
(2013) 07 MP CK 0246

In the Madhya Pradesh High Court

Case No : Writ Petition No. 17487 of 2012

Karan Developers Development Services Private Limited

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 41, 5A, 6

Citation : (2013) 3 J LJ 168 : (2014) 1 MPLJ 110

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Ashok Chakravarty, for the Appellant; Swapnil Ganguly, Panel Lawyer for the respondents 1 to 3, Shri Naman Nagrath with Shri Himanshu Mishra and Shri Swapnil Sohgaure, for the respondent No. 4 and None for the respondents 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—The order passed in this petition shall also govern the disposal of connected W.P. No. 9499/2013 (Smt. Rajkumari Bai vs. State of M.P. and others) and W.P. No. 17488/2012 (Thakur Vikram Singh vs. State of M.P. and others). This petition has been filed by the petitioner praying for the quashment of the Notifications issued by the Collector, Bhopal u/s 4 and 6 of the Land Acquisition Act, 1894 (in short "the Act of 1894") since they have been issued in violation to the mandatory provisions of the Act of 1894. It has also been prayed to quash the entire land acquisition proceedings as the government and the construction company have the alternative suitable site for raising toll plaza under the agreement between the State and the construction company.

2. In brief the case of the petitioner is that the petitioner has purchased 1 Acre of land out of Khasra No. 54/2 area 0.08 Hectare, Khasra No. 55/1 area 0.04 Hectare, Khasra No. 57/1 area 0.01 Hectare and Khasra No. 59/2 area 0.68 Hectare vide registered sale deed dated 1.6.2009. When the 5th and 6th respondents tried to interfere in the possession, the petitioner filed a civil suit for

declaration and perpetual injunction and prayed that the construction of road encroaching upon the land of the petitioner is illegal and also prayed for decree of perpetual injunction. The Civil Suit No. 972-A/2012 was filed on 3.9.2012 in the Court of First Civil Judge, Class-II, Bhopal. In the written-statement, M.P. Road Development Corporation i.e. the respondent No. 4 (hereinafter referred to as "the Road Development Corporation") specifically denied that land of the petitioner has been encroached upon for constructing by-pass road. In the written-statement it is also pleaded that the respondents 1 to 3 already initiated the land acquisition proceedings for acquiring the portion of the land of the petitioner under the Notifications of Section 4 and 6 of the Act of 1894.

3. The Notification u/s 4 and 6 of the Act of 1894 was published in the official gazette on 26.6.2012 while the Notification u/s 6 of the said Act was issued on 1.9.2012 for the acquisition of the land for construction of toll plaza which shall be constructed and operated by the respondents 5 and 6. The petitioner moved objection against the land acquisition proceedings before the Collector, Bhopal and the Land Acquisition Officer that the acquisition is being carried out in violation of the mandatory provisions of law and the Constitution of India. According to the petitioner, the acquisition is being carried out for a private Company and not for public purpose. The objection dated 17.9.2012 has been filed as Annexure P-5 and P-6. Further the case of the petitioner is that there is an alternative government land at Bhopal to construct by-pass road in village Jhagriya Khurd, Patwari Halka No. 24, Revenue Circle No. 2, Tehsil Huzur, District Bhopal, on which toll plaza can be constructed. Hence, the present petition has been filed by the petitioner.

4. The contention of Shri Chakravarty, learned counsel for the petitioner is that the Notification issued u/s 4 of the Act of 1894 is vague because in the said Notification, the description of the land, its survey number or khasra number and the names of the land owner have not been mentioned. Thus, the Notifications u/s 4 and 6 of the Act of 1894 be quashed and the proceedings of the land acquisition be also quashed. In support of his contention, learned counsel for the petitioner has placed heavy reliance upon the decision of Supreme Court, Om Prakash Sharma and others vs. M.P. Audyogik Kendra Vikas Nigam and others, (2005) 10 SCC 306.

5. Further contention of learned counsel is that the objections were not invited in terms to Section 5-A of the Act of 1894 and the opportunity of hearing was not provided to the petitioner and therefore, there is total non-compliance of Section 5-A of the Act of 1894. In support of his contention, learned counsel has placed reliance on the two decisions of Supreme Court Surinder Singh Brar and Others Vs. Union of India (UOI) and Others, and Ramji Veerji Patel and Others Vs. Revenue Divisional Officer and Others, Learned counsel has also placed reliance upon the recent decision of this Court Raju Sharma Vs. State of Madhya Pradesh and Others, . Hence, it has been prayed that this petition be allowed.

6. The last contention of learned counsel is that the acquisition of the land under

the Act of 1894 is being made by the State of M.P. and its functionaries from the Company (respondents 5 and 6) for the construction of toll plaza without consulting the Committee and without calling and considering the report of the Collector and without any agreement u/s 41 of the Act of 1894. According to learned counsel, the procedure prescribed under Rule 4(4) of the Land Acquisition (Companies) Rules, 1963 has not been followed. Thus, since the respondent No. 5 is a private construction Company who had agreed to construct by-pass road under the scheme Built and Operate (in short "BOT"), therefore, the land for private company purpose would not come within the ambit and scope of public purpose. On these premised submissions, it has been argued that by quashing the Notifications u/s 4 and 6 of the Act of 1894 the entire proceedings to acquire the land in question under the Act of 1894 be quashed.

7. In this case, the fourth respondent-Road Development Corporation has filed the return and the said return has been adopted by the respondents 1 to 3. Shri Naman Nagrath, learned senior counsel appearing for the Road Development Corporation has submitted that how and in what manner the notice u/s 4(1) of the Act of 1894 is vague, there is no pleading in this regard. Learned senior counsel submits that the vagueness is having nexus with the facts and therefore, until there is a pleading to that effect in order to demonstrate that in particular manner the notice is vague, mere bald statement during the course of argument without any pleading and material, cannot be raised. It has also been put forth by him that the names of the land owner are not required to be stated in the Notification. In this regard, learned senior counsel has placed heavy reliance on the decision of Supreme Court, *Union of India vs. K. Balaji Jaya Rama Rao and others*, (2007) 15 SCC 791.

8. Lastly, by replying the argument of learned counsel for the petitioner in regard to the proposition that the mandatory provision was not followed when the land was required for the Company, it is submitted that under misconception the petitioner has filed this petition that the land is to be acquired for the Company and it is factually incorrect because the land in question is being acquired for the public purpose toll plaza and not for the Company and hence, the provisions of Chapter-VII of the Act of 1894 were not required to be followed. In this regard, my attention has been drawn to paras 10 to 12 and 15 of the return demonstrating that the public purpose for which the land is being acquired has also been shown. Thus, according to learned senior counsel this petition is having no merit and the same be dismissed.

9. Having heard learned counsel for the parties, I am of the view that this petition as well as the connected writ petitions deserves to be dismissed.

10. True, in ground (j) of the grounds of writ petition there is an objection that the Notification u/s 4(1) of the Act of 1894 is bad in law since it was not published in terms of Section 4(1) of the Act of 1894. In the memo of petition where the facts are enumerated it has been averred by the petitioner that the notice u/s 4(1) of the Act is vague but and in what manner it is vague, nothing

has been pleaded. According to me, if the petitioner is challenging the Notification u/s 4(1) of the Act of 1894 on the basis of its vagueness, the details alleging the vagueness ought to have been pleaded because merely by saying that the notice u/s 4(1) of the Act of 1894 is vague would not suffice. During the course of argument it has been put forth by learned counsel for the petitioner that the names of the land owner have not been mentioned in the Notification. The decision of Om Prakash (supra) placed reliance by learned counsel for the petitioner is not applicable because in the said decision in para-5 where the Apex Court has held that the notice u/s 4(1) of the Act of 1894 was vague, in that para there is nothing so as to indicate that in the Notification u/s 4(1) of the Act of 1894, the names of the land owner are required to be mentioned. Further in the said decision nowhere it has been held by the Apex Court that the survey number or Khasra number are required to be given otherwise the Notification u/s 4(1) of the Act of 1894 would be vague. In para-5 of the said decision of Om Prakash (supra), the Apex Court has placed reliance upon its earlier decision Narendrajit Singh and Another Vs. The State of U.P. and Another, and has categorically held that Section 4(1) of the Act of 1894 does not require the identity of the land, which may ultimately be acquired, to be specified with too many details but it undoubtedly casts upon the government duty to specify the locality in which the land is needed. Nowhere in both these decisions it has been mentioned that the survey number, khasra number or the names of the land owner are required to be mentioned. The placitum of the said decision runs contrary to what has been held in para-5. Hence, this decision of Apex Court Om Prakash (supra) placed reliance by learned counsel for the petitioner is not at all applicable. It is pertinent to mention here that it is not the argument of learned counsel for the petitioner that by giving the description u/s 4(1) of the Act of 1894 there cannot be identity to specify the locality in which the land is needed. At this juncture, I would like to place reliance upon the decision of Supreme Court K. Balaji Jaya Rama Rao (supra) relied by learned senior counsel for the respondent No. 4 wherein it has been categorically held by the Supreme Court that Section 4 of the Act of 1894 nowhere contemplates that the name of the land owner must be mentioned in the Notification. Had it been such an intention of the legislature, u/s 5-A of the Act of 1894 in place of "any person interested in any land which has been notified u/s 4(1)", the words "owners" ought to have been legislated, but, Section 5-A simply indicates that any person interested in any land which has been notified u/s 4(1) of the Act may file objections within 30 days from the date of the publication of the Notification. Hence, the scope of Section 4(1) of the Act of 1894 is having wider connotation and it includes the land owner as well.

11. According to me, if Sections 4 and 5-A of the Act of 1894 are kept in juxtaposition to each other and are read conjointly it would become luminously clear like a noon day that the names of the land owner, khasra number or survey number are not required to be given. I may further add that had it been the intention of the legislature certainly it must have been enacted in Section 4(1) of

the Act of 1894 in the like manner. Thus, the contention of learned counsel for the petitioner that the Notifications under Sections 4(1) and 6 of the Act of 1894 are vague, cannot be accepted.

12. I do not find any merit in the contention of learned counsel for the petitioner that there is non-compliance of Section 5-A of the Act of 1894 for the simple reason that the petitioner did not file any objection, although several other persons have filed the objections and they have been annexed as Annexure R-4 and R-5 along with the return. Thus, if the petitioner has not submitted any objection u/s 5-A of the Act of 1894 it cannot be said that the Notifications u/s 4(1) and 6 of the Act of 1894 are bad in law. I may further add that it is not the case of the petitioner that the Notifications were not published in the daily newspaper inviting objections within 30 days. Thus, if the petitioner has not submitted any objection, it would not nullify the land acquisition proceedings. The decisions of Supreme Court, Surinder Singh Brar (supra) and Ramji Veerji Patel (supra) as well as the single Bench decision of this Court Raju Sharma (supra) placed reliance by learned counsel for the petitioner are, therefore, not applicable in the peculiar facts and circumstances of the present case.

13. On going through the averments made in the return, particularly, para-10 to 12 and 15 it is gathered that the land is being acquired for the purposes of construction of the road and its ancillary facility like toll plaza and therefore, it cannot be said that no public purpose is involved. In para-15 of the return, it has also been pleaded by the respondent No. 4 that several persons including M/s. Shree Builders and Shri Kailash Patidar submitted their objections u/s 5-A of the Act of 1894 and those objections are filed as Annexure R-4 (collectively) and Annexure R-5. In the Notification under Sections 4(1) and 6 of the Act of 1894, the public purpose has also been mentioned. Needless to say, the toll plaza will be used by the public at large. Thus, this objection also stands nowhere. On bare perusal of para-10 of the return of the Road Development Corporation it is found that there is specific averment in it that the fifth and sixth respondents-Companies only hold a concession agreement which is in nature of licence to construct the road on behalf of the State Government. No asset is owned by private Company and the Company is required to surrender not only the road but other assets also in terms to agreement after completion of the concession period. The only right given to the Company is to collect the toll from the vehicle using the road and passing through it but this right is also for a specific period stated in the concession agreement.

14. On going through the averments made in the petition as well as the argument advanced by learned counsel for the petitioner that for the Company the land has been acquired and therefore, the provisions of Chapter-7 of the Act of 1894 were required to be followed. However, there is nothing on record that for the Company the land is being acquired. Indeed, for the public purpose the land has been acquired by the government. The toll plaza which is an integral part of the road project being taken on BOT basis and therefore, it cannot be said

that the land acquired by the State Government is for private Company and not for public purpose. In similar type of case, the single Bench of this Court in W.P. No. 17302/2010 (Santosh s/o Inderchand Taori and others vs. State of M.P. and others) has held that acquiring the land for toll plaza is a public purpose.

15. Indeed, the alternative site which the petitioner has suggested in the petition to construct the toll plaza would not be suitable for the construction of toll plaza. The lands which are referred by the petitioner are almost at a distance of 4 to 5 kilometers from the place where the toll plaza is to be constructed according to the project report. According to me, there is no inherent right in the petitioner to contend that the toll plaza should be shifted several kilometers far away because his land is coming in the area of the acquisition. The location and specification of the toll plaza is fixed in pursuance to the detailed project report prepared by the experts for which the norms of the Ministry of Shipping and Surface Transport have been followed. Thus, this submission of learned counsel for the petitioner also stands nowhere. For the reasons stated hereinabove, I do not find any merit in this petition. Accordingly, this petition and the connected W.P. No. 9499/2013 and W.P. No. 17488/2012 are hereby dismissed. Let a copy of this order be kept in the record of aforesaid connected petitions. No order as to costs.