

(1965) 08 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 952 of 1961

Khem Karan and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 29-08-1965

Acts Referred:

Constitution of India, 1950 — Article 141, 226, 31

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

Citation : AIR 1966 All 255

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Mangla Prasad Bajpai, for the Appellant; S.C.J. Swarup, S.P. Kumar and Jia Ram Saxena, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—These three writ petitions raise common questions. The facts on which they are passed, broadly speaking, are similar. Therefore, they will all be decided by this judgment.

2. The petitions are under Article 226 of the Constitution. They pray that proceedings for the acquisition of the petitioner's land under the Land Acquisition Act are invalid and ought to be quashed and that the respondents be restrained from interfering with the petitioner's possession over the land. The petitioners are the tenure-holders of various plots of land sought to be acquired and were, in actual cultivator possession, in the U. P. Gazette, dated 9-4-1960 a notification, dated 2-4-1960 was published. This was u/s 4 of the Land Acquisition Act, 1894, notifying for general information that the land mentioned in the schedule is needed for a public purpose. It also stated that the Governor was of the opinion that the provisions of Sub-section (1) of Section 17 of the Land Acquisition Act were applicable and that he was further pleased to direct that in view of the provisions of Section 17(4) the provisions of Section 5A of the Act shall not apply. The purpose of the acquisition was stated to be establishment

of synthetic Rubber Factory by Messrs. Synthetics and Chemicals Ltd.

Then another notification, dated 4-4-1960 was published. This stated that in continuation of the notification, dated 2-4-1960 and in exercise of the powers conferred by Sub-section (2) of Section 40 of the Land Acquisition Act, 1894, the Governor of U. P. is pleased to appoint the Sub-Divisional Officer, II, Bareilly to hold an enquiry in connection with the acquisition of the land for the construction of a synthetic rubber factory by M/s. Synthetics and Chemicals Ltd. at 11 a.m. on April 14, 1960 and onwards in the Collector Bareilly and to submit a report on the matter immediately thereafter for the consideration of the State Government. On 19-6-1960 the company executed an agreement with the State Government, in view of the provisions of Section 41 of the Land Acquisition Act, and on 23-6-1960 this agreement was published in the gazette. The notification u/s 6 of the Land Acquisition Act, dated 30th June 1960 was published in the gazette, dated 2nd July 1960.

3. The validity of the proceedings initiated on the basis of these notifications was challenged in this Court by several petitions under Article 226 of the Constitution of India. While these writ petitions were pending disposal in this Court a fresh development took place on 23-2-1961. The State Government passed two notifications Notification No. 569 (iii)-EP/XVIII-B-470-H-60. a copy whereof is Annexure "D" to the petition, stated that in exercise of the powers conferred by Sub-section (1) of Section 4 and Section 6 of the Land Acquisition Act, 1894, read with Section 21 of the General Clauses Act, 1897, the Governor of Uttar Pradesh, is pleased to cancel Government Notification No. 851-EP/XVIII-B-53-H-60 dated April 2, 1960, and No. 2845-EP/XVIII B-53-H-60, dated June 30, 1960, in so far as they relate to Sections 4 and 6 of the Land Acquisition Act, 1894. The second notification was No. 569 (vi)-EP/XVIII-B-470-H-60, a copy whereof is Annexure "E" to the petition. This notification was u/s 4(1) of the Land Acquisition Act stating that the land mentioned in the schedule is needed for a public purpose, namely, the establishment of a Synthetic Rubber Factory by M/s Synthetics and Chemicals Ltd. The Schedule mentioned exactly the same land as was mentioned in the cancelled notification dated 2-4-1960. This notification Further stated-

"And whereas an enquiry has been made under: Sub-section (2) of: Section 40 of the said Act, and Messrs. Synthetics and Chemical Ltd., have entered into an agreement with the Governor of Uttar Pradesh in accordance with the provisions of Section 41 of the said Act, the Governor being satisfied that the acquisition is likely to prove useful to the public interest, is pleased to accord his consent u/s 39 to the acquisition of land specified in the Schedule."

It went on to state that the case was one of urgency and that u/s 17(4) of the Act the Governor is pleased to direct that provisions of Section 5A of the Act shall not apply. Both these notifications were published in the U. P. Gazette, dated 25-2-1961. On 24-2-1961 a fresh notification u/s 6 of the Land Acquisition Act was made. This notification was also published in the U. P. Gazette, dated

25-2-1961, The State Government thereafter filed applications in the pending writ petitions which along with the writ petitions, came up for orders on 17-3-1961; Mr. Justice V. D. Bhargava dismissed the writ petitions as having become infructuous by the following order:

"This application has been filed that the notification which has been challenged has been withdrawn. A curious argument has been made on behalf of the petitioner that the respondent State Government has no jurisdiction to withdraw or cancel the notification with retrospective effect. I am unable to understand the contention of the learned counsel for the petitioner at all. When a notification is cancelled it will be deemed to have never existed and the contention that the notification has still some value or will in any way affect the rights of the parties is not at all tenable.

Learned counsel for the petitioner has further argued that there had been certain acts done under the previous notification but they "cannot be allowed to be undone now. If something has already been done there will be no legal effect by virtue of notification after the notification has been cancelled and withdrawn. Under the circumstances if there is any other notification and if that notification is also invalid, it is open to the petitioner to challenge the notification, but the present notification after having been cancelled by the State Government will be deemed to have never existed. Under the circumstances this writ petition has become infructuous and is dismissed."

The present petitions were filed on 3rd April 1961 and the validity of the proceedings initiated by the second set of notifications issued on 23rd and 24th February 1961 is challenged.

4. The respondents raised a preliminary objection. It is urged that each petition has been filed by more than one individual. A joint petition by more than one person is not maintainable. In order to appreciate this objection some facts may be mentioned.

5. By the impugned notification land in four villages is sought to be acquired collectively. The schedule to the notification runs as follows :--

District

"pargana

Mauza

Approximate area (acres)

Bareilly

Bareilly

Bhitaulu Naogaon alias Fatehganj West

475.65

do

do

Madhopur Mua 6

287.43

do

do

Kurtara

595.57

do

do

Rukkhumpur

22.35

6. Writ Petition No. 952 of 1961 has been filed by eight persons who claim to be tenure-holders of land, situate in village Madhopur Mua 6. Writ Petition No. 1161 of 1961 has been filed by three persons who are the tenure-holders of plots sought to be acquired in villages Bhitaula Naugaon alias Fatehganj West and Writ No. 1620 of 1961 is by two individuals who are tenure-holders of plots situate in village Kurtara.

7. With respect to the land situate in all these villages there is a single notification u/s 4 and a single notification u/s 6 of the Land Acquisition Act. The action of the State Government in passing this notification does the same and the common injury to all the petitioners in the three writ petitions. The single order by one stroke deprives all the petitioners of their land. They are common sufferers of the one and the single action of the Government, All this land is being acquired in pursuance of a single proceeding. The interest of the various petitioners in getting this proceeding quashed is not merely individual and distinct. It is their common right. One of them can successfully raise all the questions urged and canvassed and pray for the quashing of this notification. In case only one of the petitioners had filed the petition, the others could well approach the Court and request permission to intervene on the ground that they have a vital interest in the outcome of the petition. On principle, it will be difficult to refuse such a prayer.

8. In Civil Misc. Writ No. 1636 of 1964, *Khurjawala Buckles Manufacturing Co. v. Commissioner of Sales Tax, U. P.*, decided on 27-7-1964 a Bench of this Court observed:--

"This Court has made very few rules and has not made rules governing so many situations that are likely to arise when exercising jurisdiction under Article 226.

The Court has not made rules governing all situations because it has left the matter at the discretion of the Judges."

Their Lordships further observed that:

"This Court has applied the analogy or the principle of the provisions relating to substitution and review contained in the Code in exercise of its discretion."

Therefore, such matters are in the discretion of the Court hearing a petition under Article 226.

9. To my mind in a single proceeding culminating in a single order affecting a large number of persons all such persons can raise a single complaint to this Court under Article 226 to canvass the validity of such action. It will be to the convenience of all concerned and would serve the interests of justice.

10. Learned counsel for the respondent has relied upon a Division Bench case of this Court in *Uma Shankar Rai and Others Vs. Divisional Superintendent, Northern Railway, Lucknow and Others*, where it has been laid down that two or more persons cannot join in a single writ petition. The facts of that case are not mentioned in the judgment as reported. Their Lordships placed reliance upon the following passage from *Extraordinary Legal Remedies* by Ferris at page 275:

"The rule is that persons having a common and joint interest in the subject matter in controversy may be joined as relators while those having separate and distinct rights may not."

It only goes to show that persons having distinct and separate rights may not join in a single petition.

11. The decision in *Uma Shankar Rai and Others Vs. Divisional Superintendent, Northern Railway, Lucknow and Others*, came in for consideration before another Division Bench of this Court in *Brij Raj Singh and Another Vs. Superintendent of Police and Others*, . In that case two police constables were charged u/s 7 of the Police Act. They were tried together in the same proceeding and by a single order both of them were dismissed from service. Both of them filed one writ petition in the High Court. A, P. Srivastava, J. delivering the judgment of the Bench, dealt with the preliminary objection as to the maintainability of the petition as follows:

"So far as the first contention is concerned it is true that as has been laid down in *Uma Shankar Rai and Others Vs. Divisional Superintendent, Northern Railway, Lucknow and Others*, the general rule is that two or more persons cannot join in a single petition as petitioners, but before that rule can be strictly applied to any case the facts of that particular case will have to be taken into account. The facts of *Uma Shankar Rai and Others Vs. Divisional Superintendent, Northern Railway, Lucknow and Others*, do not appear from the reported decision, but so far as the" present case is concerned we cannot overlook the facts that both the appellants were charged with offences which had been committed in a single transaction, both the appellants had been tried together u/s 7 of the Police Act

and both of them had been dismissed by a single order dated 19th of April 1955."

Under, the circumstances their Lordships did not allow the preliminary objection. On the same ground *Uma Shankar Rai and Others Vs. Divisional Superintendent, Northern Railway, Lucknow and Others*, can be distinguished from the instant case.

12. In *Balak and Others Vs. State of Uttar Pradesh and Another*, Oak, J. held that:

"In a petition seeking to question notifications under the Land Acquisition Act all such persons who are interested in the land sought to be acquired by the impugned notification can join as petitioners."

The decision in *Uma Shankar Rai and Others Vs. Divisional Superintendent, Northern Railway, Lucknow and Others*, was cited before his Lordship

13. The learned counsel has relied upon the following passage in *Halsbury Laws of England Vol. II page 83 para 155*:

"Two or more persons cannot join in a single application for a writ of mandamus to enforce separate claim. There must be separate applications for separate writs."

14. This passage is based upon the decision in *ex parte, Scott and Morgan (1840) 8 Dowl 328*. In that case Scott functioned as a clergyman from 1833 to 1838 but no salary was paid to him for that period. In June 1838 Mr. Morgan was appointed as clergyman and continued to be so till 1840. He was also not paid his salary. Mandamus was applied for by both to the church wardens to pay the salary due to both these gentlemen: Coleridge, J. observed:--

"You cannot have one writ on behalf of both the parties. You must have a separate writ for each. As to Mr. Scott has there not been some laches ? He is here in the year 1840 seeking to compel the inhabitants of the Parish to pay what ought to have been paid in the year 1837."

The counsel thereupon took the writ only in the case of Morgan. There is but a small observation with respect to joinder. The writ of Mr. Scott was liable to be dismissed on the ground of laches. It is noticeable that both the applications have distinct and independent claims as well as causes of action. The passage in the *Halsbury Laws of England* should be read in the light of the facts of this case on which it is based.

15. Section 8 Merrill in his "*Laws of Mandamus*" has to my mind, laid down the true rule on this aspect. At page 291, para 232 the learned author says:

"All the parties interested may be joined as relators in a mandamus proceeding. ... In order, however, that parties may be Joined as relators, they must have a right common to all of them, must have a joint benefit in the performance of the act or duty required of the respondent and must be joint sufferers, because of the non-doing."

This test is adequately satisfied in the present case.

16. The preliminary objection is misconceived and is repelled.

17. Sri M. P. Bajpai, learned counsel for the petitioners has pressed three points.

18. The first point raised was that the notification under Sections 4(1) and 17(4) of the Land Acquisition Act cannot be published together. In *Charan Singh v. Government of Uttar Pradesh* AIR 1964 AH 42 Dwivedi, J. considered this point and held that it was negated by the Supreme Court's decision in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, . He held that

"it seems to me that *Smt. Somavanti and Others Vs. The State of Punjab and Others*, is also an authority for the proposition that a notification u/s 4 may be published along with an order under subsection (4) of Section 17. All that is necessary is that the Government should first take a decision to make a notification u/s 4 and then take another decision to make an order under Sub-section (4) of Section 17."

The point is, therefore, not *res Integra* and has to be negated.

19. The second point urged by Sri Bajpai was that the declaration u/s 6 of the Land Acquisition Act cannot validly be made till the publication of the notification u/s 4(1). In the instant case the notification u/s 4(1) was published on 25-2-1961 while the, notification u/s 6 was made on 24-2-1961, a day earlier than the publication of the notification u/s 4(1). The submission is that this was incompetent. Reliance has been placed upon Section 17(4) of the Act which runs as follows:

"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 6 in respect of the land at any time after the publication of the notification u/s 4, Sub-section (1). This sub-section provides for two matters. The first part relates to the exclusion of Section 5A. The second part lays down in positive terms the consequence of the exclusion of Section 5A. The language of the second part is clear. There is no ambiguity in it. It permits the declaration u/s 6 to be made only after the publication of the notification u/s 4(1). The submission of the learned counsel is clearly supported by the language of the statute.

20. Sri Jagdish Swarup, who has appeared for the company for whose benefit the acquisition is being made, urged that this point is also concluded by the Supreme Court's decision in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, . Reliance is placed upon paragraph 60 of the judgment at page 170. Mudholkar, J., who spoke for the majority, observed that the last contention of the petitioner was that the notification under Sections 4 and 6 could not be made simultaneously and since both the notifications were published in the gazette of the same date, the provisions of law have not been complied with. His Lordship

stated the argument to be that

"the Act takes away from a person his inherent right to hold and enjoy his property and, therefore, the exercise of the statutory power by the State to take away such property for a public purpose by paying compensation must be subject to the meticulous observance of every provision of law entitling it to make the acquisition. It is pointed out that under subsection (1) of Section 4 the Government has first to notify that a particular land is likely to be needed for a public purpose, Thereafter u/s 5A a person interested in the land has a right to object to the acquisition and the whole question has to be finally considered and decided by the Government after hearing such person. It is only thereafter that in a normal case the Government is entitled to make a notification under Sub-section (1) of Section 6 declaring that it is satisfied after considering the report, if any, made u/s 5A(2) that the land is required for a public purpose. This is the sequence in which the notifications have to be made. The reason why the sequence has to be followed is to make it clear that the Government has applied its mind to all the relevant facts and then came to a decision or arrived at its satisfaction even in a case where the provisions of Section 5A need not be complied with."

It is thus apparent that this submission was advanced before the Supreme Court not on any statutory provision but on the scheme of the , Act and on the consequence flowing from the fact that the Government is taking away a man's property. The Supreme Court considered this line of reasoning and held that in a case of emergency where the applicability of the provisions of Section 5A have been excluded, it is difficult to say why the two notifications can- not in such a case be made simultaneously. His Lordship observed:

"If the Government, therefore, takes a decision to make such a notification, and thereafter takes two further decisions, that is, to dispense with compliance with the provisions of Section 5A and also to declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provisions of the law even though the two notifications are published on the same day."

His Lordship further observed:

"But the law does not make the prior publication of notification under Sub-section (1) of Section 4 a condition precedent to the publication of the notification under Sub-section (1) of Section 6 But where Section 5A is not in the way there is no Irregularity in publishing those notifications on the same day. In the whole judgment dealing with this point there is no reference to the last portion of Section 17(4). Had their Lordships been considering the effect of this provision they would not have said that there is no departure from any provision of the law or that there is no irregularity In publishing those notifications on the same day.

21. There the notification u/s 4 was published in the gazette dated 25-8-61 and

the notification u/s 6 was also published in the gazette of the same date. Their Lordships held that there was no irregularity in doing so. The case is not distinguishable on facts and in view of Article 141 of the Constitution the declaration of law made by the Supreme Court on this point is binding. The notification cannot be held invalid on this ground. The second point fails,

22. The third point centres round the validity of the enquiry held u/s 40 by virtue of the notification dated 4-4-1960. The affidavits of the parties are agreed that the only enquiry held in this case u/s 40 Sub-section (2) of the Land Acquisition Act was in pursuance of the notification dated 4-4-1960. The learned counsel for the petitioner has urged that an enquiry u/s 40, Sub-section (2) can be directed or made while the notification u/s 4 of the Land Acquisition Act has been made is in force. In this case the notification u/s 4 was at first made on 2-4-1960, but the same was cancelled on 23-2-1961 and a fresh notification u/s 4 was passed on the same date. In the decision dated 17-3-1961 of this Court it was held that the notification after having been cancelled by the State Government will be deemed to have never existed and that if anything was done by virtue of the notification it will be of no legal effect after the notification has been cancelled and withdrawn. This decision has become final between the parties. Therefore if anything was done in pursuance of the notification u/s 4(1) dated 2-4-1960, it will be of no legal effect. According to the counter-affidavit the enquiry u/s 40(2) was made by the Sub-Divisional Officer II, Bareilly on 14-4-1960 on his being appointed to do so under the notification dated 4-4-1960 and that it was on the basis of his report that the Government was satisfied about the necessity of acquiring the land in question and the notification under Sections 4 and 17(4) of the Act was issued thereafter; Vide the counter-affidavit of Sri R. K. Mathur, Assistant Superintendent, Industries (B) Department, U. P. Secretariat, Lucknow.

23. It is thus apparent that the enquiry u/s 40 preceded the notification u/s 4 of the Land Acquisition Act. Learned counsel for the petitioner has in this connection drawn my attention to the decision of the Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and Others, . In paragraph 12 the Court observed:

"Hence, it is not correct to say that any publication in the notification u/s 4 is fatal to the validity of the proceedings, particularly when the acquisition is for the company and the purpose has to be investigated u/s 5A or Section 40 necessarily after the notification u/s 4 of the Act."

Here, the Supreme Court does hold that the investigation u/s 40 has to be done after the notification u/s 4. If it is done prior to it, it will not be an enquiry in accordance with the law.

24. The Land Acquisition Act provides for the sequence in which the proceedings have to be taken. At first a notification u/s 4 has to be made to carry on a preliminary investigation with a view to having a survey and taking levels of the land and if necessary, digging or boring into the sub-soil or ascertaining whether the land is adapted for the purpose for which it is sought to be acquired. If a

decision u/s 4 is taken by the appropriate Government then it has to decide whether the case is one of emergency and, if so, whether the provisions of Section 5A should be eliminated. Section 39 of the Act provided that

"the provisions of Sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned."

These provisions are mandatory. The consent of the Government is a condition precedent to the further proceedings under the Act. Section 40 of the Act lays down that the consent shall not be given unless the appropriate government be satisfied either on the report of the Collector u/s 5A, Sub-section (2) or by an enquiry held as provided therein as to the matters referred in Clauses (a) and (b) of Sub-section (1). Sub-section (2) says that such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint. It seems clear that the appropriate Government could give its consent to the acquisition after the enquiry either u/s 5A or Section 40(2) has been held.

25. In view of all these provisions the Supreme Court declared that the investigation u/s 5A or Section. 40 has to be made necessarily after the notification u/s 4 of the Act. If an investigation is made prior to me notification u/s 4, it will be in- valid. In the instant case the enquiry u/s 40 was made on 14-4-60 whereas the notification u/s 4 has been made on 23-2-1961. Then enquiry having preceded the notification u/s 4, was in the eye of law, invalid. The position is as if no valid enquiry had been made u/s 40. In the absence of such an enquiry the State Government could not give its consent to the acquisition. In the absence of this consent the provisions of Sections 6 to 37 could not be put in force and the notification dated 24-2-61 u/s 6 of the Act and the notification dated 17-3-61 u/s 9 of the Act are, therefore, without jurisdiction and deserve to be quashed. From the counter-affidavit it is clear that the respondents took possession of the land by virtue of these notifications. The notifications being invalid, the respondent's possession is without the authority of law and in violation of the petitioner's fundamental right under Article 31 of the Constitution.

26. In the petition there is no specific prayer for restoration of possession though an injunction was claimed restraining the respondents from interfering with the petitioner's possession. From the counter-affidavit it appears that the respondents took possession immediately on the publication of the notification u/s 9. The petitioners could have applied for the amendment of the petition so as to incorporate the relief for restoration of possession. But where on the finding a particular relief is appropriate, this Court has ample jurisdiction to award it, see *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, .

27. In the result the petitions succeed. The notification dated 24-2-61 u/s 6 and the notification dated 17-3-61 u/s 9 of the Act are quashed. The proceedings

consequent thereto are also set aside. The respondents are directed to restore possession of the land to the petitioners forthwith. The petitioners will be entitled to their costs from the third respondent.