
(1995) 07 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2902 of 1994

Jaikishan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14

Citation : (1995) 2 WLN 586

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

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Jain, J.—This writ petition along with the writ petitions mentioned in Schedule A are pending since 1994 wherein acquisition proceedings of disputed land of villages Sukher, Sapetia, Amberi, Bedala and Brahmano Ka Guda have been challenged. Since these writ petitions involves common grievance and raise a common question of law and fact, they are being disposed of by this common order.

2. By this writ petition, the petitioner seeks to quash the entire proceedings being taken by the respondents no. 1 and 3 for acquisition of the land in dispute. It has been prayed that the notification issued under Section. 4 of the Land Acquisition Act, 1894 and the declaration under Section. 6 and notice u/s 9 of the said Act may also be quashed and the respondents be restrained from taking possession of the land in dispute for establishment of industrial area.

3. While issuing notice, this Court directed in all the writ petitions that, the petitioners will not be dispossessed from the land if the same is in their possession.

4. For convenient disposal of the these cases, the facts of S.B.C.W.Petitioner No. 2902 of 1994 are being taken into consideration. The facts which are necessary

to be noticed for the disposal of these matters as alleged by the petitioner are that agricultural land bearing Araj No. 11, 118, 125, 127, 137, 141, 143, 182, 217, 257, 258, 272 to 274, 279, 281, 283, 288, 289, 292, 293, 295, 298, 299, 303, 308 and 310 in all measuring 4, 1700. Hactreas situated at Brahmano Ka Guda, Tehsil Girwa, Dist. Udaipur belonging to the petitioner is partly adjacent to abadi area of Brahmano Ka Guda Udaipur and included in the Green Belt Area of Udaipur. It is alleged that the respondent no. 1 issued a notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), on 17.3.93 (Anx. 3) and was published in Rajasthan Patrika and Pratahkal dt. 5.4.93 to the effect that the land in question mentioned therein are likely to be needed for the industrial development. The notification was also published in the Gazette Notification dt. 17.3.1993. It is also alleged that the petitioner and like others after having come to know regarding issuance of notification u/s 4 of the Act submitted detailed objections u/s 5A of the Act on 16.4.93 (Anx. 5) Interalla stating that the land in question cannot be acquired as it is situated in the Green Belt Area and within the statutory limit under the Rajasthan Land Revenue (Industrial Area Allotment) Rules, 1959 (hereinafter referred to as the Rules of 1959) and that the purpose of acquisition i.e. for establishment of industrial area, would not be proper as the industrial area would spread pollution and serval other objections were raised. It is also alleged that after submission of the said objections, no enquiry as has been contemplated under Section. 5A was conducted by the respondent no. 3 nor any opportunity of hearing was given to the objectors and to produce evidence, the objection petition was rejected by the respondent no. 3 without application of mind on 1.3.1994 (Anx. 6). It is further alleged that the declaration under Section. 6. was issued an 31.3.94/4.4.94 which was published in "Pratahkal" vide Anx. 7. It is further alleged that the petitioner applied for a copy of report u/s 5A of the Act but the same was refused by the respondent no. 3. The petitioner has further alleged that initially total 196.505 hectare land was to be acquired as per the notification under Section. 4 of the Act but in the notice u/s 6 of the Act only 151.345 hectares of land included in the said declaration excluding serval lands similarly situated of other owners. List of released lands (Anx. 8) has also been filed. The petitioner has also alleged that the respondent no. 3 is going to issue notices u/s 9(1) read with Section 17 of the Act and they are prepared; to take the possession of the disputed land by calling upon the land owners to submit claims with respect to compensation and title. The petitioner has also filed one notice to file claim dt. 15.5.94 (Anx. 9). Being aggrieved with the acquisition of the land in dispute, the petitioners have filed these writ petitions.

5. In pursuance to the notice, respondents filed replies denying the allegations levelled by the petitioners. State has filed documents Anx. R1 to R. 7 along with the reply and the RICO has filed documents R-2/1 to 2/10. The respondent no. 1 has stated that though for a short period villages vix. Amberi, Sapatiya, Sukher, Bedla and Brahmano Ka Guda were of course included in the Municipal area but at present they are not part of Municipal Council, Udaipur. It has been stated that

the notice u/s 4(1) of the Act was published in the Rajasthan Gazette as also in two local news papers and further the same was notified at the convenient places in the locality. It has also been stated individual service of the notice u/s 4(1) is not necessary as the only requirement is the publication. It has been further stated that there is no prohibition for establishment of Industrial area within a radius of 5 Kms. and that the proposals for setting up of an industrial area was okayed by the Town Planning Department. It has been further pleaded that the petitioners have deliberately made a misstatement of fact that no agreement has been arrived at between RIICO and the State Government whereas there was an agreement R-2/3 and R-2/4 between the Corporation and the Government for providing of land which is still in force. The respondents have further stated that the petitioners were given full opportunity to raise objection but the basis and contents of all the objections were unreasonable they were rightly rejected by the land Acquisition Officer who prepared a report. It has also been stated that the matter was examined under the supervision of the District Collector and a survey was conducted by dividing the entire area into three zones namely A, B and C Zones, wherein it was found that in Zone C oversome parcels of land units/factories have already been established and residential houses were also constructed; therefore, in public interest those portions of Zone C have been left out of acquisition and remaining part of Zone -C has been ordered to be acquired.

The respondents have also placed the Survey Report (Ex.R-2/3) and Minutes of Meeting dt. 12.8.92 (Ex. R-2/5) on record. It has been stated that the industrial unit will be allowed to be established only after obtaining No Objection Certificate from the various departments concerned with pollution and environment. It has also been stated that the land in question is agricultural land and the same is not situated in green belt area of Udaipur as no master plan has finally been approved by the State Government under the Rajasthan Urban Improvement Trust Act, 1959. It has been further prayed that the writ petitions have no force and they may be dismissed.

6. Learned Counsel for the petitioners have contended that the respondent no. 3 has not caused any public notice of the substance of the notification u/s 4(1) at the conspicuous place in the locality and therefore, the entire proceedings taken thereafter are automatically vitiated. It has been contended that raising the objections under Section. 5A of the Act is very valuable right of the land owners but the Land Acquisition Officer, respondent no. 3 has not considered the objections raised by the petitioners. It has also been contended that without hearing objection u/s 5A of the Act and without making enquiry report without discussing it was not sent rather objections were rejected. Counsel for petitioners have contended that the declaration under Section. 6 of the Act was not published within one year of the publication of notice under Section. 4(1) of the Act. Learned Counsel for the petitioners also contended that the setting up of industrial area on the land in dispute will create pollution and will be hazardous for the environment of Udaipur City. Learned Counsel further contended that the respondents have adopted policy of pick and choose while acquiring the land as

lands of similarly situated persons have been left from the acquisition proceedings, which is hit by Article 14 and the acquisition proceedings deserve to be quashed being arbitrary and discriminatory. He has relied on *Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others*, *Krishi Utpadan Mandi Samiti, Muzqfarnagar v. Raten P. Mayal* 1988 SC 1459, *U.I.T. v. Balveer Singh* 1984 RLR 398 and *Damodar Lal Sharma v. State* 1994 (1) WLC 295.

7. Mr. Singhvi, learned Counsel for the respondents have raised preliminary objections regarding the maintainability of the writ petition. He has contended that the petitioners have misstated the facts and have not come with clean hands. He has urged that there is no violation of Section 38 to 42 of the Act, as Chapter VII does not apply. He has contended that the objections were given opportunity of hearing and entire proceedings were completed in accordance with law. He has also urged that the declaration under Section. 4(1) was published at conspicuous places in locality. He has further urged that the declaration, u/s 6 of the Act was issued in time. He prayed that these writ petitions are liable to be dismissed. He has placed reliance on the decisions rendered in *State of Mysore Vs. Abdul Razak Sahib*, . *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, , *State of Haryana and Another Vs. Raghubir Dayal*, and *Mirza Majid Hussain Vs. State of M.P. and another*,

8. I have considered the rival contentions of the parties and also the case law on the point.

9. So far as the case law cited is concerned, the principle is not disputed by the Counsel for the parties. It is settled that the Government can acquire land for public purpose. It is choice of the Government as to which land is to be acquired for public purpose so also for company purpose. A notice u/s 4 of the Act is required to be issued complying with its mandatory provisions and the substance of the notification is to be published in addition to official gazette in two news papers in the concerned locality also, so that interested persons can file objections u/s 5A, which is a very valuable right and after making a regular enquiry the concerned collector will recommend the matter to the State along with his comments, though the ultimate decision will be of the Government regarding acquisition. Thereafter declaration must be issued within one year from the date of issuance of the notification u/s 4 of the Act. Therefore, it is not necessary to deal with the above case law as the legal position is settled but each cases depends upon the facts of its own and I proceed to examine these identical matters wherein almost similar controversy has been raised.

10. So far as the contention that there exists no agreement between the State Government and RICCO, and the respondents have not complied with Section 38 to 42 of Chapter VII is concerned, the same is not tenable in view of Section 43 which provides that if there exists an agreement between the State Government and Company, it is not necessary to comply with the Section 38 to 42. Though the petitioners have alleged that in fact there is no agreement, which is alleged to be a misstatement of fact and has been controverted by the respondents by

filing the reply stating that there was an agreement entered between the RICCO and the Government and a copy of the agreement dt. 14.3.74 and revised agreement dt. 24.5.89, Ex. R-2/3 and R-2/4 are placed on record. Therefore, this contention is of no avail.

11. It has been contended that the respondents have not complied with the mandatory provisions of Rule 3 and 4 of the Land Acquisition (Companies) Rules, 1963, which are framed u/s 55 of the Land Acquisition Act, as no Committee has been constituted nor any report was called from the Collector. This argument is also not helpful. Section 55 is enabling provision empowering the Government to make rules and the said Rules of 1963 have been framed. Sub-rule (2) provides that these rules will apply to all companies under Part VII of the Act but as discussed above since there was an agreement between the State Government and the RUCO in view of Section 43, Chapter VII will not be applicable. A reference to Rule 9 of the Rules may also be made. Therefore, under the circumstances of the case as stated above due to non-compliance of these rules, the notification cannot be vitiated on this count.

12. Counsel for the petitioners have next contended that notice was not pasted at conspicuous places, which is mandatory in view of Section 4 of the Act and having failed to comply with the mandatory provision, entire acquisition proceedings are liable to be set aside. He has submitted that the notices filed along with the reply does not show that it pertains to land in dispute or hot and was caused at which conspicuous place.

13. Mr. Singhvi, learned Counsel for the respondent submitted that the respondents have filed notice of one place but in fact the notices were caused at all the convenient places. Mr. Singhvi was directed to produce the record in the Court, and record was produced.

14 A perusal of the record shows that notices were pasted at all convenient places of the disputed land of Sukher, Sapetia, Amberi and Bedala, which is also not disputed by the Counsel for the petitioners. Therefore, this argument is not tenable, except in nine writ petitions pertaining to Brahmano Ka Guda, which was frankly admitted by Mr. Singhvi, but he submitted that the notice was pasted in the locality i.e. at a nearby village which falls in the locality and on the basis of this minor mistake of clerical nature, entire proceedings cannot be said to be illegal. On the contrary Mr. Kawadia has submitted that the locality doesn't mean the adjacent village. There cannot be any doubt that Section 4 envisages that if notice is not caused and substance of such notification is not caused and substance of such notification is not published at convenient places of locality the entire proceedings may vitiate. The purpose of this provision is that the persons of that locality may be made known about the proposed acquisition, so that interested person can file objections u/s 5A which is a very valuable right. In this case the respondents while causing such notice for the land proposed to be acquired of other places had also pasted the notice of "Brahmano Ka Guda" but at adjacent village, which cannot be said to be a mistake of such a nature on the

basis of which the entire proceedings may be quashed particularly when no malafide has been attributed, so it is not open to Judicial scrutiny. That apart when objection were filed by the affected persona including the petitioners meaning thereby that they had full knowledge of the same fulfilling the requirement. Reference may be made to the decision of the Supreme Court rendered in Baljot's Case (supra). Therefore, it cannot be said that any prejudice has been to the petitioners of Writ Petition No. 2005, 2906, 2902, 3035, 3082, 3087, 3287 and 3268 of 1994 of Brahmano Ka Guda and 3624 of 1994 jointly of village Sapetia and Brahmano Ka Guda, by causing the notice of Brahmano Ka Guda at adjacent village of the said locality. Moreso, this objection does not find place in the objection petitioner itself. Thus, the contention is of no avail and the notification cannot be quashed. I find support from the decision of the Apex Court rendered in State of Haryana v. Raghuvir Dayal (supra) wherein while comparing Section 6(1) which is in paramateria with Section 4(1), their lordships of the Supreme Court have held as under:

We are not intending to say that the officer should not comply with the requirement of the law and it Is their duty to do It. But their dereliction to do, per se does not render the declaration u/s 6 illegal or Invalid.

15. Learned Counsel for the petitioners have submitted that the collector did not conduct any enquiry and sufficient opportunity of hearing was not given to the objectors, which is mandatory and he had no authority to reject the objection, thus caused prejudice to the petitioners.

16. On the other hand Mr. Singhvi has submitted that the Counsel appealing on behalf of the objectors were heard in view of the order-sheet dt. 1.3.94 and now the petitioners are not allowed to agitate and challenge the same as no prejudice has been caused.

17. u/s 5A to afford the opportunity and to make enquiry both are mandatory and the Collector has power to send his recommendations to the State Government after hearing objections without accepting or rejecting the same and ultimate decision will rest on the Government. It is needless to state that whatever is written in the ordersheet is to be accepted on its face value and is final unless one controverts it by filing an affidavit or by way of review. In the instant case, a perusal of the order sheet dt, 1.3.94 shows that the presence of one Advocate Shri Hira Lal Kataria is shown and it is also mentioned that all advocates are present, who reiterated the objections. So, the question now arises for consideration is whether the petitioners were given full opportunity of hearing or not. A further perusal of the order sheet shows that the case wa adjourned from time to time i.e. on 29.4.93, 8.6.93, 16.6.93, 28.6.93, 28.7.93, 16.8.93, 8.9.93. 22.9.93, 22.10.93, 27.10.93, 22.12.93, 12.1.94, 29.1.94 and 23.2.94. On 23.2,94 notices were ordered to be issued to all 10 advocates appearing on behalf of the objectors and the case was fixed on 28.2.94 to hear them on their objection but there is nothing on record to show that notices were served on 28.2.94. The case was adjourned on 28.2.94 to next day i.e. 1.3.94

mentioning therein that objections will be heard and the Counsel were directed to attend the Court at 12.30. Notice was served at 11.00 A.M. on 1.3.94 on the Counsel for the petitioners Shri Heera Lal Kataria. Shri Kataria moved an application to produce the evidence but the same was rejected which is not justifiable looking to the fact that the case was earlier adjourned number of times, as also the objection petition. Thus, these facts clearly show that the petitioners were not given sufficient and reasonable opportunity of hearing as opportunity of being heard does not mean a formal or nominal opportunity but sufficient opportunity, but having failed to grant such an opportunity even when asked for which is mandatory duty of the Land Acquisition Officer, even with the fact that ultimate decision will rest on Government. Therefore, in my humble opinion, the order sheet dt. 1.3.94 cannot be sustained. As regards the enquiry, though as per the respondents survey was conducted while bifurcating the entire land in three zones A, B and C which is clear from the reports Ex. R- 2/5, Ex. R-2/6, Ex. R-2/7 after which a sizeable portion was not acquired as the same was not required by the RIICO. But a bare perusal of the impugned order clearly shows that the survey report was never considered in the impugned order but was accepted as final and more so when it was conducted much before the passing of the order. The rejection of the objection by the Land Acquisition Officer by himself is not justifiable and the order is also not sustainable on this ground. As already stated Section 5A only empowers the Collector to hear the objections and send his comments to the appropriate Government for its decision but he cannot reject or accept the objections, which has been in this case as is clear from the impugned order, relevant portion of which reads as under:

izLrqr leLr vkifRr;ksa ij fopkj fd;k x;k i{dkjku }kjk izLrqr vkifRr;ksa mfpr izrhr ugha gksrh gS o ,slk izrhr gksrk gS fd dsoy vofIr dk;Zokgh ckf/kr djus dk iz;Ru fd;k tk jgk gSaA vr% vkifRr;ksa vuqfpr gSa o mUgSa fujLr fd;k tkrk gSaA

18. In view of the above, the order dt. 1.3.94 deserves to be quashed. I am fortified by the view taken in *Shri Mandir Sita Ramji v. Governor of Delhi* (supra). In the regard, it would not be out of place to mention here that in one matter bearing no 3035 of 1994 (*Vardha v. State*), the petitioner has alleged that he had constructed a residential house over the land prior to acquisition and in Civil Writ Petition No. 3185 of 1994 [*Hamari v. State*], it is alleged that there existed a shop and a guest house, which cannot be gone into by this Court under Article 226 being question of fact and needs investigation but if it is so, it is expected that the Land Acquisition Officer will enquire into such matters according to law and will pass appropriate order as the case may be.

19. In view of what I have discussed above, the prayer to quash the notification u/s 4 of the Act is rejected. However, since the impugned order dt. 1.3.94 of the Land Acquisition Officer was the impugned order dt. 1.3.94 of the Land Acquisition Officer was passed without giving proper and reasonable opportunity of hearing u/s 8A of the Act the impugned order dt 1.3.94 and all consequential orders including the declaration under Section. 6 so far as the lands covered by

the objections and u/s 9 of the Act are hereby quashed. The matter is remanded back to the Land Acquisition Officer to enquire into the objections of the petitioners after giving opportunity of being heard and make necessary recommendations to the Government as provided under Section. 5A of the Act within reasonable time. The Petitioners are directed to remain present on 28.8.95 before the Land Acquisition Officer and no fresh notice is required to be issued to the petitioners. However, the Land Acquisition Officer (Collector) will hear other objectors according to law of after hearing concerned parties will proceed as stated above. Thereafter, the Government will be free to decide the matter in accordance with law.

20. In the result this writ petition alongwith the writ petitions mentioned in Schedule -A are allowed as indicated above. Schedule A be made a part of this order. A copy of this order be placed in every file. No order as costs.