
(1985) 07 MP CK 0038
In the Madhya Pradesh High Court
Case No : M.P. No. 733 of 1983

Hari Singh and others

APPELLANT

Vs

State of. M.P. and others

RESPONDENT

Date of Decision : 05-07-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 17(1), 4, 5A

Citation : (1985) 07 MP CK 0038

Hon'ble Judges : R.K. Varma, J;P.D. Mulye, J

Bench : Division Bench

Advocate : T.N. Singh, for the Appellant; A.K. Chitale, Government Advocate for respondent Nos. 2 and 4, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Mulye, J.—The petitioners have filed this petition under Arts. 226 and 227 of the Constitution of India in the matter of Land Acquisition Act.

2. The facts giving rise to this petition, may be stated, in brief, thus: The petitioners are Bhumiswamis of land bearing survey No. 129 and No. 130 situated in village Damodarpura, Tahsil Jawad, District Mandsaur. The said land as also other adjoining lands were acquired by the respondent-State for establishment of a cement factory for which notification dated 8-2-1983 u/s 4 of the Land Acquisition Act (Annexure-A) was published. This notification further stated that the provisions of section 5-A of the Land Acquisition Act shall not be applicable in respect of the said lands as in the opinion of the State Government provisions of section 17(1) of the said Act are applicable in this respect. Subsequently, notification dated 23-2-1983 u/s 6 of the Land Acquisition Act was published (Annexure-B). Thereafter notification dated 26-2-83 (Annexure-C) u/s 9 of the Land Acquisition Act inviting claims for compensation was also published. Accordingly on 28-2-1983, the Land Acquisition Officer sent a letter Annexure-D to Tahsildar to obtain possession and deliver it to the General Manager, District

Industries Centre, Mandsaur. Accordingly, the Tahsildar obtained possession from the petitioners and other in the month of February and March, 1983 and gave it to the General Manager, District Industries Centre, Mandsaur.

3. The petitioners filed their claim for compensation at the rate of Rs. 10,000/- per bigha. The award was given on 15-6-1983 according to which compensation of Rs. 30,129.45 p. was awarded to the petitioners. Being dissatisfied, the petitioners filed application to the Collector and Land Acquisition Officer, Mandsaur for enhancement of compensation under S. 18 of the Land Acquisition Act, without reserving right to challenge the acquisition at Rs. 1,20,000 per hectare. Being still not satisfied, the petitioners approached the High Court for further compensation, which matter is still pending.

4. In this petition, the principal grievance of the petitioners has been that this acquisition is in fact not needed by the respondent-Government, but is for the requirement of the respondent Company, namely, The Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd., Birlagram, Nagda; that there was not urgency to do away with the objections to be raised by the objectors; that this is a colourable exercise of power in hurriedly trying to acquire the land which in fact was never required by the respondent-State, but for respondent No. 4 and thus the provisions of Chapter 7 of the Land Acquisition Act relating to acquisition for companies, i. e. provisions of sections 39, 40, 41 and 42 have not been followed; that the word "acquisition" has not been defined anywhere and consequently the entire acquisition proceedings being vitiated by law deserve to be quashed.

5. Further according to the petitioners, the respondent No. 4 was already granted a mining licence adjoining the said land; that the said respondent No. 4 had already submitted an application before the Government for this land and that after the said acquisition a lease deed was also executed by respondent No. 4 in favour of respondent State which further indicates that the respondent-State itself never wanted to start any cement factory, but in order to favour and oblige respondent No. 4 by this colourable exercise of power, the right of the claimants to raise objection to the acquisition of these lands has been taken away and that in fact by the said acquisition, the respondent-State has tried to create an impression as if the land is required by the respondent-State for a public purpose namely putting up a cement factory. He, therefore, submitted that the acquisition in the present case is neither fair nor in accordance with law and consequently the same deserves to be quashed and set aside, and in support of these submissions he placed reliance on the decisions reported in *Indore United Malwa Mills, Indore v. Basantilal Suresh Kumar, Ujjain* 1968 MPLJ 438; *Smt. Radhabai v. State of Maharashtra* AIR 197C Bom. 232; *Dinshaw Itelia v. State of Hyderabad* AIR 1955 Hyd 203 ; *Natwarlal Jerambhai Patel Vs. State of Gujarat and Others*, ; *P.V. Mohammed Ghouse Vs. State of Tamil Nadu and Another*, ; *Heianam Chonjon Singh v. Union Territory of Mainpur* AIR 1968 Man 45 *Smt. Somavanti and Others Vs. The State of Punjab and Others*, .

6. The respondents have contested the said petition by denying the allegations

made by the petitioner. The learned Government Advocate by placing reliance on the decision reported in *Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others*, submitted that in the present case, in fact, the acquisition is made by the Government; that after the award of the Land Acquisition Officer was given on 15-6-83, the respondent No. 4 Company has on 27-8-85 executed a lease deed in favour of the Government in respect of the land acquired and consequently the land in fact is needed for a public purpose by the Government, and by leasing out the same to respondent No. 4, the Government is benefited and there is no question of acquiring the said land for the Company namely respondent No. 4 which has not paid any amount by way of compensation to the petitioner or other persons whose land has been taken under this acquisition. He, therefore, submitted that the petitioners having never raised earlier any objection regarding the said acquisition but having actually participated in the acquisition proceedings by claiming compensation which has also been awarded to them, they cannot now agitate the same matter in this writ petition.

7. The learned counsel for respondent No. 4 vehemently urged that in fact in revenue records the said land stands recorded in the name of Mangilal Khemraj Dhakad; that the petitioners never challenged the notifications issued under S. 4 and S. 6 of the Land Acquisition Act; that after the notification issued u/s 9 they actually put up their claim for compensation for which still they are fighting; that possession was actually taken from the petitioners in March, 1983; that after the possession was obtained the respondent No. 4 has already put up the cement factory and land is being utilised for that purpose: that the map of the lands acquired under the present notification would indicate that the lands in question of the petitioners are situated in the middle which are surrounded by lands of other persons; that a cement factory has already been put in the portion of the land of the petitioners and after taking all these facts and circumstances into consideration, question of quashing the acquisition does not arise as the petitioners are estopped from challenging the same.

8. The learned counsel for respondent No. 4 further submitted that in fact this is not an acquisition for the Company which does not come into the picture; that no doubt a mining lease was executed earlier, but putting of a cement factory being for a public purpose, the Government has given the acquired land on lease to respondent No. 4 for which they have to pay very heavy premium; that there has been a delay in filing this petition as the petitioners kept quiet; that no such writ can be issued against respondent No. 4 which is a Company and in support of these submissions he placed reliance on the decisions reported in *Jatadhar Mitra and Others Vs. State of West Bengal and Others*, and *Chandmal Gendalal Agrawal v. State of M.P.* 1984 MPLJ 563. He, therefore, vehemently urged that there is no colourable exercise of power in acquiring the said land by the Government for a public purpose; that it was for the Government to find out whether there was urgency or not and consequently it was for this Court to consider whether the dispensation of the notice u/s 5-A was proper or not. He, therefore, submitted that in fact the factory having already been put up which

has started production of cement, a public purpose has been achieved and this delayed objection challenging the acquisition by the said petitioners deserves to be dismissed on these grounds.

9. After hearing the learned counsel and after going through the case law, we are of opinion that there is no merit in this petition which deserves to be dismissed for reasons stated hereinafter. Admittedly one Mahendra Kumar had earlier filed M. P. No. 751 of 1983 challenging the same acquisition, but the same was withdrawn. At that time the petitioners did not come forward, as according to the learned counsel for the petitioners only subsequently came to know about such a M. P. having been filed earlier, which it is difficult to believe. It is also not in dispute that the petitioner never challenged any notifications issued under the Land Acquisition Act in respect of these lands, but on the contrary they put up their claim for compensation and being not satisfied with the quantum of compensation already granted they are already pursuing the matter for enhancement of compensation. It is also not in dispute that the cement factory has already been constructed which is working in full swing and that the petitioner's land as per the map is situated in the centre surrounded by lands of other persons and that the petitioners' land is no longer a vacant land but a factory has already been built thereon. Apart from the fact that earlier a mining lease was granted to respondent No. 4, there is no convincing and satisfactory material placed on record to indicate that in fact the acquisition in the present case was for the Company and that the State Government never required the said land. Therefore, it is difficult to agree with the submission of the learned counsel for the petitioner that there has been a colourable exercise of power in issuing such a notification. So far as the urgency is concerned, the submission of the learned counsel for the petitioner is no doubt attractive, but as has already been held it is for the Government to decide whether there is urgency or not, though ordinarily it is expected of the Government to specify the reasons of urgency so that the public at large, including the persons whose lands are being acquired for public scheme, are made aware regarding the urgency and would not give cause to such litigation.

10. It is now well settled by several decisions of various High Courts that essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne wholly or in part by public funds and ordinarily is not the function of the Court to go into the question whether the need was genuine or not unless the petitioners are able to specify that the action taken by the Government was a fraudulent one. Ordinarily the Government it is the best authority to determine whether the purpose in question is a public purpose or not and the declaration made by it u/s 6 is a conclusive evidence of the fact that the land in question is needed for public purpose. The expression "public purpose" has been used in a generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited. Therefore, when the proposed acquisition is intended to serve a public purpose in its generic sense, the fact that the acquisition is primarily for a company will not

affect the validity of its acquisition, though in the present case it has not been satisfactorily proved that in fact the acquisition is for the respondent-Company.

11. For all these reasons we see no merit in this petition which is dismissed with no order as to costs. The amount of security deposit, if any, on verification be returned to the petitioner in person.