
(2009) 08 AHC CK 0246
In the Allahabad High Court

Indrapal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Land Acquisition Act, 1894 — Section 17, 4, 5A, 6

Citation : (2009) 08 AHC CK 0246

Hon'ble Judges : S.K. Singh, J; Ashok Srivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Sri A.K. Misra, learned Advocate who appears in support of this writ petition, Sri M.C. Chaturvedi, learned Chief Standing Counsel for the State Authority and Sri Ramendra Pratap Singh, learned Advocate for the development authority.
2. Prayer in this petition is for quashing the impugned notifications issued u/s 4(1) read with Section 17(4) of the Land Acquisition Act, 1894 dated 13.2.2006 and u/s 6 read with Section 17(1) of the Act dated 12.6.2006 (Annexure Nos. 1 and 2 to the writ petition).
3. The question involved in this petition is that whether exercise of the State Government in issuing notifications in question by invoking urgency clause u/s 17 and dispensing the enquiry u/s 5A of the Land Acquisition Act is justified ?
4. For disposal of the writ petition the undisputed facts can be noticed here. Petitioners claim to be Bhumidhar of Plot Nos. 2 and 3 situated in village Rohillapur, Pargana Dadri, Tehsil and District Gautam Budh Nagar and they are recorded in Khatauni and Khasra extracts. It is claimed that over the aforesaid plots huge residential constructions/Abadi is in existence since last more than 50 years and petitioners are in possession. A proposal was submitted by the District Magistrate, Gautam Budh Nagar on the basis of request made by the respondent

authority for acquiring about 238.993 acres of land situated in village Rohillapur, Pargana Dadri, Tehsil and District Gautam Budh Nagar. Petitioners on coming to know apprised the authorities with regard to existence of Abadi over the land in question upon which a detailed survey was carried out at the level of District Magistrate in order to verify the things and a team of officers consisting number of the authorities besides the officials of the revenue department inspected the spot and submitted a report on 12.7.2003. On the basis of that report government took decision that land in dispute is to be exempted from acquisition. The order of the State Government in this respect is dated 31.7.2003. It is thereafter, after lapse of such a long by the impugned notification land of the petitioners is sought to be acquired and thus this writ petition.

5. Submission of the learned Counsel for the petitioner is that impugned notifications are totally illegal, arbitrary and unjust and in fact they are in colourable exercise of the powers with the government. Submission is that no material exists on the record before the State Government to form subjective satisfaction for dispensing of the enquiry and invoking urgency clause. The earlier decision taken by the State Government for exemption of the land by order dated 31.7.2003 based on the report of the team so constituted for the purpose dated 12.7.2003 attained finality and thus without considering this aspect impugned notification has been illegally issued. It is further submitted that in issuing notification to acquire only two plots, there appears to be no public purpose, and therefore, impugned exercise being totally arbitrary, whimsical and malafide, that needs interference of this Court.

6. Lastly, it is submitted that if by lapse of time or otherwise on being satisfied about no need of acquiring the land if the proceedings lapsed or exemption was granted, unless some extraordinary situation is there, in a routine manner again notification cannot be issued. In support of the aforesaid submission reliance has been placed on the judgment given by the Apex Court in the case of Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, and the decision given in case of Union of India (UOI) and Others Vs. Mukesh Hans etc., Besides aforesaid reliance has been placed on other decisions also.

7. In response to the aforesaid Sri Chaturvedi, learned Chief Standing Counsel and Sri Ramendra Pratap Singh, learned Advocate submits that if State Government was satisfied that land is required for the planned development then petitioner cannot question the power of the respondents and at the same time argument that petitioner's Abadi is in existence can not detain the respondents from acquiring the land. Submission is that even Abadi land can be acquired, and therefore, if notification has been issued by invoking urgency clause and dispensing the opportunity of enquiry then no exception can be taken to it.

8. In view of the aforesaid, this Court is to decide the matter. There is no dispute about the fact that huge area to the extent of 238.993 acres was required by the respondent for the purpose of planned development in the year 2003. Petitioners

on coming to know about acquisition process made representation about existence of their old Abadi since last 50 years upon which a team of officers so constituted for the purpose made necessary inspection and submitted report on 12.7.2003. The team consisted of Administrative Officer of the authority, Deputy Collector and Tahsildar . The report is Annexure-4 to the writ petition. The State Government having agreed with the report so submitted vide order dated 22.7.2003 so communicated to the District Magistrate, Gautam Budh Nagar by letter dated 31.7.2003 informed that land in dispute being Abadi in nature has been exempted from acquisition (Annexure-5 to the writ petition). There is no dispute about the fact that decision of the State Government dated 31.7.2003 has become final and it is thereafter after about three years notification has been issued to acquire the land in dispute and surprisingly enough only two plots belonging to the petitioners are subject matter of the fresh notification. The averment in respect to the finality of the decision so taken by the State Government vide letter dated 31.7.2003 is contained in para 17 of the writ petition about which there is no denial in the counter affidavit filed by the authority which is clear from para 14 of the counter affidavit. Similarly in para 8 of the counter affidavit filed by the State also there is no denial to the aforesaid fact. The only assertion in the counter affidavit is that existence of Abadi will not be a ground for the petitioner to claim any exemption. It is not the case where petitioner to challenge the notification for the first time is claiming any exemption on the ground of Abadi rather it is a case where the notification to acquire huge area was issued in the year 2003 and at that time on the basis of inspection report submitted by the duly constituted committee the State Government having agreed to the spot situation chose to exempt the land from acquisition and thus the State Government has to come out with any justification or deviation to the consideration so taken at that time so as to permit issuance of the fresh notification for the land in dispute. In the counter affidavit there is absolutely no whisper about incorrectness or otherwise in respect to the decision so taken by the State Government on 31.7.2003 by which State Government decided to exempt the land.

9. Neither there is any averment in the counter affidavit nor during course of argument from the side of the respondent any justifiable cause is shown that the execution/implementation of the scheme is held up or there is serious difficulty in getting the planned development scheme carried out/completed. Neither any map nor any other detail in respect to the spot situation has been placed before the court so as to be satisfied that any development work on the spot is being jeopardized on account of non availability of these two plots. If huge area has already been acquired in the year 2003 and the land in dispute on the facts has been chosen to be exempted then unless reasons are placed, this Court finds exercise of the State Government in issuing notification by invoking urgency clause u/s 17 and dispensing enquiry u/s 5A to be not justified. No material whatsoever has been stated to be in existence on the basis of which an opinion can be formed by the State Government for the purpose to dispense the enquiry

and to invoke urgency clause. It is a case where notification has been issued by complete non application of mind on the part of the respondent although on full consideration of the situation, relying upon the report of the officials the State Government earlier had taken contrary decision.

10. The Apex Court in the decision given in case of Union of India (UOI) and Others Vs. Mukesh Hans etc., made certain observations in respect to right of opportunity of hearing u/s 5A of the Act. The observation as made in para 36 is hereby quoted:

It is clear from the above observation of this Court that right of representation and hearing contemplated u/s 5A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. Therefore, in our opinion, if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5A.

11. Another observation by the Apex Court in the decision given in case of Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, is also to be quoted:

Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down u/s 5A of the Act in exceptional case 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 proposed to be acquired for public purpose. A public purpose, however laudable it may, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and also dispenses with the inquiry u/s 5A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause u/s 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry u/s 5A of the Act could be completed. In other words, if the power u/s 17 is now exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily 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 law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot a

substitute or support for the laxity, lethargy or lack of care on the part of the State administration.

12. In the recent judgment given by the Apex Court in case of Essco Fabs Private Ltd (Supra) the Apex Court quashed the impugned notification issued u/s 6 of the Land Acquisition Act on the ground that after lapse of long time if the land is to be acquired then valuable rights of the land owner of raising objection u/s 5A of the Act cannot be taken away. The Apex Court found that urgency clause cannot have been invoked and enquiry and hearing of objection provided u/s 5A could not have been dispensed with.

13. In another decision given by the Apex Court in case of Om Prakash and Another Vs. State of U.P. and Others, the Apex Court made the following observation:

According to the aforesaid decision of this Court , inquiry u/s 5A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, at least observation regarding Article 14, vis-a-vis, Section 5A of the Land Acquisition Act would remain apposite.

14. In another decision given in case of Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, the following observation was made:

The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings u/s 5A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry u/s 5A which has to be considered.

15. From the facts and analysis so made the undisputed fact is that neither any material nor any circumstance or ground has been stated in the counter affidavit nor during course of argument that after taking the final decision to exempt the land in dispute in the year 2003, after the report of the committee so constituted to exempt the land what was the necessity or urgency to immediately notify the land in dispute and that too only two plots. No other land is sought to be acquired.

16. Thus this Court is convinced that issuance of notification acquiring the land in dispute is arbitrary and illegal and the respondents in dispensing the enquiry u/s 5A of the Act and in invoking urgency clause u/s 17 of the Act has committed manifest error.

17. When the writ petition was filed this Court directed the parties to maintain status- quo and that stay continued till decision of the matter.

18. For the reasons given above, this writ petition succeeds and is allowed. The impugned notifications issued u/s 4(1) read with Section 17(4) of the Land Acquisition Act, 1894 dated 13.2.2006 and u/s 6 read with Section 17(1) of the

Act dated 12.6.2006 (Annexure Nos. 1 and 2 to the writ petition) are hereby quashed.