

(2019) 02 RAJ CK 0248
In the Rajasthan High Court
Case No : Special Appeal Writ No. 199 Of 2019

Kalu

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

National Highways Act, 1956 — Section 3A, 3A(1), 3C, 3C(1), 3C(2), 3D(1)
Land Acquisition Act, 1896 — Section 4, 4(1), 5A
Constitution Of India, 1950 — Article 226

Citation : (2019) 02 RAJ CK 0248

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : Manoj Bhandari, Abhinav Jain, Sharad Kothari, Lalit Pareek

Judgement

1. Feeling aggrieved of the order dated 22.01.2019, vide which learned Single Judge has dismissed appellant's writ petition, he has preferred the present intra-court appeal.

2. The concise facts within the precincts of the challenge made before us are that the appellant, resident of Village Jojro Ka Kheda, Tehsil Gangrar, District Chittorgarh has his agricultural land spread in Khasra No.61, 312, 313 and 314. Initially some part of his land was acquired by the respondent - National Highways Authority of India (hereinafter referred to as "the NHAI") for construction of National Highway in 2002. Thereafter, for the purposes of widening of the said Highway, the respondent - NHAI purchased some part of the land with mutual consent for setting up of a toll plaza.

3. After construction of the National Highway and establishment of toll plaza, the petitioner got his land converted for commercial use and commenced his business thereupon.

4. Thereafter, a notification dated 7.4.2017 came to be published under Section 3A of the National Highways Act, 1956 (hereafter referred to as "the Act of

1956"), showing Highway Authority's intention to acquire land for building (widening/ six-laning, etc.) maintenance, management and operation of National Highways No.79 in the stretch of land from KM. 151.000 to Km. 159.000 and Chittorgarh Bypass from Km. 0.000 to Km.29.600 (Bhilwara-Chittorgarh section). The appellant's land falling in Aaraji No.61 admeasuring 0.22 hectares, Aaraji No.312/763 admeasuring 0.35 hectares, Aaraji No.313/765 admeasuring 0.17 hectares, Aaraji No.314 admeasuring 0.27 hectares, Aaraji No.315 admeasuring 0.02 hectares and Aaraji No.317 admeasuring 0.01 hectares was mentioned in the Schedule appended with the notification dated 07.04.2017.

5. Pursuant to the above referred notification dated 07.04.2017, the appellant submitted his objections on 11.05.2017 before the Land Acquisition Officer - respondent No.3. The appellant raised grievance that his land recorded as 'aabadi land' in the revenue record was proposed to be acquired for the purposes of establishment of toll plaza; whereas there was no requirement of expansion of the toll plaza. An objection was also raised that the respondent authority was acquiring valuable agricultural land for its own commercial use or exploitation, which was impermissible in law.

6. The appellant's aforesaid objections came to be rejected by the competent authority cum Addl. District Collector vide his order dated 13.09.2017. The competent authority held that the purpose for which the land was being acquired, viz. construction of toll plaza, was undeniably a public purpose and looking to the public interest involved, the appellant's objections deserved rejection.

7. Impugning the aforesaid order dated 13.09.2017, passed by the competent authority i.e. Land Acquisition Officer and so also the notification dated 07.04.2017 issued under Section 3A of the Act of 1956, the appellant preferred a writ petition under Article 226 of the Constitution of India. During the course of arguments, the appellant confined his challenge to the order dated 13.09.2017 while dropping the challenge to the notification dated 07.04.2017.

8. Learned Single Judge dismissed the appellant's writ petition vide his order dated 22.01.2019, which is subject to judicial scrutiny in the instant appeal.

9. Mr. Manoj Bhandari, learned counsel for the appellant assailing the order dated 22.01.2019, passed by learned Single Judge contended that learned Single Judge has erred in rejecting appellant's writ petition vide impugned order. He argued that the learned Single Judge has upheld the order of the Land Acquisition Officer, which was not only non-speaking but contrary to facts and law as well. It was also contended that sufficient Government land is available about 300 meters ahead of the appellant's land and the respondent could well utilize such land instead of acquiring the land of the appellant and other agriculturists. It was argued that the impugned order dated 13.09.2017 passed by the Land Acquisition Officer is absolutely illegal, as the appellant's detailed objections have been rejected summarily. According to the appellant, his land has been acquired

for the purpose of expansion of toll plaza, which does not fall within the ambit of the intended use, shown in the notification dated 07.04.2017, issued under Section 3A of the Act of 1956.

10. Mr. Sharad Kothari, on the other end, supporting the order passed by the learned Single Judge submitted that there is no infirmity in the order of the learned Single Judge, so as to call for any interference in intra-court appellate jurisdiction; learned Single Judge has dealt with each of the contentions raised by the appellant in detail; the provisions contained in Section 3C of the Act of 1956 are significantly different from the provision embodied in Section 5A of the Land Acquisition Act, 1896; and that scope of enquiry by the competent authority under Section 3C of the Act of 1956 is very limited.

11. Learned counsel for the respondents contended that impugned order of the competent authority is required to be examined on the para-meters contained in Section 3C of the Act of 1956 and not on the basis of Section 5A of Land Acquisition Act and no fault can be found in such order, if the same is examined within the contours of Section 3A of the Act of 1956.

12. We have heard learned counsel for the parties and given our thoughtful consideration over the matter.

13. Before delving upon the arguments advanced by Mr. Bhandari, we deem it appropriate to have a survey of the provisions contained in Section 3C of the Act of 1956 vis-a-vis Section 5A of the Land Acquisition Act, 1894, which provides for and deal with hearing of objections.

"3C. Hearing of objections.-(1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section."

"5A. Hearing of objections.-(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act."

14. A careful reading of sub-section (1) of Section 3C of the Act of 1956 reveals that the Act permits a person interested in the land to raise his objections only qua "the use of land for the purpose or purposes mentioned in sub-section (1) of Section 3A of the Act" whereas in case of acquisition under the Land Acquisition Act, 1894, the person interested in the land can object to the very acquisition.

15. In other words, the scope of objection under the National Highways Act, 1956 is confined to the use of land for the purpose enshrined in the notification, whereas in case of acquisition under the Act of 1894, a person can raise other objections in relations to the acquisition, including the objection about the use of land. Hence, the order of competent authority is required to be examined, while keeping in mind the scope permissible under Section 3C(1) of the Act of 1956. The para-meters laid down and principles enunciated for the purpose of enquiry under Section 5A of the Land Acquisition Act cannot be applied, when it comes to an order passed by the competent authority/Land Acquisition Officer under Section 3C of the National Highways Act, 1956.

16. Our above referred view is fortified by the judgment rendered by Hon'ble the Supreme Court in case of Competent Authority Vs. Barangore Jute Factory & Ors., reported in (2005) 13 SCC 477; relevant paragraph whereof is reproduced hereunder :-

"8. The absence of plan also renders the right to file objections under Section 3C(1) nugatory. In the absence of a Plan, it is impossible to ascertain or know which part of acquired land was to be used and in what manner. Without this knowledge no objections regarding use of land could be filed. Since the objection regarding use of the land had been given up by the writ petitioners, we need not go any further in this aspect. We would, however, like to add that unlike Section 5A of the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 4 of the said Act, Section 3C(1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those under sub-section 3A(1). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned counsel for the NHAI that failure to file objections disentitles Writ Petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this Court in Delhi Administration v. Gurdip Singh Uban and Ors. In our view, this judgment has no application in the facts of the present case where right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 5A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except

on the question of its user. Therefore, the present objection has to be decided independently of the right to file objections. De hors the right to file objection, the validity of the Notification has to be considered. Failure to file objection to the notification under Section 3C, therefore, cannot non-suit the Writ Petitioners in this case."

17. On the bedrock of the provisions contained under Section 3C of the Act of 1956 and deliberation made hereinabove, if we test the arguments advanced by learned counsel for the appellant, we hardly find any merit therein.

18. After reading of the notification dated 07.04.2017 issued under Section 3A of the Act of 1956, particularly the expression "के निर्माण (चौड़ा करने/छह लेन का बनाने, आदि) अनुरक्षण, प्रबंध और प्रचालन के लोक प्रयोजन के लिए वह भूमि अपेक्षित है"; Mr. Bhandari contended that the land is being acquired for toll plaza, which does not find mention in the purposes mentioned in the subject notification issued under Section 3A of the Act; which contention, according to us is per-se untenable. The subject expression used in the notification dated 07.04.2017 clearly brings within its fold, the construction or expansion of the toll plaza also.

19. With a view to see correctness of our prima facie view, we have seen the English version of the said notification dated 07.04.2017; upon perusal whereof, we find that the expression used in the English version of the notification is: "for building (widening/ six-laning, etc.) maintenance, management and operation of National Highway No.79". In our considered opinion, construction and expansion of toll plaza squarely falls within the expression "management and operation of National Highway". Hence, it is incorrect to contend that the appellant's land, which is meant to be used for the purpose of expansion/construction of toll plaza is not covered under the purpose, it was sought to be acquired.

20. So far as the other argument of the appellant regarding availability of Government land just about 300 meters away from the contentious land is concerned; we would at the outset say that it is neither in the domain of the writ Court nor in the appellate Court to enter into the factual enquiry or to venture into assessment of feasibility or practicability of establishing the toll plaza.

21. That apart, neither factual foundation has been laid nor any documentary evidence such as revenue map etc. has been placed to enable us to even enter into this issue. We therefore see no good reason to consider appellant's such contention.

22. Adverting to the argument of the appellant regarding the impugned order of the competent authority being non-speaking, we record that the order of the competent authority cannot be examined as an order of judicial Courts. Learned Single Judge has deliberated on this issue at a great length and we are totally in agreement with the conclusion arrived at by him.

23. Our view is fortified by the judgment of Apex Court reported in (2011) 12 SCC 69: Union of India Vs. Dr. Kushala Shetty & Ors., which has been relied upon

by the learned Single Judge. We deem it apt to reproduce relevant excerpts from the said judgment :

"23. The only reason assigned by the Division Bench of the High Court for upsetting the well considered order passed by the learned Single Judge negating the respondents' challenge to the acquisition was that declaration under Section 3D(1) was published even before communication of the decision taken by the Competent Authority in terms of Section 3C(2). The process of reasoning adopted by the Division Bench for recording its conclusion appears to have been influenced by an assumption that the objections filed by the land owners had not been decided till the issue of declaration under Section 3D(1). However, the fact of the matter is that the Competent Authority had, after giving opportunity of personal hearing to the objectors, passed order dated 11.10.2005 and rejected the objections. Though, that order was not crafted like a judicial order which is passed by a legally trained mind, the rejection of the representations made by the respondents cannot be faulted only on that grounds.

28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular projects, if it is found to be ex-facie contrary to the mandate of law or tainted due to malafides. In the case in hand, neither any violation of mandate or the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the Order under challenge cannot be sustained."

24. As a result of discussion aforesaid, the appeal fails.