
(2001) 09 RAJ CK 0144
In the Rajasthan High Court
Case No : Civil Special Appeal No. 14 of 1992

Krishi Upaj Mandi Samiti

APPELLANT

Vs

Swarn Singh and Others

RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 16, 17, 4

Citation : (2002) 2 WLN 193

Hon'ble Judges : Rajesh Balia, J; Jagat Singh, J

Bench : Division Bench

Judgement

Rajesh Balia, J.—This appeal arises out of the petition filed by respondent No. 1 Swarn Singh on 21st August, 1980. The respondents No. 4 & 5, since deceased, were made party to the writ petition because they were the joint tenants of the land in question. The petition was to challenge Notification dated 12.5.1980 (Ex.5) which was a declaration u/s 6 of the Land Acquisition Act, 1894 concerning Murabba No. 58/62 in Chak 1-A (Chhoti) an Murabba No. 11 in Chak 6(e). The present petition relates to the acquisition proceedings concerning Murabba No. 58/62 in Chak 1-A. The Writ Petition No. 1550/1980 was preferred by the tenants of Murabba No. 11 in Chak 6(e)--Ratana Ram and Ors. v. State of Rajasthan which has since been dismissed, as informed by the learned Counsel for the parties.

2. In the present petition, notice was issued on 22nd August, 1980 and an interim order was issued that the petitioner shall not be dispossessed from the land in dispute. This interim order was confirmed to last decision of the writ petition on 8th April, 1983.

3. The petition came to be finally heard on 4th September, 1991.

4. During the pendency of the writ petition, the Land Acquisition (Amendment) Act, 1984 came into force w.e.f. 24th September, 1984. Alongwith other amendments made in the provisions of the Land Acquisition Act, 1894, Section

11-A was inserted, which read as under:

11-A. Period within which an award shall be made.--The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.--In computing the period of two years referred to in this section, the period during which any action is stayed by an order of a Court shall be excluded.

5. Apparently, the proviso postulated that in cases where declaration u/s 6 has been made prior to the commencement of the Land Acquisition (Amendment) Act, 1984 and award has not been made before the commencement of the Act of 1984, the award shall be made within a period of two years from the date of such commencement else the entire proceedings for acquisition of land shall be lapsed. We may notice that in the present case notification u/s 4 has been made in respect of lands in question vide Notification dated 17th August, 1978 which was published on 29th September, 1978 and declaration u/s 6 in pursuance, thereof was made on 12th May, 1980. Thus, the case came within the province of proviso to Section 11-A. It also contained an Explanation for excluding the period during which any action or proceedings to be taken in pursuance of such declaration stayed by an order of a Court for computing the period of two years for making the award mandatorily in pursuance of the substantive provisions of Section 11-A.

6. By the Land Acquisition (Rajasthan Amendment) Act, 1987, which was deemed to have come into force on Jan. 3, 1987, Section 56 was inserted in the Land Acquisition Act, 1894 which inter-alia envisaged that where an award has been made u/s 11, if any of the respective periods as specified in Section 11-A has expired, the said period or the periods, as the case may be, shall be deemed to have been extended upto date of award and in the pending cases in which no award has been made till the commencement of the Rajasthan Amendment Act, the period prescribed for making award u/s 11-A was extended by further two years from the date of the commencement of the Rajasthan Amendment Act, 1987. Thus, in the present case, ordinarily the award u/s 11-A in pursuance of declaration made on 12th May, 1980 could have been made without exclusion of any time until 3rd Jan., 1989, without which the proceedings would have lapsed.

7. Since no award has been made in the present case within the said period or even until the decision of the writ petition, the learned Single Judge relying on the provisions of Section 11-A of the Land Acquisition Act, 1894 and the decision rendered by this Court in D.B. Civil Writ Petition No. 1895/80 following the decision of Kerala High Court in S. Bavajan Sahib Vs. State of Kerala and Others, allowed the writ petition by holding that the acquisition proceedings in respect of

land in question stood lapsed as the award was not passed within the period prescribed under the Act of 1894 as amended by the Amending Act of 1984 and the Rajasthan Amending Act of 1987.

8. The plea of the Krishi Upaj Mandi, the present appellant, was that since there was an interim order staying the dispossession of the petitioner in pursuant of the acquisition proceedings from 22nd August, 1980 until the date of the decision of the writ petition, the entire period has to be excluded for computing the period of two years within which the award was to be made from the appointed date and considering the provisions made in Explanation the proceedings cannot be held to have lapsed. This plea did not find favour with the learned Single Judge apparently on the basis of the reason that weighed with the Kerala High Court that since proceedings for making an award were not stayed, mere staying the dispossession of the person holding the land subject of acquisition proceedings, would not invoke the provisions of Explanation to Section 11-A. This was so held on the ground that right to dispossess a person in possession in pursuance of acquisition proceedings ordinarily arise u/s 16 only after passing of award and not prior to it, unless a notification u/s 17(4) has been issued. Hence relaxation in substantive provision of Section 11-A can only relate to stay of any proceedings which are permissible before making of an award by the collector.

9. On the plain reading of Explanation to Section 11-A, we are unable to persuade ourselves with the reasoning adopted by the Kerala High Court. The Explanation, in our opinion, is wide enough to cover any case in which not only the making of award is stayed but taking of any action of proceedings in pursuance of the declaration made u/s 6 is stayed by any order of the Court, has to be excluded for the purpose of computation of the period of two years for the purposes of Section 11-A. The language is clear in itself when it reads "the period during which any action or proceedings to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded." The proceeding for taking of the possession of the land sought to be acquired is initiated either on order u/s 17(4), in which case waiting for making of an award is not required. Otherwise proceedings for determining award is installed only by issuing notices u/s 9 of the Land Acquisition Act, 1894. The Section 9 of the Act envisages, causing a public notice to be given at convenient places on or near the land to be taken stating that the "GOVERNMENT INTENDS TO TAKE POSSESSION OF THE LAND" and inviting claims to compensation. Thus notifying intention to take possession by the acquiring authority sets in motion the proceedings for determining the award of compensation. In that any order staying taking of possession is staying the implementation of intention to take possession of land under acquisition proceedings. Thus taking possession being integral part of proceedings for determining compensation, any interim order staying taking of possession cannot also be looked in isolation from the proceedings of making an award and treat it independent of it. Thus, such an order, in our opinion, will have to be taken in consideration in term of Explanation to Section 11-A for the purpose of excluding the period during which such stay order staying taking

possession of the land under acquisition or of dispossession of person from such land, while computing period of two years u/s 11-A of the Act of 1894. Proceedings for taking possession are in fact an action to be taken in pursuance of declaration u/s 6 and that part of the consequential action of dispossession falls within the purview of the Explanation.

10. We further find that the decision of the Kerala High Court relied on by learned Single Judge of this Court has since been over-ruled by the Supreme Court in *Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another*, . It fortifies us in our conclusion reached above. The Supreme Court laid emphasis on the expression "any action or proceeding" which is stayed by an order of a Court in pursuance of the said declaration. The Court held:

The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceeding referred to in the Explanation to actions or proceedings preceding the making of the award u/s 11 of the said Act. In the first place, as held by the learned Single Judge himself where the case is covered by Section 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Section 17 or otherwise. On the other hand, it appears to us that Section 11-A is intended to limit the benefit conferred on a land holder whose land is acquired after the declaration u/s 6 is made to in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the land-holder. In order to get the benefit of the said provision what is required, is that the land-holder who seeks the benefit must not have obtained any order from a court restraining, any action or proceeding in pursuance of the declaration u/s 6 of the said Act so that the Explanation covers only the cases of those land-holders who do not obtain any order from a court which would delay or prevent the making of the award or taking possession of the land acquired. In our opinion, the Gujarat High Court was right in taking a similar view in the impugned judgment.

In view of this, the order under appeal and ground on which it is founded cannot be sustained.

11. Faced with this situation, learned Counsel for the petitioner-respondent urged that notwithstanding that even if the order under appeal cannot be sustained for the reasons on which it is founded, he is still entitled to sustaining as the order on other grounds which he has raised support of his petition. He urged in the first instance that since land was not needed by the State for its own purposes but was sought to be acquired for Krishi Upaj Mandi Samiti, Sri Ganganagar, the Krishi Upaj Mandi Samiti has never requisitioned the land in question for its any of the need, and therefore, the satisfaction of the State Govt. that the land in question is needed for public purposes, namely, for Krishi Upaj Mandi Samiti, is founded on non-existent material. He contends, however subjective the

satisfaction of the appropriate Govt. about the existence of public purpose for acquisition of the land in question may be, it has to be founded on the existing objective material. Subjective satisfaction though is not subject to judicial review requiring scrutiny into the adequacy or sufficiency of the material but it must be founded on existing and relevant material having nexus for the purpose sought to be achieved by reaching the subjective satisfaction, and when challenged on such ground the acquisition authority is under an obligation to satisfy by showing the existence of relevant material.

12. On principle, this submission made by the learned Counsel for the petitioner-respondent cannot be doubted. In this connection, decision of Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, may be referred to.

13. However, from the perusal of the record, we find that the contention is not well founded on facts. The respondents in their reply have clearly stated and have placed on record Annx. R/1, which is a requisition issued by Krishi Upaj Mandi Samiti, Sri Ganganagar in July, 1976 pointing out that as per the Chief Town Planner's recommendation the Samiti needs three more Murabbas in addition to what it has purchased viz. Murabba Nos. 10, 11 & 58 out of which Samiti has already purchased Murabba No. 10 and Collector was requested to initiate proceedings for acquiring the land falling in Murabba Nos. 11 & 58 which led to institution of the acquisition proceedings in question. In view of this material, the first contention raised by the learned Counsel for the petitioner-respondent is not sustained.

14. The other contention raised by the learned Counsel for the petitioner is that though Land Acquisition Officer in his enquiry u/s 5-A of the Acquisition Act, after notification u/s 4 was issued, has agreed with the objection raised that the land in question is not reasonably required by the Krishi Upaj Mandi Samiti, but the State Govt. has not agreed with that conclusion. Any conclusion contrary to report made by L.A.O. could not have been reached by the State without affording an opportunity of hearing to the objectors.

15. We are unable to sustain this contention also. The process by which the satisfaction of the State Govt. is reached about the existence of a public purpose for which the land is needed to be acquired, does not envisage any such type of further hearing after report of the Land Acquisition Officer is submitted u/s 5A on consideration of the objections submitted to him by the objectors in pursuance of notification issued u/s 4. The nature of opportunity to raise objection to any acquisition proceeding envisaged under statute is submitting of objections, if any, by any one before the Land Acquisition Collector. Land Acquisition Collector has been obligated to afford opportunity of hearing to such objector before submitting such objections alongwith his report containing his recommendations thereon alongwith record of proceedings for the decision of the Govt. The filing of the objections, hearing of the objections in respect of it and the report of Collector thereon containing his recommendations u/s 5-A only provides a

material on the basis of which State Govt. is to take decision whether the land in question is required for a public purpose. At that stage any further hearing by the State is not envisaged. The contention of the petitioner to the contrary does not accord with the scheme of the Act.

16. In this connection reference may be made to *Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others*, . It was a case in which the L.A.O./Collector has not afforded an opportunity of hearing to the objector against the proposed acquisition u/s 5-A yet on his report declaration u/s 6 was issued. On challenge, the plea was taken that since Collector has not afforded an opportunity of hearing, the Division Bench, while accepting the contention that such opportunity of hearing before declaration u/s V could be made, directed the Delhi Administration to give an opportunity of hearing to the objector. This led to hearing of the objections by Lt. Governor of Delhi and rejection thereof. With this background, the Division Bench dismissed the writ petition that this was substantial compliance because recommendations even if made by the Collector after affording opportunity of hearing to the objector were not binding on the Govt. and it could take a different view. The Supreme Court, reversing the judgment of Delhi High Court spoke through Mathew J.:

The duty to afford such opportunity of being heard by the Collector u/s 5-A is mandatory. A decision by the Govt. on the objection, when the Collector afforded no opportunity of being heard to the objector would not be proper. The power to hear the objection u/s 5-A is that of Collector and not of the appropriate Govt. It is no doubt true that the recommendation of the Land Acquisition Collector is not binding on the Govt. The Govt. may choose either to accept the recommendation or to reject it, but requirement of Section is that when a person's property is proposed to be acquired, he must be given an opportunity to show cause against it. Merely because the Govt. may not choose to accept the recommendation of Land Acquisition Collector even when he makes one, it cannot be said that he need not make the recommendation at all but leave it to the Govt. to decide the matter.

The Court went on to add

When a procedure is prescribed by the legislature, it is not for the Court to substitute a different one according to its notion of justice when the legislature has spoken, the Judges cannot afford to be wiser.

17. The above principle echoes the other well known principle that principles of natural justice are subject to statutory proceedings, to the extent that the same can be totally excluded in a given case. If the manner and procedure by which principles of natural justice of affording adequate opportunity of hearing has been prescribed by statute, the same cannot be subjected to general principles of natural justice which are invoked in the absence of any statutory provisions to that effect. It is not in dispute that the Collector had provided opportunity of hearing as envisaged u/s 5-A before making report alongwith his

recommendation thereupon.

18. No other ground has been raised.

19. Before parting with the case, we may notice that the learned Counsel for the petitioner has invited our attention to an application made on behalf of the applicants-respondents No. 4 & 5, the joint holders of the land, that after the declaration u/s V was issued, by Notification dated 22nd October, 1980, 19 bighas of land in question of Murabba No. 58/62 has been de-acquired and to that extent they may be permitted to withdraw their petition and the petition may be confined only to the extent it concerns the remaining part of the land which still remains the subject matter of acquisition. It is submitted by the learned Counsel for the appellant Samiti that the notification dated 22.10.1980 has subsequently been cancelled. learned Counsel for the petitioner-respondent has urged that the subsequent withdrawal being void ab initio, he need not challenge it and he shall take his stand, if in pursuance of that notification the proceedings in respect of the land which has been made subject matter of Notification dated 22.10.1980 is again proceeded with on the ground that the subsequent notification cannot result in restoring the acquisition proceedings which have been brought to an end subject to liberty to raise this contention if and when it is necessitated, he may be permitted to withdraw the writ petition at his own risk.

20. In the facts and circumstances, we are of the opinion that this request of the learned Counsel for the petitioner-respondent merits acceptance and accordingly he is permitted to withdraw his writ petition qua the 19 bighas of land for which de-acquire notification has been issued on 20.10.1980 subject to his right to challenge or take his defence against the subsequent cancellation of this notification, confined to ground stated above.

21. Accordingly the appeal is allowed, order under appeal is set aside and the writ petition is dismissed.

22. There shall be no orders as to costs.