

(2017) 08 AHC CK 0031
In the Allahabad High Court
Case No : 38328 of 2017

Himanshu Kumar And Another

APPELLANT

Vs

Union Of India And 3 Others

RESPONDENT

Date of Decision : 24-08-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 6 - Publication of preliminary notification and powers of officers thereupon. - Declaration that land is required for a public purpose
National Highways Act, 1956, Section 3D(1), Section 3-A (1), Section 3C (2), Section 3G (1) - Declaration of acquisition - Hearing of objections - Determination of amount payable as compensation

Citation : (2017) 08 AHC CK 0031

Hon'ble Judges : Dilip Gupta, Kumar Singh

Bench : Division Bench

Advocate : Hanuman Prasad Dube, Ravi Kant, Pranjali Mehrotra

Final Decision : Dismissed

Judgement

1. This petition seeks the quashing of the notification dated 23 August 2013 issued under Section 3D(1) of the National Highways Act 1956 that declares that the land specified in the Schedule should be acquired for building, maintenance, management and operation of National Highway No.232 on the Rae Bareilly-Banda Section in the stretch of land between Km.245 to Km. 289.

2. A notification dated 14 January 2013 was earlier issued under Section 3A (1) of the Act. It provided that the Central Government, after being satisfied that for the public purpose, land of which brief description was given in the Schedule, was required for the aforesaid purpose, declared its intention to acquire such land. It also provided that any person interested in the said land could, within twenty one days from the date of publication of the notification in the Official Gazette, object to the use of such land for the aforesaid purpose under Section 3C (1) of the Act. It also provided that any order made by the competent

authority under Section 3C (2) of the Act would be final. The total area of land situated in 17 villages that was proposed to be acquired was 6.8168 hectares or 68168 sq.meters. This notification was published in the Official Gazette on 14 January 2013 and in the two local newspapers on 14 February 2013.

3. The petitioners claim to be co-tenure holders of plot no.1311 situated in village Mahokhar, Tehsil Sadar, District Banda. The area sought to be acquired of plot no.1311 which was indicated in the notification issued under Section 3-A (1) of the Act is 0.2461 hectares or 2461 sq. meters.

4. Opportunity was given to file objections within 21 days from the date of publication of the 3-A (1) notification in the Official Gazette on 14 January 2013. The petitioners claim to have filed objections under section 3C(1) of the Act on 8 March 2013 with a prayer that instead of 0.2461 hectares of their land, only 0.0174 hectares may be acquired since only this much area of adjacent plots was acquired.

5. A declaration under Section 3-D (1) of the Act was made on 23 August 2013. It provides as follows:- "Whereas by the notification of the Government of India in the Ministry of Road, Transport and Highways No.S.O. 148 (E) dated 14 January 2013 published in Gazette of India. Extraordinary, Part-II Section 3, subsection (ii) issued under Sub-section (i) of Section 3D of the National Highways Act, 1956 (48 of 1956) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the land specified in the Schedule annexed to the said notification for building (widening/lour-lanning etc.) maintenance management and operation of National Highway No.232, on the stretch of land from Km. 245.000 to Km. 289.000 (Rae Bareli-Banda Section) in district of Banda in the State of Uttar Pradesh.

And whereas the substance of the said notification has been published in "Amar Ujala" and "Indian Express" both dated 14 February 2013 under sub-section (3) of section 3A of the said Act.

And whereas objections have been received and the same have been considered and disallowed by the competent authority.

And whereas, in pursuance of sub-section (1) of section 3D of the said Act, the competent authority has submitted its report to the Central Government.

Now, therefore, upon receipt of the said report of the competent authority and in exercise of the powers conferred by sub-section (1) of section 3D of the said Act, the Central Government hereby declares that the land specified in the said Schedule should be acquired for the aforesaid purpose.

And further, in pursuance of sub-section (2) of section 3D of the said Act, the Central Government hereby declares that on publication of this notification in the Official Gazette, the land specified in the said Schedule shall vest absolutely in the Central Government, free from all encumbrances."

6. The said notification issued under section 3D (1) of the Act was subsequently published in the two newspapers on 17 September 2013. The amount of compensation to be paid was, thereafter, determined under Section 3G (1) of the Act and a notice dated 1 June 2017 was issued to both the petitioners mentioning therein that the award has been made and they can receive the compensation on 7 July 2017, subject of course to producing the required documents.

7. Sri Ravi Kant, learned Senior Counsel assisted by Sri H.P. Dube, learned Counsel appearing for the petitioners submitted that the objections filed by the petitioners on 8 March 2013 before Competent Authority have not been decided and, therefore, the notification dated 23 August 2013 issued under section 3D (1) of the Act should be set aside since it had been issued without following the procedure contemplated under Section 3C of the Act. To support this contention, learned Senior Counsel placed the correspondence enclosed with the writ petition. In this connection, learned Senior Counsel has placed reliance upon the decisions of the Supreme Court in *The Purtabpur Company Ltd. v. Cane Commissioner of Bihar* AIR 1970 SC 1986 and *Dipak Babaria Babaria and another v. State of Gujarat and others* (2014) 3 SC 502.

8. Sri Pranjal Mehrotra learned counsel appearing for the National Highways Authority of India Authority has, however, submitted that this petition has been filed with inordinate delay of about four years and, therefore, for this reason alone the writ petition should be dismissed. Learned Counsel also submitted that admittedly the petitioners did not file objection under Section 3C (1) of the Act within the period stipulated and, therefore, they cannot raise any grievance about non- consideration of their objection. The submission is that the objections were required to be filed within 21 days from the date of publication of Section 3D (1) notification in the Official Gazette on 14 January 2013 but, even according to the petitioners, the objections were filed on 8 March 2013 much beyond 21 days. Learned counsel appearing for the Authority has also submitted that even in the objections that had been filed by the petitioners all that was stated was that the area of the land of the petitioners sought to be acquired is much more than that of the adjacent tenure holders and that the petitioners would have no objections if the same area as of others, is acquired. In fact, it has been stated that 0.0174 hectares of land of the petitioners should only have been acquired instead of 0.2461 hectares and the petitioners would have no objection if 0.0174 hectares of land is acquired.

9. We have considered the submissions advanced by the learned counsel for the parties.

10. In order to appreciate the contentions, it would be appropriate to refer to some of the relevant provisions of the Act.

11. Section 3A deals with the power to acquire the land and is as follows:- "3A. 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."

Section 3C deals with the hearing of the objections and is as follows:-

"3C. Hearing of objections- (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority 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.

(3) Any order made by the competent authority under sub-section (2) shall be final."

12. Section 3D deals with the declaration of acquisition and is as follows:- "3D. 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 subsection (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."

13. In the instant case, as noted above, the notification dated 14 January 2013 that was issued under Section 3A of the Act mentions that the Central Government, after being satisfied that for the public purpose the land mentioned in the Schedule was required for building(widening/four laning etc.), maintenance, management and operation of National Highway No.232 in the stretch of land from km.245.00 to 289.00 (Rae Bareli-Banda Section) intended to acquire such land and that any person interested in the said land may, within twenty one days from the date of publication of the notification in the Official Gazette, object to the use of such land for the aforesaid purpose under Section 3C(1) of the Act. It is also mentioned that such objections could be made to the Special Land Acquisition Officer.

14. The aforesaid Notification issued under Section 3A of the Act was published in the Official Gazette on 14 January 2013. Admittedly, the petitioners filed their objections on 8 March 2013 much beyond the stipulated period of 21 days from 14 January 2013. The Supreme Court in Union of India vs. Kushala Shetty and others (2011) 12 SCC 69 observed that objections filed beyond the stipulated period do not require any consideration because of non-adherence to the time schedule specified in Section 3C (1) of the Act. The relevant portion is reproduced below:- "Of course, a grievance on this score was made in the objections dated 16-10-2006 filed by some of the landowners of Padavu Village, but that was clearly an afterthought and, in any case, the same did not require consideration because of non-adherence to the time schedule specified in section 3-C(1) of the 1956 Act."

15. The Supreme Court in the case of Competent Authority vs. Barangore Jute Factory and others 2005) 13 SCC 477 also observed that Section 3-C (1) of the Act gives a very limited right to object. The objection can only be to the use of the land under acquisition for purposes other than mentioned in Section 3A (1) of the Act and it does not confer right to object to the acquisition. The relevant portion is reproduced below:- "We would, however, like to add that unlike Section 5- A of the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 4 of the said Act, Section 3-C(1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purpose other than those under Section 3-A(1). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned counsel for NHAI that failure to file objections disentitles the writ petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this Court in Delhi Admn. V. Gurdip Singh Urban (1999) 7 SCC 44. In our view, this judgment has no application in the facts of the present case where the right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which

confers a general right to object to acquisition of land under Section 5-A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except on the question of its user....." (emphasis supplied)

16. In the present case, as noted above, all that was stated by the petitioners was that lesser area of land should be acquired. The objection was not that the land was being acquired for any purpose other than Section 3A (1) of the Act. The petitioners, therefore, cannot be permitted to raise any issue about non-consideration of their objections said to have been filed under section 3C (1) of the Act. What is also important to note, at this stage, is that this petition has been filed after a period of 4 years to assail the notification that was issued under Section 3D (1) of the Act on 23 August 2013. As noted above, on publication of the declaration made under section 3D (1) of the Act, the land vests absolutely in the Central Government free from all encumbrances. The said notification was published in the Gazette dated 23 August 2013.

17. A Constitution Bench of the Supreme Court way back in the year 1974 in *Aflatoon & Ors. Vs. Lt. Governor of Delhi & Ors* AIR 1974 SC 2077 , examined the consequences of a delayed challenge to the acquisition proceedings and observed that writ petitions filed in the year 1972 seeking to challenge the notification issued under Section 4 of the Land Acquisition Act and the declaration made under Section 6 of the Act in the year 1966 should be dismissed solely on the ground of laches on the part of the petitioners as the petitioners should not be permitted to sit on the fence and allow the Government to complete the acquisition proceedings and then attack the notification on grounds which were available to them at the time when the notification was published as that would be putting a premium on dilatory tactics.

18. This Constitution Bench decision has been repeatedly followed by the Supreme Court in subsequent decisions.

19. In *The Ramjas Foundation & Ors. Vs. Union of India & Ors.* AIR 1993 SC 85, the notification under Section 4 of the Land Acquisition Act was issued in 1959 and the declaration under Section 6 of the said Act was made in 1969. The writ petitions were filed in the year 1973. After referring to the aforesaid Constitution Bench decision in *Aflatoon*, the Supreme Court observed as follows:- ".....The challenge on the other hand in the writ petition is in respect of notifications under Sections 4 and 6 covering the entire land measuring about 730 bighas situate in village Sadhurakhurd. We find no justification at all in explaining the delay on the ground that no award has been passed nor the appellants have been dispossessed so far. This cannot be an explanation for not challenging the notifications under Sections 4 and 6 of the Act. In the facts and circumstances of the case before us the appellants were also sitting on the fence and did not take any steps of challenging the notifications under Sections 4 and 6 of the Act till 1973 though the grounds now sought to be urged were available to the appellants as soon as such notifications were issued. Thus viewing the matter

from any angle we are clearly of the view that the writ petition was also liable to be dismissed on the ground of laches and delay on the part of the appellants apart from other grounds already dealt by us. In the face of the aforesaid view taken by us, it is not necessary at all to go on other questions raised in the case.".

20. The same view was reiterated by the Supreme Court in *State of Tamil Nadu & Ors. Vs. L. Krishnan & Ors.* (1996) 1 SCC 250 and it was observed:- "There is yet another and a very strong factor militating against the writ petitioners. Not only did they fail to file any objections in the enquiries held under Section 5-A, they also failed to act soon after the declarations under Section 6 were made. As stated above, the declarations under Section 6 were made in the year 1978 and the present writ petitions were filed only sometime in the year 1982-83 when the awards were about to be passed. It has been pointed out in *Aflatoon* that laches of this nature are fatal."

21. This was also the view expressed by the Supreme Court in *Urban Improvement Trust, Udaipur Vs. Bheru Lal & Ors.* JT 2002 (7) SC 310. In this case the declaration under Section 6 of the Land Acquisition Act was published in the official gazette on 24 May 1994 but the writ petitions were filed after two years to challenge the acquisition proceedings. The Supreme Court observed that in a case where the land is needed for a public purpose and that too for a scheme framed under the Urban Development Act, the Courts should take care not to entertain writ petition filed with delay as it is likely to not only cause prejudice to the persons for whose benefits the housing scheme is framed but it also has a negative impact on the planned development of the area.

22. In *Government of A.P. & Ors. Vs. Kollutla Obi Reddy & Ors.* (2005) 6 SCC 493, the Supreme Court again observed that the writ petitions filed after a long passage of time to challenge the acquisition proceedings should not be entertained.

23. The same view has been taken by the Supreme Court in the subsequent judgments rendered in *Swaika Properties Ltd. & Anr., Vs. State of Rajasthan and Ors.*, AIR 2008 SC 1494; *Sawaran Lata & Ors., Vs. State of Haryana*, 2010) 4 SCC 532 and in *Banda Development Authority, Banda Vs. Moti Lal Agarwal & Ors.*, 2011) 5 SCC 394

24. In *Banda Development Authority, Banda*, the Supreme Court held:- "16. In our view, even if the objection of delay and laches had not been raised in the affidavits filed on behalf of BDA and the State Government, the High Court was duty-bound to take cognizance of the long time gap of nine years between the issue of declaration under Section 6(1) and filing of the writ petition, and declined relief to Respondent 1 on the ground that he was guilty of laches because the acquired land had been utilised for implementing the residential scheme and third-party rights had been created. The unexplained delay of about six years between the passing of award and filing of the writ petition was also

sufficient for refusing to entertain the prayer made in the writ petition.

17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

.....

19. In matters involving challenge to the acquisition of land for public purpose, this Court has consistently held that delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay. The Court has also held that the delay of even few years would be fatal to the cause of the petitioner, if the acquired land has been partly or wholly utilised for the public purpose.

.....

26. In the instant case, the acquired land was utilised for implementing Tulsi Nagar Residential Scheme inasmuch as after carrying out necessary development i.e. construction of roads, laying electricity, water and sewer lines, etc. BDA carved out plots, constructed flats for economically weaker sections and lower income group, invited applications for allotment of the plots and flats from general as well as reserved categories and allotted the same to eligible persons. In the process, BDA not only incurred huge expenditure but also created thirdparty rights. In this scenario, the delay of nine years from the date of publication of the declaration issued under Section 6(1) and almost six years from the date of passing of award should have been treated by the High Court as more than sufficient for denying equitable relief to Respondent No.1."

25. The Supreme Court has, thus, repeatedly declined to entertain petitions for quashing the acquisition when they have been filed with considerable delay after the publication of the declaration under Section 6 of the Land Acquisition Act. In the Constitution Bench decision rendered in *Aflatoon* delay of six years was considered fatal and in the other cases delays ranging between two years to six years were found sufficient for dismissing the petitions on the ground of laches.

26. The records also indicate that possession of land was taken and the award has also been made and it is at the stage of payment of compensation that this petition has been filed in regard to a small area ad-measuring 2461 sq. meters. The information supplied under the Right to Information Act to the petitioners also indicates that the work is in progress and would be completed soon.

27. This writ petition, therefore, deserves to be dismissed as it has been filed after four years from the publication of the section 3D (1) notification in the

Official Gazette.

28. This apart, what needs to be noted is that the objections that were filed by the petitioners on 8 March 2013 were basically to the effect that a greater area of the land belonging to the petitioners has been acquired as compared to the adjacent land. In the present case 0.2461 hectares of land belonging to the petitioners was acquired but in some cases only 0.0174 hectares of land may have been acquired. It may be true that area of the land of the petitioners that was acquired was more but then the area that is actually needed depends upon the alignment of the Highway and it is for the experts to work-out what area is actually required.

29. It would, for this purpose, be useful to reproduce what was said by the Supreme Court in *Kushala Shetty* and it is as follows:- "28. Here, it will be apposite to mention that NHA is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHA prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be *ex facie* contrary to the mandate of law or tainted due to *mala fides*. In the case in hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained." (emphasis supplied)

30. It is, therefore, also not possible to accept this contention of learned Counsel for the petitioners. It was for the experts to workout how much area of each plot was required for the Highway.

31. What is also important to note is that the land was sought to be acquired for a public purpose namely building (widening/four laning etc.) maintenance, management and operation of National Highway No.232 in the stretch of land from km.245.00 to 289.00 (Rae Bareilly- Banda Section). The total area of land proposed to be acquired situated in 17 villages is 6.8168 hectares or 68168 sq. meters. Learned Senior Counsel has placed before the Court some documents and contended that the objections that were filed by the 65 tenure holders were actually not decided in the manner contemplated under Section 3C of the Act. It will not be appropriate at this stage to examine this matter at the instance of the

petitioners who had not filed objections within the stipulated period and that too after four years when the work of construction is about to be completed.

32. Thus, for all these reasons stated above, it will not be appropriate to grant any relief to the petitioners. The writ petition is, accordingly, dismissed.