature that the Government is convinced that holding of enquiry or hearing of objections may be detrimental to public interest.

16. Coming back to the facts of this case, there is no such averment in the writ petition that there was no material with the State Government to record its satisfaction that there was urgency and that the enquiry u/s 5A should be dispensed with. The pleadings are confined to the existence of constructions over the entire plot No. 56, and the discrimination in refusing to include the entire plot No. 56 in "Lal Dora". The emphasis on the master plan that the land is denoted as agricultural land and that there was no such urgency to record satisfaction u/s (1) of Section 17, and invoke Sub-section (4) of Section 17 are entirely vague. The State Government has in its counter-affidavit stated that the land was required for various schemes to be implemented in phases, and that N.O.I.D.A. has given the details of the user of the land for the purpose of the schemes of planned industrial development of N.O.I.D.A. We therefore do not find that the urgency clause was applied arbitrarily or that there was no material to invoke the provisions of Sub-section (4) of Section 17 of the Act.

17. With regard to existence of constructions and to include the entire plot No. 56 in, "Lal Dora" we find that in the representations made by the petitioner on 24.3.1988 and 29.8.1989, and thereafter on 14.8.1992, the petitioners have not stated that there was abadi on plot No. 56. In the representation dated 24.3.1988, they have referred to plot No. 56 as their "khet". The petitioners have referred to their meeting dated 22.3.1988 with the Chairman of the N.O.I.D.A. In the representation, they have stated that declaration of "Lal Dora" is a boon and a gift of the authority, and that petitioners were also entitled to similar benefit. The "Lal Dora" includes the boundary wall after leaving their khet (agricultural field). It was further stated that the petitioners are entirely dependent upon agriculture and that if they were clever, they could also have raised a boundary wall to include their land in "Lal Dora". In none of these representations, it is stated that there was abadi on plot No. 58 and that the petitioners are actually living and have their residential houses on these plots.

18. The petitioners' representation was considered by the State Government, and it was found that there was no abadi at the time of inspections prior to making of the preliminary notification under subsection (1) of Section 4 of the Act, and thus they are not entitled to the benefit of exemption or to include plot No. 56M in "Lal Dora".

19. The writ petition is dismissed. The interim order is discharged.