

(1968) 12 MP CK 0005
In the Madhya Pradesh High Court
Case No : M. P. No. 2 of 1967

Jagannath Prasad and others

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 04-12-1968

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 4

Citation : (1969) J LJ 267 : (1969) MPLJ 196

Hon'ble Judges : P. V. Dixit, C.J.; G. P. Singh, J

Bench : Division Bench

Advocate : A. B. Choubey, for the Appellant; K. P. Munshi, Govt. Advocate, for the Respondent

Judgement

P. V. Dixit, C. J.

By this application under Article 226 of the Constitution the petitioners, who claim to be the owners of a piece of land situated within the limits of the Gwalior Municipal Corporation, seek a writ of certiorari for quashing a notification issued by the Government on 6th November 1965 u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) and published in the Gazette dated 19th November 1965 with regard to the acquisition of the land belonging to the applicants for the purpose of constructing a dispensary. The notification also directed that section 5A of the Act shall not apply in respect of the said land as in the opinion of the Government section 17(1) of the Act applied to the land. This notification was followed by another notification u/s 6 of the Act published in the Gazette dated 8th April 1966. The notification u/s 6 directed the Collector u/s 17 (1) of the Act to take possession of the land on the expiration of 15 days from the publication of the notice mentioned in section 9(1) . A writ of certiorari has been sought also for quashing the notification issued u/s 6 .

The only ground which Shri A. R. Choube, learned counsel appearing for the petitioners, urged before us was that the land in the present ease was neither waste land nor arable land and consequently the provisions of subsection (1) and

sub-section (4) of section 17 could not be invoked in respect of the land and the Government had no power to direct that section 5A of the Act shall not apply and that possession of the land shall be taken on the expiration of 15 days from the publication of the notice u/s 9(1). Learned counsel contended that the direction of the Government about the inapplicability of section 5A of the Act deprived the applicants of their valuable right of objecting to the acquisition of the land, of being heard in the enquiry u/s 5A and of satisfying the acquiring authority that the proposed acquisition of the land was not justified or legal.

In the return filed on behalf of the respondent-State it is not disputed that the land in question belonged to the petitioners and that it is situated within the limits of the Gwalior Municipal Corporation. It has, however, been averted that the land was a waste land on the date of the issue of the notification u/s 4 of the Act. It has also been stated that on the publication of the notification u/s 4-

.it was open to the persons interested in the land to raise such objections u/s 5(A) of the Act as they might have deemed proper. The mention of the opinion of the Government that section 17 of the Act applies to these lands, even if erroneous, did not preclude the owners of the land from filing objections against the alleged expression of opinion as also on the merits of the case.

The persons interested in the land filed no objections u/s 5(A) of the Act within the prescribed period of one month, they or their successors in interest can have no grievance now.

Having heard learned counsel for the parties we have reached the conclusion that this application must be granted. Sub-sections (1) and (4) of section 17 of the Act are as follows:-

Special powers in cases of urgency-

(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

* * *

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made u/s 8 in respect of the land at any time after the publication of the notification u/s 4, sub-section (1).

It will be seen that section 17(4) applies only in the case of the land to which the provisions of section 17(1) or section 17(2) are applicable. We are not concerned

with section 17(2) which deals with acquisition of land for Railway Administration. The relevant provision is section 17(1) . For the applicability of section 17(1) , two conditions must be fulfilled. First, the acquisition of the land must be urgently necessary; and, secondly, the land must be waste or arable land. It is only when these two conditions are satisfied that it is competent for the acquiring authority to direct u/s 17(4) that the provisions of section 5A shall not apply to the proposed acquisition of the land.

The question of the existence of urgency is undoubtedly a matter for the subjective determination of the Government. It is not a justiciable matter. But the question whether the land is waste or arable is an objective fact and u/s 17(4) , the Government is required to form an opinion in regard to this objective fact before exercising its power under that provision of issuing a direction with regard to the inapplicability of section 5A . It is true that, as pointed out by the Supreme Court in *Raja Anand v. State of U. P.* (1), the opinion of the State Government which is a condition for the exercise of the power u/s 17(4) is subjective and the Court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the Government u/s 17(4) . But as further emphasized by the Supreme Court in that case-

..even though the power of the State Government has been formulated u/s 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a Court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide. If, therefore, in a case the land under acquisition is not actually waste or arable land but the State Government has formed the opinion that the provisions of sub-section (1) of section 7 are applicable, the Court may legitimately draw an inference that the State Government did not honestly form that opinion or that in forming that opinion the State Government did not apply its mind to the relevant facts bearing on the question at issue.

The meaning of the expressions "waste land" and "arable land" has been expounded by the Supreme Court in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, . and *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*, . According to the decision in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, ., "arable land" is "land" which is mainly used for ploughing and for raising crops; "waste land" means "land which is unfit for cultivation or habitation, desolate and barren land with little or no vegetation thereon." In the case of *Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*, . it has been held that "by arable land is meant not only land capable of cultivation but also actually cultivated". In the case of *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, . it has also been held that the question of determination of character of land is a preliminary finding of fact on which depends the jurisdiction of the State Government to act u/s 17 (1) and section 17 (4) of the Act and, therefore, the High Court is entitled in a proceeding of writ of certiorari to determine whether or not the finding of the State Government is

correct. The pertinent observations in the case of Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, . are:-

..the condition imposed by section 17 (1) is a condition upon which the jurisdiction of the State Government depends and it is obvious that by wrongly deciding the question as to the character of the land the State Government cannot give itself jurisdiction to give a direction to the Collector to take possession of the land u/s 17 (1) of the Act. It is well established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact the High Court is entitled, in a proceeding of writ of certiorari to determine, upon its independent judgment, whether or not that finding of fact is correct.

In the present; case, it is manifest that the Government never applied its mind to the question whether the land proposed to be acquired was waste land or arable land. The impugned notification do not at all indicate that the necessary opinion was formed by the Government. In the notification u/s 4 it was simply stated that in the opinion of the Government section 17 (1) of the Act applied. This general statement about the applicability of section 17 (1) fails to give any idea whether the Government considered the land in question to be waste land or arable land. Even in the return filed by the State there is nothing to show that the Government at any time formed an opinion about the definite character of the land. All that has been stated is, "The land was lying a waste land upto the date of notification u/s 4, Land Acquisition Act". In fact, the land proposed to be acquired cannot in any sense be regarded as waste land or arable land as explained by the Supreme Court in the decisions cited earlier. The petitioners' land is admittedly situated within the limits of the Municipal Corporation; it is a building site. It is a land which is suitable for putting up any construction and cannot be regarded as land which is unfit for cultivation or habitation or desolate land. It may be that it is not being put to any use at present; but that does not mean that it is waste land. It is also not arable land capable of being used for ploughing or for raising crops. When, therefore, the Government did not form any opinion about the character of the land and when in fact the land proposed to be acquired is neither waste land nor arable land, the Government's directions that section 5A of the Act shall not apply and that possession of the land should be taken on the expiration of 15 days from the publication of the notice u/s 9(1) are dearly illegal and ultra vires.

Before parting with this case, we must refer to the Statement in the return that it was open to the petitioners to raise objections u/s 5A of the Act and that "the mention of the opinion of the Government that section 17 of the Act applies to these lands, even if erroneous, did not preclude the owners of the land from filing objections against the alleged expression of opinion as also on the merits of the case". We must say that this is a most curious way of meeting the complaint made on behalf of the petitioners that no direction with regard to the inapplicability of section 5A could be made in-as-much as the land was neither waste land nor arable land and the Government did not in fact form any opinion

about the character of the land.

For these reasons, the notification dated 6th November 1965 u/s 4 by which the State Government applied section 17(1) and (4) of the Act to the land in question and directed that the provisions of section 5A of the Act shall not apply to the land is quashed. The notification of the State Government dated 15th December 1965 u/s 6 of the Act declaring that the land in question was needed for public purpose and directing the Collector to take order for acquisition of the land u/s 7 of the Act and further directing him to take possession of the land on the expiration of fifteen days from the publication of the notice mentioned in section 9(1) is also quashed. The petitioners shall have costs of this application from the respondents Nos. 1 to 3. Counsel's fee is fixed at Rs. 200. The outstanding amount of the security deposit shall be refunded to the petitioners.