

(2012) 04 MP CK 0092

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2471 / 2012

Jagdish Chandra and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(1), 4, 5A, 6

Citation : (2012) 04 MP CK 0092

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : C.L. Yadav, with Mr. O.P. Solanki, for the Appellant; C.R. Karnik, G.A. for Respondents No. 1 to 3 and Mr. H.Y. Mehta, Advocate for Respondents No. 4 and 5, for the Respondent

Judgement

Hon'ble Shri N.K. Mody, J.—The prayer in the petition is to quash the notification dated 08/12/2011, 30/09/2011 and 27/02/2012. Short facts of the case are that petitioners are agriculturist residing at village-Doulatur, Tehsil-Badnagar, District-Ujjain. It was alleged that land bearing survey No. 255, 264, 210, 209, 203 and 265 is owned by the petitioners. It was alleged that vide letter dated 13/09/2010 issued by respondent No. 5 to the respondent No. 2 it was requested that the lands in question are required for converting Ratlam-Mhow track from meter gauge to broad gauge. It was alleged that respondent No.2 was requested to issue notification u/s 4 of the Land Acquisition Act (which shall be referred hereinafter as "Act"). It was alleged that in compliance of letter dated 13/09/2010 issued by the respondent No. 5, respondent No. 2 has issued notifications Annexure-P/1 and P/2 by invoking urgency clause u/s 17 (1) of the Act and directing that the provision of Section 5A of the Act will not apply in this case because provision of Section 17 (1) of the Act is applied. It was further alleged that the respondent No. 3 has issued a public notice to the petitioners and other persons on 20/12/2011 stating that the notification u/s 4 of the Act has already published in the Gazattee and Tehsildar is authorized to take further action in the matter in accordance with law. It was also stated in the notice that

no objection will be maintainable because urgency clause of Section 17 (1) of the Act is invoked. In the petition it is prayed that orders/notifications be quashed.

2. Learned counsel for the petitioners argued at length and submit that letter whereby request was made to acquire the land is dated 13/09/2010 while notification was issued by the respondent No. 2 on 30/09/2011 i.e. after more than one year and another public notice was issued on 20/12/2011 which itself shows that there was no justification on the part of respondent No. 4 to invoke the urgency clause. It is submitted that in the letter dated 13/09/2010 issued by the respondent No. 5 it is not mentioned that there is an urgency in the matter. It is submitted that to file an objection and protest against the acquisition is a valuable and substantive right of the petitioner. It is submitted that it is the only protection available to the petitioner under the Act, therefore, the respondents have no authority to deny this opportunity of the petitioners without any material and application of proper mind. It is submitted that the respondents can dispense with provision of Section 5A of the Act only on good and valid considered reason. It is submitted that Annexure-P/6 is the map which shows the existing position of land owned by the petitioners. It is submitted that if the land is acquired for the purpose of laying down the railway line, then, the field owned by the petitioners will be divided in two parts which will affect the petitioners adversely. Learned counsel placed reliance on a decision in the matter of *Jai Narain and Others Vs. Union of India and Others*, wherein Hon"ble Apex Court has held that question of urgency cannot be determined solely by expressions used in notification u/s 4. It was further held that the emergency must be reflected in the need of the acquisition. The existence of urgency is a matter which is entirely based on the subjective satisfaction of the Government. Learned counsel further placed reliance on a decision in the matter of *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, wherein Hon"ble Apex Court has held that right of representation and hearing contemplated u/s 5A 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, 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. Further reliance is placed on a decision in the matter of *Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others*, wherein Hon"ble Apex Court has observed that to say that invoking of urgency provisions would be justified if land was required for implementation of a project which would benefit large section of the society. It needs no emphasis that majority of the projects undertaken by the State and its agencies / instrumentalities, the implementation of which requires public money, are meant to benefit the people at large or substantially large segment of the society. If what the High Court has observed is treated as a correct statement of law, then in all such cases the acquiring authority will be justified in invoking Section 17 of the Act and dispense with the inquiry contemplated u/s 5A, which

would necessarily result in depriving the owner of his property without any opportunity to raise legitimate objection. However, as has been repeatedly held by this Court, the invoking of the urgency provisions can be justified only if there exists real emergency which cannot brook delay of even few weeks or months. In other words, the urgency provisions can be invoked only if even small delay of few weeks or months may frustrate the public purpose for which the land is sought to be acquired. Nobody can contest that the purpose for which the appellants' land and land belonging to others was sought to be acquired was a public purpose but it is one thing to say that the State and its instrumentality wants to execute a project of public importance without loss of time and it is an altogether different thing to say that for execution of such project, private individuals should be deprived of their property without even being heard. It is submitted that in view of the aforesaid position of law, petition filed by the petitioners be allowed and the notifications be quashed.

3. Learned counsel for the respondents No. 1 to 3 and 4 to 5 have filed separate return. In the return filed by the respondents No. 4 and 5 it is alleged that Railway Administration is converting Meter Gauge Lines into Broad Gauge and land is acquired for said purpose because existing Meter Gauge alignment is having many sharp turns (curves) which cannot be used for Broad Gauge lines as existing alignment is not suitable for higher speed potential and extent loading standards of Broad Gauge. It is submitted that acquisition was started only after invoking Section 17 of the Act as there was urgency of development activity to convert Meter Gauge into Broad Gauge. It is submitted that after the letter dated 27/09/2010 Annexure-P/ 5 issued by the respondent No. 5 respondent No. 2 directed respondent No.3 to take necessary documents from Railway Administration vide letter Annexure-4-R/3. It is submitted that respondents No. 4 and 5 also requested to Chief Engineer to accord approval to take acquisition proceedings u/s 17 of the Act vide Annexure-4-R/4. Thereafter Divisional Commissioner, Ujjain Division, Ujjain vide letter dated 14/09/2011 accorded permission to acquire land u/s 17 of the Act which is annexed as Annexure-4-R/5. It is submitted that respondents No. 4 and 5 submitted all necessary documents and approval to respondent No. 2 vide letter dated 30/03/2011 and requested to give detail of amount of compensation to be deposited and thereafter deposited the amount of compensation vide letter Annexure-4-R/6. It is submitted that after following the due procedure the acquisition was started and notification u/s 4 of the Act was published in official gazette on 30/09/2011 and the same was published in News Paper on 08/12/2011 and notification u/s 6 of the Act was published on 27/02/2012. It is submitted that petitioners are challenging the notifications of Section 4 of the Act after a lapse of five months. It is submitted that petitioners have submitted objections before the Acquisition Officer and objections of the petitioners is that the petitioners be permitted to lay pipe lines below the new Railway Line for the purpose of irrigation as their field will be divided in two part because of the railway line. It is submitted that another prayer made in the objection filed by the petitioners is that after laying down

Broad Gauge Railway Line the Railway Track of Meter Gauge which is lying near to the proposed land which has to be acquired will be of no use of respondents, therefore, instead of giving compensation the land be given in exchange. It is submitted that this itself shows that looking to the urgency of land petitioners have requested for exchange of land and permission to lay down the pipe line. Learned counsel placed reliance on a decision in the matter of Mahadevappa Lachappa Kinagi Vs. State of Karnataka AIR 2009 SC 477 wherein because of submerging by overflow of river the land in question was required for rehabilitation of family of village Hon"ble Apex Court observed that in view of emergency and completion of barrage, acquisition of further land by Government by invoking emergency power under Section 17 is proper. It is submitted that in the facts and circumstances of the case, petition filed by the petitioners be dismissed.

4. From perusal of record, it is evident that the request was made for acquisition of land by respondents No. 4 and 5 to respondent No. 2 vide letter dated 13/09/2010 and notification u/s 4 of the Act was issued on 30/09/2011. Thus the notification was issued after a year but in between that period respondent No. 2 inquired by issuing letter dated 13/09/2010 whereby the respondent No. 5 was asked the urgency. Vide letter dated 08/10/2010 Tehsildar was directed to submit the status of land and Tehsildar was asked to submit the NOC. Vide letter dated 12/10/2010 NOC was issued by Tehsildar and Tehsildar also after investigation prepared Panchnama on 20/10/2010. Thereafter Tehsildar submitted the report to S.D.O. Thereafter on 30/03/2011 Assistant Chief Engineer Railways issued a letter. On 01/04/2011 Land Acquisition Officer required to deposit the amount. In this regard a letter was issued on 12/05/2011. For invoking urgency clause order was issued by Commissioner, Ujjain Division on 14/09/2011. After collection of rates of irrigated and un-irrigated lands on 01/04/2011 notification was issued. Keeping in view all the facts and circumstances of the case and also the fact that decision of State Government for invoking urgency clause is not questioned on malafides, this Court finds that no case for interference is made out. In the matter of Chandmal Gendalal Agrawal and State of M.P. 1984 MPLJ 563 Division Bench of this Court has held that question whether enquiry u/s 5A should be dispensed with is a matter of subjective satisfaction of State Government and decision of State Government whether urgency exists cannot be questioned in Court if Government applies its mind and acts in good faith. Undisputedly the work of laying down of Railway line is in progress as the tenders has also been invited. The Railway line which has to be laid down will also cover the area which is tribble and needs development. In the circumstance, petition filed by the petitioners has no merits and the same stands dismissed. However, keeping in view the request made by petitioners for exchange of land it is directed that if an appropriate application is filed by the petitioners supported with affidavit specifically stating that petitioners be given land in exchange and not the compensation then, respondents No. 4 and 5 shall examine that whether the land owned by

respondents No.4 and 5 which is being used presently for the track of meter gauge will be of any use of respondents No. 4 and 5 and if the respondents No. 4 and 5 is of the view that land owned by respondents No.4 and 5 over which meter gauge track is existing is of no use then the respondents No. 4 and 5 shall be at liberty to surrender the same and upon filing appropriate application by the petitioners the respondents No. 1 to 3 shall consider the same for exchange of land with the land acquired by the notification under challenge. However, if the petitioners opts to invoke the right to get the land in exchange then petitioners shall not be entitled to receive compensation for the land which has been acquired and if the Railways agrees to exchange of land then the respondents No. 4 and 5 shall be entitled for refund of the amount of compensation deposited. With the aforesaid observations, petition stands disposed of. No order as to costs. C.C. as per rules.