

(1992) 04 AHC CK 0102

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13683 of 1992

Lalit Kumar Arora

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-04-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5, 5A, 6
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 3, 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (1992) 2 AWC 1257

Hon'ble Judges : Om Prakash, J;A.P. Singh, J

Bench : Division Bench

Advocate : S.V. Goswami, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Singh, J.—A large number of plots including plot No. 67 admeasuring 0 788 hectares situated in village Rajpur Bangar pargaua and District Mathura are subject matter of acquisition proceedings initiated by having issued notifications u/s 4(1)(Annexure 5 to the writ petition) and u/s 6(1) of the Land Acquisition Act (Annexure 7 to the writ petition. The Petitioner Lalit Kumar Arora. who claims himself to be the purchaser of the said land from Sri Kishori Lal, recorded owner of the land, has filed this writ petition challenging the acquisition proceedings on various grounds enumerated by him in the writ petition but at the bar he has pressed only following grounds:

1. Purpose of acquisition as indicated in the notification issued u/s 4 of the Land Acquisition Act (Annexure 5 to the writ petition) being planned housing development in Mathura Vrindaban town, through Mathura Vrindaban Development Authority, the land under acquisition cannot be needed for the planned housing development in Mathura Vrindaban town as that is at the distance of 10 Km situated from the town of Mathura Brindaban. Consequently the acquisition proceedings at the instance of Mathura Vrindaban Development

Authority, Respondent No. 3 in respect of Petitioner's land is wholly illegal;

2. Declaration issued u/s 6(1) of the Land Acquisition Act by the Government, which has been published in the local news-paper and is filed as Annexure 7 to the writ petition, has not been issued in the Form which is prescribed in the Manual of Government Orders as per Form II (R-D) being Form No. 168 as required by para 417 of the Manual of Government Orders, as such it is to be presumed that there was no application of mind by the Government while issuing the said declaration specially when there is nothing to suggest that the report submitted by the Collector u/s 5A of the Land Acquisition Act was duly considered by the Government before making the declaration;

3. The acquisition proceedings are wholly illegal as there is nothing to indicate that prior approval of the revenue authorities was obtained by the Government before making the declaration u/s 6(1) of the Land Acquisition Act for acquisition of the land, which is in respect of agricultural land as acknowledged by the Land Acquisition Officer himself in the report submitted by him to the State Government u/s 5A. of the Land Acquisition Act which has been filed as Annexure 3 to the supplementary affidavit;

4. Since sufficient barren land was already lying vacant in close vicinity of the land under acquisition and was fit for being used for the purpose for which the acquisition is being made as such the acquisition of agricultural land is not permissible as per para 411 of the Manual of Government Orders, which also proves that there was absolutely no application of mind by the Government before making the declaration for acquisition of the land which would also lead to an inference of malice in law so as to totally vitiate the acquisition proceedings; and

5. Lastly the acquisition proceedings cannot be said to be for public purpose as the acquisition of land belonging to poor people will cause displacement of a large number of people belonging to the weaker sections of the society rendering them landless and destitutes while the purpose sought to be achieved by the acquisition is for settling people coming to Mathura and Vrindaban town on religious tours. The acquisition proceedings, therefore cannot be said to be in accordance with the land Acquisition Act and are, therefore, vitiated.

2. The Writ Petition did not contain necessary averments to justify the points raised by the counsel for the Petitioner at the bar We offered him an opportunity to file supplementary affidavit at the out set but the learned Counsel pressed for arguing the case only on legal aspects. However, after the arguments were heard and judgment was reserved on 17-4-1992, the learned Counsel moved an application to bring on record certain more facts through a supplementary affidavit which, however, was entertained by us on 20-4-1992. Since the writ petition was heard at the stage of admission only without requiring the Respondents to file their version in the shape of counter affidavit, we do not consider it necessary to give a detailed judgment for deciding the writ petition,

however, we give brief reasons in respect of the arguments raised at the bar on behalf of the Petitioner.

3. First contention of the learned Counsel for the Petitioner is devoid of substance. Firstly, for the reason that in the objections filed, which were fully considered by the Special Land Acquisition Officer, as will be apparent from the report sent by him to the State Government, which is filed by the Petitioner himself as Annexure 3 to the supplementary affidavit, no such objection was taken. This is essentially an argument based on facts. Such a fact could only be raised by the Petitioner. Or any other interested person, before the Special Land Acquisition Officer in the objections which were filed u/s 5 of the Land Acquisition Act (in brief, the Act) so that the acquiring body namely; Mathura Vrindaban Development Authority could have controverted the said objection. From a perusal of the report sent to the Government by the Special Land Acquisition Officer, it does not appear that any such objection was raised as such the factual objection raised in the writ petition without anything more to show that the facts alleged in the writ petition are correct, cannot be accepted. Secondly, the Mathura Vrindaban Development authority which is the acquiring body has been constituted u/s 4 of U.P. Urban Planning and Development Act, 1973. Section 3 of the said Act contemplates declaration of "development area" by the State Government. Until the notification is filed showing the area which has been declared to be the development area for the Respondent No. 3 by the State Government, we cannot be in a position to know whether the land lies in the development area of Respondent No. 3. No specific averment in this respect too has been made by the Petitioner either in the writ petition or in the supplementary affidavit as such it is not known to us as to whether the village where the land under acquisition is situated is within the "development area" of Mathura Vrindaban Development Authority. It is not denied at the bar that Mathura Vrindaban Development Authority has power under the provisions of the U.P. Urban Planning and Development Act, 1973 to carry on development work within the "development area" as declared u/s 3 of the said Act. Thus Respondent No. 2 has power to develop the land within the "development area". In absence of averment that the village in question does not come within the "development Area" of Mathura Vrindaban Development Authority, the argument of the Petitioner cannot be accepted. In these circumstances, the first contention raised by the Petitioner that the land situated at a distance of 10 km. cannot be acquired for the development of Mathura Vrindaban town, cannot be accepted,

4. Second point raised by the Petitioner is also without any merit and deserves to be rejected. Section 6(1) of the Act does not prescribe any Form in which the declaration is required to be made. Form 168 referred to in para 417 of the Manual of Government orders is virtually a reproduction of Section 6(1) of the Act. Interpreting Section 6(1) of the Act, and a similar form prescribed by West Bengal Government by issuing executive orders, the Supreme Court in the case of Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others, , in para II observed as follows:

We are also told by counsel that no statutory forms are prescribed by the West Bengal Government for such a declaration either under the Act or the rules made there under though there are model forms framed presumably for the guidance only of the officers of the Acquisition Department. There being thus no statutory forms and Section 6 not requiring the declaration to be made in any particular form, the mere fact that the notification does not ex-facie show the Government's satisfaction, assuming that the words "it appears" used in the notification do not mean satisfaction would not render the notification invalid or not in conformity with Section 6.

5. The above observations of the Supreme Court are squarely applicable to the present case, inasmuch as Rule 417 of the Manual Government Orders also contains guidelines issued by the Government for being followed by the concerned Government authorities as was done by the West Bengal Government in the above mentioned case. Thus strict non-compliance of such guidelines does not at all render the acquisition proceedings, or for that matter, the declaration issued u/s 6(1) of the Act illegal.

6. Third contention of the Petitioner too deserves to be rejected. Petitioner has not pointed out any statutory rule or "regulation or even a Government instruction or circular which requires previous sanction to be obtained from the revenue authorities before acquisition of agricultural land is made under the Land Acquisition Act. In para 10 of the writ petition, he has, however, stated that the Collector has no jurisdiction to issue notification u/s 4(1) of the Land Acquisition Act unless sanction u/s 143 of the U.P. Zamindari Abolition and Land Reforms Act is obtained from the Assistant Collector of the Division. Section 143 of the U.P. Zamindari Abolition and Land Reforms Act does not create any bar against the acquisition of agricultural land under the Land Acquisition Act. It only requires that before a Bhumidhar puts the agricultural land to any other use including use for industrial or residential purpose he shall obtain sanction from the Assistant Collector of the area. The Petitioner has thus wrongly placed reliance on the provisions of Section 143 of the U.P. Zamindari Abolition and Land Reforms Act inasmuch as the said provision does not require the acquiring body or the Government to obtain sanction from the Assistant Collector before the land is put to any non-agricultural use.

7. Previous sanction of the Assistant Collector, contemplated by Section 143 of the U.P. Zamindari Abolition and Land Reforms Act, is directed to be the application of personal law in the matter of devolution of such land as will be apparent from Clause (2) of that section. The provision of section 143 of the U.P. Zamindari Abolition and Land Reforms Act cannot thus be pressed into service to create a bar against the acquisition of agricultural land by the Government under the Land Acquisition Act. Thus the bar against putting an agricultural land to any other non-agricultural use cannot be made applicable to a land which has been acquired and is not available for use by the Bhumidhar. In our opinion the provisions of Section 143 of the U.P. Zamindari Abolition and Land Reforms Act

firstly are not attracted to the acquisition proceedings and no sanction of the Assistant Collector is required for acquisition of agricultural land under the Land Acquisition Act and secondly, the power of the Government to acquire the land, including agricultural land is unqualified and is not subject to any condition imposed by any other Act, including Section 143 of the U.P. Zamindari Abolition and Land Reforms Act. The condition for exercise of power to acquire the land has to be seen only under the Land Acquisition Act and such a condition on the power of the Government to acquire the land under Land Acquisition Act cannot be inferred from any other law. U.P. Zamindari Abolition and Land Reforms Act is a special Act which was enacted by the Legislature to abolish Zamindaris and to create new rights in favour of tenure-holders in the land and to evolve new system of land revenue and collection there of. The said Act has nothing to do nor deals with the acquisition of land so its provisions cannot be read to impose a condition on the power of the Government under the Land Acquisition Act to acquire land, including agricultural land.

8. Fourth point of the Petitioner has duly been dealt with by the Special Land Acquisition Officer in his report submitted to the Government, which is Annexure 3 to the supplementary affidavit. It has been reported by the Special Land Acquisition Officer, in his report, submitted to the Government, that in respect of the proposal of the acquisition, preliminary enquiry was made regarding availability of any other barren or non-agricultural land within a radius of half a mile and after enquiry it was found that sufficient barren or non-agricultural land was not available for the purpose for which the land in dispute was being acquired. It was also reported by the Special Land Acquisition Officer in his report that there was no religious monument, building, grave or grave-yard in the said land and there was no other proposal for acquisition in respect of the said purpose. From the above it cannot be said that the notifications u/s 4 and 6 of the Land Acquisition Act were issued without application of mind. Whether uncultivated land was available or not in the area to meet the requirement for which the acquisition was being made, was fully dealt with and on being satisfied on the basis of the report submitted by the Special Land Acquisition Officer that the land included in the notifications issued u/s 4(1) and 6(1) of the Land Acquisition Act were needed for public purpose, namely; for planned housing development in Mathura town through the Mathura Vrindaban Development Authority, Mathura the notifications were issued by the Government. In view of this specific report of the Special Land Acquisition Officer, the contention made on behalf of the Petitioner at the bar is, therefore, wholly misconceived. Since the Special Land Acquisition Officer has specifically made sure about non-availability of barren or non-agricultural land in the vicinity of half a mile as such it cannot be said that the provisions of para 411 of the Manual of Government Orders, which requires the acquisition of barren or non-agricultural land, if available, were not complied with.

9. The last submission of the Petitioner also deserves to be rejected summarily. The purpose indicated in the notifications under challenge is different from what

has been stated by the learned Counsel for the Petitioner at the bar, which is on the basis of the reply filed by the Mathura Vrindaban Development Authority before the Special Land Acquisition Officer, to oppose the objections filed by tenure-holder u/s 5A of the Act. The purpose for acquisition of the land as mentioned in Section 4 notification is reproduced hereunder : -

For what purpose required--For planned Housing Development in Mathura Town. District Mathura through the Mathura-Vrindaban Development Authority, Mathura.

Kis prayojan ke liye aabashyakata hai. Suniyojit bikash yojana ke adhin gram Rajpur Bangar pargana Mathura tahsil -Mathura Zila Mathura mein Mathura Brindhvan Vikash Pradhikaran kee aabasiye viyash ke liye aabashypkata hai.

Public purpose mentioned in the notifications issued under Sections 4(1) and 6(1) of the Land Acquisition Act is the purpose which has to be seen and it alone is relevant for judging the legality of the land acquisition proceedings under the Land Acquisition Act. The purpose, as mentioned in the two notifications which have been reproduced above being different, it cannot be said that the land was acquired for the purpose of religious pilgrims coming to Mathura Vrindaban town from outside. Factually also Petitioner's contention in this respect is not correct. Mathura Vrindaban Devebpment Authority in it's reply, filed before the Special Land Acquisition Officer which is Annexure 3-A to the writ petition, in paras 9 and 10 has explained the purpose for which the acquisition was proposed to be made. In these paragraphs it has been reiterated by Mathura Vrindaban Development Authority that the land is being acquired for the purpose of meeting residential requirements of the day by day increasing population of the city. The Petitioner has, however, taken resort to the additional reason given by the Development Authority in para 10 for emphasising the pressing requirement for acquisition of the land. This contention of the Petitioner thus is also without substance and has no factual basis. The Special Land Acquisition Officer has also dealt with this point in Annexure 3 to the supplementary affidavit and has rejected this contention on valid considerations, with which we fully agree.

10. The learned Counsel for the Petitioner has placed reliance on certain observations of the Supreme Court in the case of Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, and also in the case of Bharat Singh and Others Vs. State of Haryana and Others, and has cited some other cases but to our mind none of these cases are applicable to the controversy raised by the potitioner in the back-ground of the facts given in the writ petition and the supplementary affidavit. Even at the bar, the learned Counsel was not able to satisfy us as to how these decisions are relevant in respect of Petitioner's case.

11. For the above reasons, the writ petition fails and is dismissed in limine as no relief can be granted to the Petitioner.

12. Counsel for the Petitioner orally states that a certificate be granted to enable the Petitioner to file an appeal before the Supreme Court. Since in our opinion the

petition does not raise a substantial question of law of general importance, we decline to issue the certificate.