

(1960) 01 AHC CK 0015
In the Allahabad High Court
Case No : Writ Petition No. 129 of 1958

Gur Dayal and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 18-01-1960

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 5A
Uttar Pradesh Land Acquisition (Amendment) Act, 1954 — Section 17(1A)

Citation : AIR 1960 All 564

Hon'ble Judges : D.S. Mathur, J

Bench : Single Bench

Advocate : Niamatullah, M.M. Lal and Inayatullah, for the Appellant; Standing Counsel, for Opposite Party No. 1, Saraswati Prasad and B.L. Kaul for Opposite Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

D.S. Mathur, J.—This is a petition under Article 226 of the Constitution of India, by Gur Dayal and 41 others for the issue of a writ of mandamus, certiorari or any other appropriate writ, order, or direction to restrain the respondents, namely, the State of Uttar Pradesh, the Administrator, Municipal Board, Lucknow, and the Land Acquisition Officer, Lucknow Improvement Trust, Lucknow, from continuing the proceeding for the acquisition of houses and land mentioned in the notices purporting to be u/s 9(3) of the Land Acquisition Act, 1894, and to quash the orders under which these notices were issued.

2. In view of a few material questions involved in the case which are favourable to the petitioners it is not necessary to refer to all the facts which have been given by the parties in their affidavits, nor is it necessary to make a reference to the various documents annexed by them to their affidavits. For example, it is not necessary to express any opinion as to whether the land being acquired could or could not be transferred to the Municipal Board for carrying out the scheme known as Lucknow Municipal Board Mahanagar Housing Scheme, and whether

the purpose of the scheme can be deemed to be a public purpose.

In the present case, notices were issued with regard to land which can be treated as Abadi sites on which constructions of petitioners Nos. 1 to 11 stand. The land was not a waste or arable land and for that reason the compliance of provisions of Section 5-A could not be dispensed with. It is on this ground that the notices shall be quashed. When the land in question cannot be acquired without holding a proper enquiry u/s 5-A of the Land Acquisition Act, it will not be necessary to consider the other question, namely, whether the land was being acquired for a public purpose. It is for this reason that I am confining myself to only such facts which can justify the grant of a writ in favour of the petitioners.

3. There is virtually " no controversy on the material facts of the case. All the petitioners are residents of village, Mahanagar-Rahimnagar which is a Hadbasti village in the vicinity of the city of Lucknow, situate on the Lucknow-Faizabad road to its north. On 26-9-1946 the State Government issued a notification, u/s 4 of the Land Acquisition Act notifying that the land of 17 villages, as detailed therein, was needed for a public purpose, namely, construction of Government buildings by the Public Works Department. 793 acres land of village Mahanagar-Rahimnagar was included in the notification. It was further notified under Sub-section (4) of Section 17 that the provisions of Section 5-A of the Act shall not apply to the acquisition proceeding. No enquiry, as contemplated by Section 5-A, was conducted and it was on 23-11-1946 that a notification u/s 6 of the Land Acquisition Act was published with regard to only 335.75 acres of land of village Mahanagar.

The Governor at the same time acted under the provisions of Sub-section (1) of Section 17 of the Act and directed the Deputy Commissioner of Lucknow to take possession of land, being waste or arable land, mentioned in the schedule, on the expiry of the period of notice mentioned in Sub-section (1) of Section 9. This land or part thereof has already been acquired. Another notification u/s 6 with regard to the remaining land was issued on 26-6-1948 and it was worded in the same manner as the earlier notification of 23-11-1946.

4. It was in pursuance of the letter notification that the Land Acquisition Officer, respondent No. 3, issued notices, Annexures D. 1 to D. 10 to the affidavit, calling upon the petitioners Nos. 1 to 11 to put forward their claim for the land and properties being acquired. These notices were served on the petitioners between May 20, 1958 and May 22, 1958. The respondents conducted survey operations in the locality, which gave an apprehension to petitioners Nos. 12 to 42 that similar action may be taken against them for taking possession of their houses and Abadi sites.

5. The petitioners have given details with regard to the notices and the survey operations in para 15 of the affidavit and this part of the assertion was admitted by the respondents. The Court can, therefore, proceed with the assumption that steps are being taken for taking possession of houses and Abadi sites of the

petitioners, and notices had already been issued to petitioners Nos. 1 to 11 and after survey operations notices would have been issued to the other petitioners also, had they not approached this Court.

6. Since after the incorporation of Section 5-A of the Land Acquisition Act it is necessary for the Collector or the Land Acquisition Officer to hold an enquiry and to submit a report to the appropriate Government before a notification u/s 6 can be issued. The enquiry u/s 5-A can be dispensed with in cases of urgency where the appropriate Government is of opinion that the provisions of Sub-section (1) of Section 17 are applicable, and a notification to that effect is published in the Official Gazette. Sub-section (1) provides that in cases of urgency, whenever the appropriate Government so directs, the Collector may, even though no award has been made, on the expiry of 15 days from the publication of the notice mentioned in Section 9(1), take possession of any waste or arable land needed for public purposes or for a Company. Action under Sub-section (1) of Section 17 can thus be taken only with regard to waste or arable land and not Abadi sites on which constructions stand.

The provisions of Sub-section (4) of Section 17 can be applied only to such land to which the provisions of Sub-section (1) are applicable; I am not making a reference to the scope and the enforcement of the provisions of Sub-section (2) of Section 17 and similar powers which can be exercised with regard to the land covered by the sub-section, as they relate to land required by the Railway Administration for certain specified purposes. In the present case, the land was being acquired by the State Government for construction of residential quarters and not for any of the purposes contemplated by Sub-section (2) of Section 17. In other words, the enquiry u/s 5-A can be dispensed with in cases of urgency when only waste or arable land is needed for a public purpose. Such an enquiry cannot be dispensed with where the land needed for a public purpose is not waste or arable land but is Abadi land on which constructions stand.

7. Section 17 was amended under the Land Acquisition (U. P. Amendment) Act, 1954, when Sub-section (1-A) was added to Section 17 after Sub-section (1). Under Sub-section (1-A) the Collector can take possession of land other than waste or arable land. But as Sub-section (4) was not correspondingly amended, the enquiry contemplated by Section 5-A has to be held with regard to land which could be covered by new Sub-section (1-A) of Section 17. The amendments made under the Land Acquisition (U. P. Amendment) Act, 1954, cannot, therefore, in any way affect the invalidity of the notifications under Sections 4 and 6 in question.

8. As already mentioned above, it is the admitted case of the parties that notices u/s 9(3) in question were issued with regard to land which was not waste or arable. In fact constructions are standing on the land. The land belonging to the petitioners Nos. 12 to 42 is also not waste or arable land. Such land was not covered by the provisions of Sub-section (4) of Section 17 and consequently, at the stage of notification u/s 4, or shortly thereafter, the compliance of the

provisions of Section 5-A of the Act could not be dispensed with. In other words, the second clause of the aforementioned notification u/s 4 is invalid to the extent it dispensed with the holding of an enquiry with regard to land which was not waste or arable.

9. The afore-mentioned notification u/s 6 with regard to land which was not waste or arable was admittedly issued without holding an enquiry u/s 5-A of the Act. This was in clear disregard of the provisions of the Act, and on this ground this notification made u/s 6 shall also be invalid to this extent. When no valid notification was issued u/s 6 with regard to the above land, the Collector could not proceed u/s 9 of the Act, nor can he take possession on the basis of the invalid portion of the notification.

10. The respondents challenged the maintainability of the petition on two grounds: firstly, that a joint petition by 42 persons is not maintainable and secondly, the notifications under Sections 4 and 6 were challenged after an inordinate delay. Strictly speaking, a joint petition by all the petitioners was not maintainable, but the present is not the stage to call upon the petitioners to delete the names of those who could not join in the present petition.

Whether the petition of one or all is allowed shall have the same effect as the respondents shall not be in a position to take further acquisition proceedings against any of the petitioners, of course with regard to the above land. In other words, no useful purpose would be served by passing any order with regard to the first objection with regard to the filing of a joint petition by 42 petitioners. This part of the objection is, in these circumstances, being over-ruled.

11. The notifications under Sections 4 and 6, were published many years back, but the respondents themselves did not take any steps u/s 9 of the Land Acquisition Act nor did they make any attempt to dispossess the petitioners. In the circumstances, the petitioners were properly advised not to challenge the notifications soon after their publication but to approach this Court, when attempts were being made to enforce the scheme by dispossessing them (petitioners). The present petition was moved within a few days of the service of the notices. In other words, there was no delay in the presentation of the petition. In any case, the delay is such which can be condoned.

12. The next point for consideration is whether this Court should quash those parts of the notifications under Sections 4 and 6 of the Act which are invalid, that is, relating to land which is neither waste nor arable, or to grant a relief on the lines sought for in the petition. I am of opinion that a writ be issued merely to quash the invalid parts of the notifications; but the learned counsel for respondent No. 2 brought to my notice the difficulties in which the Municipal Board shall be placed if the notifications are quashed directly and not by implication.

The effect of the writ to be issued in the case will be the same, that is, the notifications under Sections 4 and 6 shall for all practical purposes be invalid in

so far as the land, which is not waste or arable, is concerned. But in view of the contention raised on behalf of the respondent No. 2 I would grant the relief on the lines sought for in the petition itself. I would however, like to make it clear that respondents Nos. 2 and 3 shall be advised to proceed only in respect of waste or arable land and if they desire to acquire land, which is not waste or arable land, they should move the appropriate Government to take action in accordance with the law.

13. To sum up, the notifications under Sections 4 and 6 are valid only to the extent that they apply to waste or arable land, and are invalid to the extent of other land. As the Land Acquisition Officer has at present issued notices u/s 9(3) of the Land Acquisition Act against petitioners Nos. 1 to 11 only, these notices alone are being quashed. No further action has yet been taken against the petitioners Nos. 12 to 42 and for this reason and also because no specific relief was sought for, no order is being issued with regard to these petitioners. It is expected that the respondents shall not take any further steps with regard to the land of petitioners Nos. 12 to 42 which is not waste or arable land.

14. The petition is hereby allowed and the notices u/s 9(3), Annexures D. 1 to D. 10 to the affidavit, are quashed. The respondents are further directed not to take any further proceeding with respect to these notices. Costs on parties.