

(2003) 05 MP CK 0092

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6582 of 2002

Jagannath and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-05-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A

Citation : (2003) 05 MP CK 0092

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Alok Aradhe, for the Appellant; Shashank Shekhar, Government Advocate for respondents 1, 4, 5 and 6 and Shekhar Sharma for respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Petitioners are assailing the acquisition of land in this writ petition pursuant to the notification issued u/s 4(1) of the Land Acquisition Act on two grounds, first that notification is vague inasmuch as purpose is mentioned as "residential", no other indication is given. The second objection is that enquiry u/s 5A of Land Acquisition Act was made by the Land Acquisition Officer, matter then travelled to Collector and thereafter to Commissioner. Commissioner as per Order P/8 dated 29th May, 2002 has simply expressed his agreement with the view expressed by the Land Acquisition Officer and Collector, it cannot be said to be a decision rendered by the Commissioner on merit u/s 5-A of the Act.

2. It is averred in the petition that petitioners are owners of land situate at Village Bada Buzurg, Tehsil-Burhanpur, District-Khandwa. Notification P/3 u/s 4(1) of the Act was issued for the purpose of acquisition of land. Pursuant thereto petitioners submitted their objections, enquiry u/s 5-A of the Act was held and the Land Acquisition Officer submitted the report dated 14-5-2002 contained in order sheets P/9. Collector forwarded the report to the Commissioner for appropriate action on 15-5-2002. Thereafter Commissioner has

passed the order which was communicated by the Deputy Commissioner as per letter P/8 dated 29th May, 2002. Petitioners submit that notification P/3 is vague inasmuch as in column 6 of the notification purpose is mentioned as "residential", nothing else is mentioned in para 6 of the notification. Thus, notification issued u/s 4 is vague and liable to be quashed. It is also averred by the petitioners that Commissioner has not dealt with the objections of the petitioners and has merely agreed with the recommendations made by Land Acquisition Officer and Collector, there is no proper decision rendered on the objections of the petitioners u/s 5-A of the Act. Petitioners have submitted that land is reserved for various other purposes as apparent from letter P/6, that is, for construction of the main road, residential purpose, etc. Therefore, land cannot be acquired for the purpose different than made in the development plan and as mentioned in the notification u/s 4 of the Act.

3. A return has been filed by respondents 2 and 3/M.P. Housing Board. It is contended in the return that acquisition has been properly made. There is no vagueness in the notification issued u/s 4(1) of the Act, declaration u/s 6 was also issued on 30-8-2002, decision has been rendered by the Commissioner in accordance with law. It is further submitted that for development 14.68 hectares of land is required for development of small township in which various kinds of civil amenities like shopping complex, community hall, school, play ground, open space and roads are going to be constructed. The land in question will be developed in accordance with the master plan.

4. Shri Alok Aradhe, learned counsel appearing for petitioners has submitted that notification is vague and liable to be quashed on the strength of decision of the Apex Court in Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, as mentioning of "residential" purpose does not give an indication about the mode for which land is to be acquired. He has further submitted that Commissioner has simply expressed his agreement to the orders passed by Land Acquisition Officer and Collector, thus, no decision on merit on the objections of the petitioners u/s 5-A has been given.

5. Shri Shekhar Sharma, learned counsel appearing for respondents 2 and 3 has submitted that there is no vagueness in the notification, as large area is acquired, it is not necessary to point out with reference to every particular piece of land, for what purpose it is to be used. Thus, there is no vagueness in the notification and the decision rendered by the Commissioner is proper.

6. Shri S. Shekhar, learned Govt. Advocate appearing for respondents 1, 4, 5 and 6 has submitted that notification is not vague, purpose is mentioned, name of village has been mentioned, district has been mentioned and the land has been acquired for the purpose of M.P. Housing Board is also mentioned. Thus, there is no vagueness in the notification and decision of the Commissioner is in accordance with law, well reasoned.

7. The first question for consideration is whether notification P/3 issued u/s 4(1)

of the Act is vague.

8. It is mentioned in the notification that land is required for the purpose of M. P. Housing Board, column 5 has to be read with column 6 in which "residential" purpose is mentioned, thus, notification P/3 issued u/s 4, in my opinion, leaves no room for doubt that land has been acquired for "residential" purpose for scheme of M.P. Housing Board, thus, it is clear that for acquiring the land the "residential" requirement is mentioned in the notification. Thus, I find no vagueness in the notification in question with respect to purpose.

9. The submission that it should have been mentioned which particular piece of land is required for what particular purpose, when large area is required for the purpose of residential colony and for establishing a small township, it is not necessary, in my opinion, to mention vis-a-vis with regard to each piece of land for what purpose it is to be acquired. It has been mentioned that development plan has to be adhered to in making development over the land in question.

10. Coming to the decision of the Apex Court in M.P. Housing Board vs. Mohd. Shafi and ors. (supra) para 14 has been relied upon by the learned counsel appearing for petitioners in which it has been laid down thus:-

14. Apart from the defect in the impugned notification, as noticed above, we find that even the "public purpose" which has been mentioned in the schedule to the notification as "residential" is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in "public interest" or for the benefit of the "public" or an identifiable section thereof. In the absence of the details about the alleged "public purpose" for which the land was sought to be acquired, no one could comprehend as to why the land was being acquired and therefore was prevented from taking any further steps in the matter.

11. The said decision turned on its own facts. In the instant case there is no iota, of any doubt on reading of the notification u/s 4 of which plan etc. could be looked into in the office that land was acquired for the "residential" purpose for the scheme of M. P. Housing Board, other details have also been mentioned in the notification. It cannot be said that residential purpose ought to have been further classified which particular piece of land is to be used for which purpose in residential township/colony.

12. The Apex Court has considered the question of vagueness in notification in State of Tamil Nadu v. L. Krishnar, (1996) 1 SCC 250 and it has been laid down that whether the public purpose stated in the notification is vague or not is a question of fact to be decided in each case, when there is acquisition of large extent of land. The Apex Court has held thus:-

35. The next question is whether the public purpose stated in the three

notifications concerned is vague. It must be remembered that what is vague is a question of fact to be decided in each case having regard to the facts and circumstances of that case. By saying that the public purpose in the said notifications is vague what the respondents really mean is not that it is not a public purpose but that since the public purpose is expressed in vague terms and is not particularised with sufficient specificity, they are not in a position to make an effective representation against the proposed acquisition.

36. In *Aflatoon*, the Constitution Bench dealt with the question whether the acquisition of a large extent of land for a public purpose, viz., "the planned development of Delhi" was vague. Mathew, J., speaking for the Constitution Bench, stated that; (SCC p. 290, para 5)

According to the section it is only necessary to state in the notification that the land is needed for a public purpose

and then added: (SCC p. 290, para 5)

The wording of section 5-A would make it further clear that all that is necessary to be specified in a notification u/s 4 is that the land is needed for a public purpose. One reason for specification of the particular public purpose in the notification is to enable the person whose land is sought to be acquired to file objection u/s 5-A. Unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition u/s 5-A.

The learned Judge then referred to the ratio of *Munshi Singh* and held: (SCC p. 290 para 6)

We think that the question whether the purpose specified in a notification u/s 4 is sufficient to enable an objection to be filed u/s 5-A would depend upon the facts and circumstances of each case.

The learned Judge also referred to the decision in *Arnold Rodricks* and held: (SCC p. 290, para 8)

(I)n the case of an acquisition of a large area of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the case of an acquisition of a small area, it might be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed. (emphasis supplied).

37. In *Pt. Lila Ram vs. Union of India*, another Constitution Bench held that the public purpose mentioned in the notification concerned therein, viz., "for the execution of the Interim General Plan for the Greater Delhi", is specific in the circumstances and does not suffer from any vagueness. The Court again pointed out that the notification does not pertain to a small plot but a huge area covering thousands of acres and in such cases, it is difficult to insist upon greater

precision for specifying the public purpose because it is quite possible that various plots covered by the notification may have to be utilised for a different purpose set out in the Interim General Plan. Of course, that was a case where the Interim General Plan was prepared and published by the Government after approval by the Cabinet as a policy decision for development of Delhi as an interim measure till the master plan could be made ready.

38. The above decisions, and particularly the decision in *Aflatoon*, do establish that whether the public purpose stated in the particular notification is vague or not is a question of fact to be decided in the facts and circumstances of each case and further that where a large extent of land is acquired, it would not be proper to insist upon the Government particularising the use to which each and every bit of the land so notified would be put to. The three notifications concerned herein, we are told, pertain to about 400 acres in all. The parties have not furnished copies of the notifications in their entirety. Only Shri Ashoke Sen has supplied the full text of the notification dated 19-2-1975. It shows that a total extent of ninety-seven acres one cent was proposed to be acquired, affecting the holdings of about twenty-five persons, some of them holding such small extents of 0.26 or 0.25 acre.

13. The Division Bench of this Court in *Seema Suraksha Bed Karmik Sahkari Grih Nirman Samiti, Tekanpur vs. Datarsingh and others*, 2001(3) MPLJ 673 has also reiterated the law laid down in *State of T.N. and others vs. L. Krishnan and others* (*supra*).

14. Coming to the second submission as to decision of the objection u/s 5-A, it is clear from the report dated 14-5-2000 the report submitted by the Land Acquisition Officer is in detail. Inspection report has also been taken into consideration. It is not shown or urged by the petitioners how on merits, the decision is bad in law, when report was submitted and was considered and approved by the Commissioner, that has to be taken to be a decision by the Commissioner. It is clear that Commissioner considered the reasons mentioned in the report, it cannot be said that Commissioner has failed to consider the matter. There was objective material placed before the Commissioner to render the decision, thereafter decision has been rendered by the Commissioner which has been simply communicated as per letter P/8. Communication P/8 has been assailed in this writ petition. In my opinion, it cannot be said that decision on the objections of the petitioner by the Commissioner is not proper or in accordance with law. Matter has travelled to the Commissioner is not in dispute and the Commissioner has passed the final order is also not in dispute.

15. For the aforesaid reasons. I find no merit in the writ petition. It is dismissed. No order as to costs.