
(2007) 04 GAU CK 0021
In the Gauhati High Court

Krishna Baruah

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 17, 24, 3, 31, 4

Citation : (2007) 3 GLT 599

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—The petitioner in this writ petition is questioning the legality of the notifications dated 5.1.2001 and dated 16.1.2001 issued by the Revenue Department, Government of Meghalaya under the provisions of Sections 4(1) and (2) and 17(1) and (4) of the Land Acquisition Act, 1894 ("the Act" for short) for acquiring about 7.879 acre situate at Maxwellton Estate, Kench's Trace, Shillong for construction of Office Complexes on the ground that there is no urgency.

2. Though the facts in the writ petition are numerous, the point in controversy actually lies within a narrow compass. Shorn of unnecessary details, the case of the petitioner is that the aforesaid plot of land bounded on the North by Stream, on the South by PWD Road, on the East by PWD Road and on the East by the land of (late) B.K. Dey, Smt. Rajashree Bhattacharjee and on the West by the land of (late) R.K. Bisharad, which she claimed to inherit from her late husband, namely, Chittaranjan Baruah, is recorded in her name as the owner thereof. According to the petitioner, by the impugned notifications, she has been denied of her valuable right to make objection u/s 5A of the Act against the proposed acquisition. She pleaded that there is absolutely no urgency to invoke the provisions of Section 17(4) of the Act, which is evident from the expression used by the State-respondents, namely, "likely to be needed" which merely refers to the future need and clearly implies that there is no emergency to acquire the

same calling for dispensing with the said valuable right to make objection made available u/s 5A of the Act. It is also pleaded by the petitioner that there are plots of land acquired by the Government, which remained unutilized and were ultimately handed over to tribals for their personal use, even though such acquisitions were made ostensibly for public purpose. Such lands so acquired and for public purpose and made over to tribals are the lands of Murlidhar Jalan, situate opposite the office of the Deputy Commissioner, Shillong, the plot of one J.R Goenka at Garikhana, G.S. Road, Shillong, which remained unutilized till date. So are the plots of Santikumar Sundarkumar Bajoria and one Aulad Hussain situate at Police Bazar, G.S. Road, Shillong and Police Bazar, Centre Point, Shillong respectively. It is also the case of the petitioner that there are other vacant lands belonging to the Government in Shillong and also near her land, but are never utilized and that right from the very beginning, the respondent-authorities as well as the District Council have been putting hindrance and obstacles on her right to use and enjoyment of the aforesaid plot, which she inherited from her late husband. She also claims that the area of her land proposed to be acquired is 7.897 acres, which is reality measures 9.213 acres. The proposed acquisition is, contends the petitioner, a device invented by the respondent-authorities to deprive her of her inherited property and is, therefore, malafide and cannot be sustained in law. Having no alternative, she has been compelled to file this writ petition to protect her property, which is a right guaranteed under Article 300A of the Constitution.

3. The writ petition is resisted by the respondent-authorities by filing their affidavit-in-opposition. The respondents admit that the estate in question is recorded in the name of the late Chittaranjan Barooah, but they contended that the same does not confer any title to the plot upon the deceased Chittaranjan Barooah. Similarly, it is further contended, the land came to be mutated in the name of the petitioner only in compliance with the direction of this Court in Civil Rule No. 20 (SH) of 1992, but no title accrued to the petitioner thereby. It is pointed out by the respondents that the Maxwellton Estate is under the occupation of Shri J.N. Bawri by constructing a residential house thereon. It is asserted by the respondents that the impugned acquisition proceeding was initiated as the land is urgently required for construction of the Meghalaya Public Service Commission Complex including the Examination Hall, the office complexes of the Meghalaya Home Guard and Civil Divisions, the office complexes of the Commissioner of Taxes and the Commissioner of Excise, which have been asked by the Ministry of Defence in the DO letter dated 22.11.2000 to vacate the defence land occupied by them. According to the respondents, the urgency has arisen to meet the twin needs of immediate delivery of possession of the defence land to the Military authorities and to shift the said Government Offices located therein to the land proposed to be acquired. The urgency clause u/s 17(4) of the Act was, therefore, invoked to avoid any delay in construction of such office complexes. It is also pleaded by the respondents that the petitioner, on her own admission, never occupied the plot in question, which, on the

contrary, is under the occupation of some tenants and Shri J.N. Bawri, her alleged Power of Attorney holder. The respondents flatly deny that the proposed acquisition is made with ulterior motive and to deprive her of her residential house. It is, thus, submitted that the writ petition is devoid of merits and is liable to be dismissed with cost. The respondents also filed an additional affidavit dated 24.6.2005 wherein it is stated that due to the stay order passed by this Court, the acquisition proceeding could not continue thereby adversely affecting public interest. It is also pointed out therein that in the meantime, the defence authorities had issued eviction notice requiring the Home Guard to vacate the defence land, which is under challenge in this Court. It is pleaded that there is thus urgency in the proposed acquisition.

4. Mrs. Millie Hazarika, the learned Counsel for the petitioner, makes two-fold submissions, namely, (i) the impugned notifications issued under Sections 4 and 17(4) of the Act did not indicate the urgency for taking possession of the land of the petitioner, and therefore, the same is vitiated; the petitioner is thereby illegally deprived of her right to make objections u/s 5A of the Act. According to her, had such an opportunity of hearing been given, the petitioner could have convinced the authorities that she was entitled to retain at least a portion of the estate for her residential purpose and further that the true area of her land being acquired is 9.213 acres and not 7.897 acres as claimed by the respondents in the impugned notifications. Her second contention is that when so many acquired land remain unutilized, the action of the respondents in choosing her land for acquisition cannot be justified in any manner and the entire exercise undertaken by the respondents is, therefore, mala fide and a fraud on powers under the Act. In support of her various contentions, the learned Counsel for the petitioner relies on the decisions of the Apex Court in *Jnanedaya Yogam and Another Vs. K.K. Pankajakshy and Others*, and *Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others*, On the other hand, Mr. this Court Sen, the learned Counsel for the State respondents, submits that there is absolute urgency in the acquisition proceeding, a fact fortified by the eviction notice issued by the Ministry of Defence subject of CR(P) No. 40 (SH) of 2006. On the basis of this submission, the case record relating to CR(P) No. 40 (SH) 2006 is taken on board.

5. I have given my anxious consideration to the rival submissions made by the counsel for both the parties. At the outset, it may be noted that the petitioner is undoubtedly a "person interested" within the meaning of Section 3(b) of the Act. The law is by now well settled that the term "person interested" includes any person claiming interest in the amount of compensation Whether it be valid claim or not and eventually a Collector may award him nothing. To appreciate the controversy, it may be useful to reproduce the impugned notifications, which are in the following terms:

Notification The 5th January, 2001

No. RDA 1/2001/39?It is hereby notified that land with the boundary described

below measuring more or less 7.879 acres in the village of Maxwellton Estate Kench's Trace Sub-Division Shillong in the District East Khasi Hills is likely to be needed for the public purpose; viz; for the Construction of Office Complexes.

Schedule of Boundary

North : Stream South : PWD Road East : PWD Road West : Land of (Late) B.K. Dey, Smti Rajashree Bhattacharjee and Land of (Late) R.K. Bisharad This Notification is made under the Provision of Section 4 of Act 1 of 1894; as amended by Act 68 of 1984 to all whom it may concern.

Government are pleased to authorize the Officer for the time being engaged in the undertaking with their servants and workmen to enter upon and survey the land and do all other Acts required or permitted by Sub-section (2) of Section 4 of the Act.

In exercise of the powers conferred by Section 17(4) of the Act, Government have decided that in view of the urgency of the Project Provisions of Section 5A of the Act shall not apply.

Sd/- F.R. Hynniewta Under Secretary to the Government of Meghalaya Revenue Department.

"PUBLIC NOTICE" [Under Section 4(1) of the Land Acquisition Act, 1894]

This is for general information of the public that Government intends to acquire about 7.879 acres of the land located at Kench's Trace (Maxwelton Estate), East Khasi Hills District, Shillong for the public purpose i.e. for the construction of office complexes by Government of Meghalaya, Revenue Department.

The boundaries of the proposed land is shown below:

North : Stream South : PWD Road East : PWD Road West : Land of (Late) B.K. Dey, Smti Rajashree Bhattacharjee and Land of (Late) R.K. Bisharad.

The Notification Letter No. RDA.1/2001/39 dated 5th January 2001 u/s 4 of the Land Acquisition Act, 1894 for the acquiring the land has been published in:

1. Meghalaya Gazette on 5.1.2001
2. Meghalaya Guardian on 16.1.2001
3. U Peitngor on 12.1.2001.

In exercise of the power conferred by Section 17(4) of the Act, Government have decided that in view of the urgency of the Project Provisions of Section 5A of the Act shall not apply.

Sd/- Additional Deputy Commissioner (Rev.) East Khasi Hills District Shillong

Memo No. L. 14/3(3)00/16-A

Dated Shillong, the 16th Jan" 2001.

6. Since the fate of the writ petition hinges on the correct interpretation of Sections 4, 5A and 17(4) of the Act, to the extent they are relevant, the same are also reproduced hereunder:

4(1). Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette (and in two daily newspapers circulating in that locality of which at least one shall be in the regional language) and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification).

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorized by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality;

to dig or bore in the sub-soil.

to do all other acts necessary to ascertain whether the land is adapted to, such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches,

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

5A (1) Any person interested in any land which has been notified u/s 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 authorized 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 u/s 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.

17(1) In cases of urgency, whenever the Appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or That station, or of providing convenient connection with or access to any such station, [or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity], the Collector may, immediately after the publication of the notice mentioned in Sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this Sub-section without giving to the occupier thereof at least forty-eight hours" notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding Sub-sections the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(a) Tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) Pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, Sub-section (2), and where the Collector is so prevented, the provisions of Section 31, Sub-section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation

under that section.

(4) 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 date of the publication of the notification u/s 4, Sub-section (1).]

7. From the provisions extracted above, it becomes clear that protection is given to a person whose land is to be acquired by providing him the right to object to the proposed acquisition of his/her land notified u/s 4; opportunity of hearing is also provided to show that the proposal to acquire the land was unwarranted; such opportunity available u/s 5A is not illusory but real and cannot be denied except in case of urgency. The legal position is tersely put by the Apex Court in *Krishan Lal Arjena* (supra) in para 16 as under:

Section 17 confers extraordinary powers on the authorities under which it can dispenses with the normal procedure laid down u/s 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry u/s 5A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause u/s 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry u/s 5A of the Act could be completed. In other words, if power u/s 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration.

8. The question as to whether there is urgency or not, though reviewable by Court, is left to the discretion and decision of the authorities. Obviously, the

formation of opinion by the authorities on this aspect of the matter is a subjective matter. Nevertheless, the Court can examine whether the authorities have considered the grounds which are relevant for the purpose for which the power can be exercised or whether the authorities have considered the grounds which are not relevant for the purpose for which the power can be exercised. In *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, the Apex Court held that once the Court comes to the conclusion that the authority concerned was acting within the scope of its power and had some material, however meager, on which it could reasonably base its opinion, the Court should not and would not interfere. The judicial policy of non-intervention with the exercise of administrative discretion or subjective satisfaction is best illustrated by the Apex Court in *State of Gujarat Vs. Jamnadas G. Pabri and Others*, wherein it was held that an exercise of power may involve two elements: an objective element and a subjective element; the existence of the former is a condition precedent for the exercise of the latter power, or it could be said that the former is a jurisdictional fact and is subject to judicial review, but not the latter. The Court is certainly entitled to inquire, when a challenge is made against the notification issued u/s 17(4) of the Act, whether the Government have applied their mind, and if so whether their opinion regarding the urgency of the matter, was founded on relevant facts and circumstances. The contention that as Section 17(4) leaves the matter to the opinion of the Government, the question whether circumstances or material exist on the basis of which the Government have formed the opinion that there exists emergency in regard to a land is not at all justiciable is, therefore, too broad a proposition and cannot be accepted.

9. It is against the backdrop of the legal principles set forth above that I now propose to examine whether there were materials on record, upon which the respondents formed an opinion that there was really urgency and that such urgency requires dispensing with providing opportunity of hearing to the petitioner envisaged in Section 5A of the Act. It may be noted here that such materials must have existed on the date of forming such opinion and not thereafter. I have carefully perused the file relating to the related acquisition proceeding produced by the counsel for the State-respondents. Since the urgency must relate to the date when the impugned notifications were issued, I also examined the letter dated 22.12.2000 of the Joint Secretary (APO&W), Govt. of India, Ministry of Defence, Deptt. of Defence, New Delhi addressed to the Chief Secretary, Govt. of Meghalaya, upon which heavy reliance is placed by the respondents. The letter, which is at Annexure-1 to the counter-affidavit of the respondents, is in the following terms:

Arvind Joshi Government of India Joint Secretary Ministry of Defence (APO&W)
Deptt. of Defence Tele: 3014222 New Delhi D.O. No. 25(3)/2000 22nd
November, 2000 Dear Sri Singh,

I am writing this in connection with the encroachment of defence land at Kench's Trace, Shillong by the various departments of the Meghalaya State Govt. and

civilians of the area.

2. As you may aware, Army owns 118.7399 acres of land at Kench's Trace (Lawsohtun), Shillong. It has been reported that significant portions of this land have been encroached upon by State Govt. Departments, viz. 6.50 acres by the Meghalaya State Home Guards & 3.83 acres by Sericulture and Weaving Departments. Besides, civilians have encroached at various pockets.

3. In this connection, I would like to state that the subject land has been earmarked for Key Location Plan for situating a unit and a Military farm, as per the zonal plan. Since Shillong Cantt. is already short of land and there are no prospects of acquiring land due to scarcity of suitable land for construction purposes, it is imperative to protect the existing holdings from encroachments. In the circumstances, my I request you to issue necessary directions to the Meghalaya State Home Guards and Sericulture and Weaving Departments to vacate the defence land which has been under unauthorized occupation of these departments.

With warm regards.

Yours sincerely, Sd/- (Arvind Joshi)

Shri J.P. Singh Chief Secretary Govt. of Meghalaya Meghalaya.

10. The aforesaid letter undoubtedly shows that the Ministry of Defence needed the land under occupation by the Meghalaya State Home Guards and Sericulture & Weaving Department of the Government of Meghalaya as the same had been earmarked for Key Location Plan for situating a Unit and Military Farm as per Zonal Plan and, therefore, requested the Chief Secretary to issue necessary directions requiring the Meghalaya State Home Guards and Sericulture and Weaving Department to vacate the same as they had been in unauthorized occupation of defence lands. In the record of the meeting held in the office of the Chief Minister, Meghalaya on 3.1.2001, it is seen that the Chief Minister apprised the Minister of Revenue and other high officials about the discussion he had with the Defence Minister on the latter's request for the immediate shifting of the Home Guards Complex at Kenches" Trace. The meetig on that day itself decided that land acquisition proceeding be initiated for acquiring the Maxwellton Estate under the urgency clause so that the entire Home Guards Complex could be shifted and accommodated in the Maxwellton Estate since the Ministry of Defence, Govt. of India was pressing hard and that the entire process be completed by the Revenue Department within March, 2001. The impugned notifications invoking urgency clause u/s 17(4) of the Act were admittedly issued on 5.1.2001 and 16.1.2001 i.e. a day after the meeting held at the office of the Chief Minister and/or shortly thereafter. On the facts found on record, the objective elements, namely, the need for immediate shifting of the Home Guards Complex to the Maxwellton Estate i.e. the land proposed to be acquired arose since the Defence Ministry was pressing hard and that immediate possession of such Estate to accommodate the Home Guards Complex, have been clearly

established. Once these objective elements are established, then the subjective elements i.e. whether the matter was so urgent that an enquiry u/s 5A of the Act would frustrate the very object of acquisition, is not normally justiciable as it is an inference to be drawn from the facts by the respondents and this Court would not sit in appeal over the opinion of the respondents as to urgency of the case and of the need to dispense with enquiry u/s 5A of the Act.

11. In any case, on the facts established from the file, the view taken by the respondents that the matter is urgent and enquiry u/s 5A of the Act should be dispensed with, is a possible view, based on relevant materials, howsoever meager they may be, which cannot be interfered with by this Court in exercise of its writ jurisdiction on the mere possibility of another view. It may be reiterated that the satisfaction of the respondents can be interfered with if the satisfaction recorded is demonstrably perverse based on no material or is one which a reasonable man would not form. In my judgment, infirmity of these natures is plainly not there in this case. On my aforesaid findings, the remaining contentions of the learned Counsel for the petitioner do not survive for consideration.

12. Before parting, I am disturbed by some apprehension entertained at the bar that the land sought to be acquired in this case is not really for public purpose as made out to be in the impugned notifications but for allotment to influential people. In the absence of any evidence, this Court has to ignore such apprehensions. But the law in this behalf is also well settled that if a land is acquired for public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose and not for private purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to others, the land should be put to public auction and the amount fetched in the public auction can be better utilized for public purpose envisaged in the directive principle of State Policy of the Constitution. This principle will also be applicable if the entire acquired land is also ultimately not utilized by the respondent-authorities. The State-respondents are expected to, and must keep in mind the aforesaid legal principles

13. For what has been stated above, there is no merit in this writ petition, which is hereby dismissed. However, on the facts and circumstances of the case, I pass no order as to costs. The interim order dated 24.1.2001 is accordingly vacated.