

(2016) 12 AHC CK 0202

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 56451 of 2011

Kunwar Shlivahan Singh

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 22-12-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), Section 4

Citation : (2017) 3 ADJ 678 : (2017) 172 AIC 918 : (2017) 2 AllWC 1749 :
(2017) 121 ALR 131 : (2017) 135 RD 230

Hon'ble Judges : Arun Tandon and Mrs. Sangeeta Chandra, JJ.

Bench : Division Bench

Advocate : Pankaj Govil and M.K. Gupta, Advocates, for the Petitioners; C.S.C., Suresh Singh and Ravindra Singh, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Arun Tandon and Mrs. Sangeeta Chandra, JJ.—This bunch of 7 writ petitions has been filed for quashing the notifications issued under Section 4 of the Land Acquisition Act, 1894 read with Section 17(1) of the Act dated 13.05.10 and that issued under section 6 read with section 17(4) dated 28.7.2010 with a further prayer to restrain the respondents from interfering with the possession of the petitioners over the plots mentioned in the prayer clause

2. The facts in short relevant for deciding the present writ petitions are as under:

3. The petitioners in all these writ petitions claim themselves to be the recorded tenure holders of the plots as have been detailed in the body of the petitions situated in village Mirzapur, Pargana Dankaur, Tehsil Sadar, District Gautam Budh Nagar. Some of the petitions are stated to have raised constructions over the land in question.

4. The petitioners are aggrieved by the notification issued under Section 4 of the Land Acquisition Act, 1894 for acquiring the land dated 13.5.2010 followed by notification under Section 6 of the same Act dated 28.7.2010. It is the common

case of the petitioners that the State Government decided to invoke the powers under section 17(1) and 17 (4) of the Land Acquisition Act for dispensing with the opportunity of hearing as contemplated by Section 5 of the Act, while issuing the aforesaid notifications.

5. This exercise of powers under Section 17 by the State Government for dispensing with the opportunity of hearing is alleged to be bad on the ground that under the notifications issued under Section 4 and Section 6 of the Act, the purpose for acquisition was disclosed as planned development of the area by Yamuna Express Way Industrial Development Authority.

6. According to the petitioners the controversy with regard to the invoking of the provisions under Section 17(1) and section 17(4) for dispensing with the enquiry where land is proposed to be acquired for planned development, has been settled by the Apex Court in the case of *Radhey Shyam v. State of UP and others* reported in (2011) 5 SCC 553 wherein it has been held that in the matter of planned land development of the area invocation of urgency clause cannot be justified.

7. Sri Ravindra Singh on behalf of the development authority and Smt. Suman Rathi on behalf of the State contended before us that the land was gradually being acquired by the State Government on proposals submitted by the development authority for planned development including the construction of residential colonies. In the facts of the case, it cannot be said that there was no urgency so as to invoke the provisions of Section 17 of the land acquisition Act. It is submitted that the development authority has made huge investment for the development of the area running into hundreds of lakhs and that in case the notification are set aside by this Court public money would go waste.

8. We have heard learned counsel for the parties and examined the records of the present writ petitions as well as the original records of the State Government produce by learned standing counsel under the order issued by us dated 19.12.2016.

9. From the records we find that the proposal for acquiring the land of village Mirzapur Pargana Dankaur was submitted by the development authority vide letter dated 26.12.2009. The State Government responded to the same vide letter dated 07.01.2010 requiring the development authority to examine the issues as have been provided for under the circular of the directorate dated 7.12.2004. A reply to the said direction of the State Government less submitted by the development authority on 15.02.2010 and thereafter on 5.3.2010, a letter was forwarded by the development authority certifying the deposit of 10% of the compensation with the Government for the purpose of acquisition. This letter dated 5.3.2010 accompanied a letter of the District Magistrate wherein it was recorded that he was satisfied with the requirement of dispensation of opportunity of hearing and exercise of powers under Section 17 on the asking development authority. Following the aforesaid correspondence a office note

dated 5.5.2010 was put up. The relevant portion dealing with the urgency i.e. paragraphs 3, 4 and 5 read as follows :

"3- ftykf/kdkjh }kjk /kkjk 17 ykxw fd;s tkus ds lEcU/k esa miyC/k fd;k x;k izek.k&i= ,oa vkSfpR; dh fVIi.kh esa mYys[k fd;k x;k gS fd ;euk ,Dlizsl&os vkS| ksfxd fodkl izkf/kdj.k dk xBu mRrj izns"k vkS|ksfxd {ks= fodkl vf/kfu;e] 1976 ds vUrxZr gqvk gS mDr vf/kfu;e dk mn~ns"; jkT; ds fufnZ"V {ks=ksa esa vkS| ksfxd fodkl rFkk mlls lEc) ekeyksa gsrq izkf/kdj.k dh lajpuk djuk gSA mDr vf/kfu;e ds vUrxZr ;euk ,Dlizsl&os izkf/kdj.k dks vius vf/klwfpr {ks= esa Hkwfe vf/kxzghr djus] ;kstuk cukus] vkS|ksfxd fodkl bdkbZ;ka gsrq Hkwfe fpfUgr djus] vk/kkjHkw r lqfo/kk,a fodflr djus] fodz; }kjk vFkok iV~Vs ij vFkok vU; izdkj ls vkS| ksfxd Hkw & mi;ksx gsrq Hkwfe dk fuLrkj.k djus] Hkouksa ,oa bdkb;ksa dh LFkkiuk dks fu;fer djus Hkw & mi;ksx fu/kkZfjr djus dk vf/kdkj fn;k x;k gSA jktLo xzke&fetkZiqj] ijxuk&nudkSj] rglhy&lnu] ftyk xkSrecq)uxj ;euk ,Dlizsl&os izkf/kdj.k ds vf/klwfpr {ks= esa fLFkr gSA lqfu;ksftr fodkl gsrq izLrkfor Hkwfe dh ;euk ,Dlizsl&os dks rRdky vko";drk gSA vtZu esa foyEc dh n"kk esa izLrkfor Hkwfe ij vfrdze.k c<+us dh izcy laHkkouk gS ftl dkj.k lqfu;ksftr fodkl ij izfrdwy izHkko iM+sxkA

4- xzke&fetkZiqj 55-2023 gs0 Hkwfe lqfu;ksftr fodkl gsrq vtZu izLrkfor fd;k x;k gSA fyf[kr@ekSf[kd vkifRr lqus tkus rFkk fuLrkj.k esa fuf"pr :i ls o"kksZa yxsaxs rFkk vizR;kf"kr foyEc gksxkA ftlls lqfu;ksftr fodkl Bi gks tk;sxkA vr% tuin xkSrecq)uxj }kjk lqfu;ksftr fodkl gsrq Hkwfe dk vtZu fd;k tkuk vifjgk;Z gSA

5- vr% jktLo xzke&fetkZiqj] ijxuk&nudkSj] rglhy&lnoj ftyk&xkSrecq)uxj dh 55-2023 gs0 Hkwfe rRdky vf/kxzghr fd;k tkuk gSA mDr dks n`f"Vxr j[krs gq, p;fur Hkwfe ds vf/kxzg.k gsrq dysDVj }kjk Hkwfe vtZu vf/kfu;e] 1894 ds vUrxZr /kkjk 4@1 ds lFk ifBr /kkjk 17 dh vf/klwpuk fuxZr dj;s tkus dk iw.kZ vkSfpR; n"kkZrs gq, laLrqfr dh x;h gS rFkk /kkjk 17 ykxw gksus ds QyLo:i /kkjk 5&, ds izkfo/kku foyqIr gks tkrs gSa vkSj Hkw & Lokfe;ksa dks lquokbZ dk volj lekIr fd;s tkus ds vkSfpR; ls dysDVj }kjk iw.kZ lgefr O;Dr dh gSA mDr ds n`f"Vxr /kkjk 17 ykxw djus esa "kklu dh lgefr O;Dr fd;s tkus esa vkifRr ugha gksrh gSA"

10. From the recital of the facts as noted above it shall be seen that not only the State Government had taken 6 months for consideration of the proposal before issuing of the final notification under Section 4 of the Land Acquisition Act, the only reason assigned for dispensing with the opportunity of hearing to the farmers as per in paragraphs 3, 4 and 5 of the office note are that there is likelihood of encroachment of the land which is proposed to be acquired and that opportunity of hearing may delay the acquisition and finally there is a recommendation of the District Magistrate for exercise of powers under Section 17 of the Act.

11. In our opinion all the three reasons mentioned above are legally not sustainable for invoking the urgency provisions.

12. Petitioners were in possession of the land holding the question of any encroachment/occupation does not arise. More over, the report submitted by the

District Magistrate/ development authority did not reflect upon any such fact. Opportunity of hearing as contemplated by Section 5 provides for a period of 30 days in the matter of filing of objections. The objections so filed can always be decided by the authority concerned within a reasonable time. And if the authority itself is not able to decide the objections, it is not open for the State to contend that such opportunity of hearing should not be afforded as it will delay the acquisition. The very purpose of Section 5 of the land acquisition Act, would be frustrated if the authorities for lapse on their part, of not deciding the objection within the reasonable time, can be permitted to avoid compliance of Section 5 of the Act. Further we find that the District Magistrate in his letter referred as to above has only mentioned that he is satisfied with the proposal submitted for invoking the powers under Section 17 without disclosing any reasons for such invocation of the urgency clause.

13. We further find that the issue with regard to invoking of Section 17 of the Land Acquisition Act in cases where land is proposed to be acquired for the purpose of planned development in favour of the development authority has been considered by the Apex Court in detail in the case of *And Sri Radhey Shyam (Dead) Through L.Rs. And others v. State of U.P. and others*) and in paragraphs 55 and 59 it has been held as follows :

55. In our view, the above noted factors do not furnish legally acceptable justification for the exercise of power by the State Government under Section 17(1) because the acquisition is primarily meant to cater private interest in the name of industrial development of the district. It is neither the pleaded case of the respondents nor any evidence has been produced before the Court to show that the State Government and/or agencies/instrumentalities of the State are intending to establish industrial units on the acquired land either by itself or through its agencies/instrumentalities. The respondents have justified the invoking of urgency provisions by making assertions, which are usually made in such cases by the executive authorities i.e. the inflow of funds in the State in the form of investment by private entrepreneurs and availability of larger employment opportunities to the people of the area. However, we do not find any plausible reason to accept this tailor-made justification for approving the impugned action which has resulted in depriving the appellants" of their constitutional right to property. Even if planned industrial development of the district is treated as public purpose within the meaning of Section 4, there was no urgency which could justify the exercise of power by the State Government under Section 17(1) and 17(4). The objective of industrial development of an area cannot be achieved by pressing some buttons on computer screen. It needs lot of deliberations and planning keeping in view various scientific and technical parameters and environmental concerns. The private entrepreneurs, who are desirous of making investment in the State, take their own time in setting up the industrial units. Usually, the State Government and its agencies/instrumentalities would give them two to three years" to put up their factories, establishments etc. Therefore, time required for ensuring compliance of the provisions contained

in Section 5-A cannot, by any stretch of imagination, be portrayed as delay which will frustrate the purpose of acquisition. In this context, it is apposite to note that the time limit for filing objection under Section 5-A (1) is only 30 days from the date of publication of the notification under Section 4(1). Of course, in terms of sub-section (2), the Collector is required to give opportunity of hearing to the objector and submit report to the Government after making such further inquiry, as he thinks necessary. This procedure is likely to consume some time, but as has been well said, "Principles of natural justice are to some minds burdensome but this price-a small price indeed-has to be paid if we desire a society governed by the rule of law."

56. In this case, the Development Authority sent proposal some time in 2006. The authorities up to the level of the Commissioner completed the exercise of survey and preparation of documents by the end of December, 2006 but it took one year and almost three months to the State Government to issue notification under Section 4 read with Section 17(1) and 17(4). If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under sub-section (1) of Section 5-A and the time spent by the Collector in making inquiry under sub-section (2) of Section 5-A would have defeated the object of acquisition.

57. The apprehension of the respondents that delay in the acquisition of land will lead to enormous encroachment is totally unfounded. It is beyond the comprehension of any person of ordinary prudence to think that the land owners would encroach their own land with a view to frustrate the concept of planned industrial development of the district.

58. The perception of the respondents that there should be at least one year's time gap between the issue of notifications under Sections 4 and 6 is clearly misconceived. The time limit of one year specified in clause (ii) of the proviso to Section 6(1) is the outer limit for issue of declaration. This necessarily means that the State Government can complete the exercise under Sections 5-A and 6 in a shorter period.

59. The only possible conclusion which can be drawn from the above discussion is that there was no real and substantive urgency which could justify invoking of the urgency provision under Section 17(1) and in any case, there was no warrant to exclude the application of Section 5-A which, as mentioned above, represent the statutory embodiment of the rule of audi alteram partem.

14. In view of the aforesaid we are more than satisfied in that no facts existed before the State Government for invoking the powers under Section 17(1) and Section 17(4) of the land 1894 in the case in hand. As a result whereof the notifications under section 4 and section 6 of the Land Acquisition Act are held to be bad. We have been informed that thus far no award has been made by the Special land Acquisition Officer, with reference to the notifications under

challenged.

15. This takes the court to the issue of investment of public money for development of the acquired land running into crores of rupees by the development authority subsequent to the acquisition notifications. Reference has been made to the judgment of the Apex Court in case of M/S Sahara India Commercial Corp. Ltd. & others v. State of U.P. & Others passed in Civil Appeal No. 11501 of 2011 along with connected civil appeals decided on 30.11.2016 wherein the Apex Court after coming to the conclusion that the acquisition by the State was bad, has provided that compensation be paid to the tenure holders to be determined on the basis of the provisions of Right to Fair Compensation and transparency in Land Acquisition & Rehabilitation and re- Settlement Act, 2013 with a further direction that the construction which had been raised prior to the acquisition notification shall also be considered by the Collector, for the purpose of determination of compensation. It has been provided that the date of notification, for acquisition shall be deemed to be the date on which the order had been passed by the Apex Court i.e. 30th November, 2016. Relevant paragraph of the judgement of Apex Court in the Case of M/S Sahara India Commercial Corp. Ltd. (Supra):

"12. The next question that confronts the Court is the relief that should be granted in the present cases. Ordinarily, in the normal course, interference with the acquisition proceedings would result in a return to the status prior to the commencement of the acquisition proceedings obliging the acquiring authority to return the land to the landowners. However, from the materials placed before us it appears that the purpose for which the land was acquired has been implemented and on parts of the land constructions under different Housing and other Schemes have come up. While there is a controversy with regard to the extent of the development that has taken place what is reasonably certain is that a fairly large portion of the land has been put to use for the purposes for which the same was acquired. What, however, is clear that insofar as the land of the appellants is concerned the same continue to be largely vacant on account of the interim orders passed by the Court. In such a situation, we are of the view that even though the impugned acquisition has been found to be legally fragile, requiring the acquiring authority to return the land to the landowners, at this stage, would have the effect of jeopardizing the Housing and other project which either have been completed or have reached completion. This would be contrary to public interest. Therefore, we are of the view that in the totality of the facts of the case we should mould the relief in the following manner:

I) Though this Court is interfering with the acquisition proceedings as a whole, yet it directs that there will be no obligation on the part of the acquiring Authority to return any part of the land to any of the landowners. In other words, the acquiring Authority would have the option to retain entire of the land acquired by the notifications in question. In such an event, only in respect of the land of the appellants before this Court (Stated to be 76 in number and the area

involved 281 acres, approximately) the date of the present order will be deemed to be the date of a fresh notification for acquisition of the aforesaid land of the appellants before this Court. We repeat to make it clear that for the rest of the land acquired and in respect of the landowner who may have received any part of the compensation the aforesaid directions would have no application. The compensation to be determined on the basis of the deemed notification, as directed, will be in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and claims of compensation for constructions that may have come up on the acquired land prior to the dates of original Notifications (16th October, 2004 and 11th November, 2004) will also be considered by the Collector on their own merits."

16. Following the same direction of the Apex Court we deem it fit and proper to provide same relief to the petitioners before us. It is, therefore, directed as under:

17. The State shall determine and pay compensation to the petitioners, to be determined on the basis of the date of this order as the date of the acquisition notification i.e. 22.12.2016, under the provisions of Right to Fair Compensation and transparency in Land Acquisition & Rehabilitation and re-Settlement Act, 2013 the claim of compensation for construction which were standing on the date of the earlier notification shall also be computed. This exercise shall be completed within 2 months from the date of the receipt of the certified copy of this order. All consequential action shall be taken after immediately thereafter.

18. Writ petition is allowed subject to the direction issued above.