
(2004) 03 AHC CK 0203

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52305 of 2000

Laxmi Narain Jagdish Saran Kanya Inter College and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 3, 4, 41, 48(1)

Citation : (2004) 5 AWC 4435 : (2004) 2 UPLBEC 1812

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Shashi Nandan, for the Appellant; N.C. Rajvanshi, Ajit Kumar, R.D. Gupta and M.K. Rajwanshi and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—These two writ petitions are being disposed of by a common judgment.

2. Heard learned Counsel for the parties.

3. Writ Petition No. 52305 of 2000 has been filed by the petitioner college through one Sri Ram Veer Singh who claimed to be the Manager of the said college. By means of that petition the petitioner has challenged the impugned order dated 26.7.2000/4.8.2000 (Annexure 14 to the writ petition) by which a notification was issued u/s 48(1) of the Land Acquisition Act releasing the land in question from acquisition under the Act.

4. The petitioner is an Intermediate college imparting education to girl students up to Intermediate level in Moradabad city. Since the institution did not have a playground for its students it approached the State Government for acquiring a land for that purpose. Hence a notification u/s 4 of the Land Acquisition Act was published in the Official Gazette on 29.3.1980. After disposing of the objections u/s 5A the State Government issued a declaration u/s 6 vide Annexure 1 to the writ petition.

5. It may be mentioned that the petitioner college is run by a society which is a company u/s 3(e) of the Act. Hence the land acquisition proceedings for acquiring the land for the purpose of playground was taken in accordance with the procedure prescribed in Part VII of the Act. The society and the State Government entered into an agreement u/s 41 of the Act which was published in the Official Gazette dated 21.3.1983 copy of which is Annexure 2 to the writ petition. The Special Land Acquisition Officer, Moradabad gave an award dated 23.8.1986 determining the amount of compensation payable to the tenure holders vide Annexure 3 to the writ petition. Against that award a reference u/s 18 is pending.

6. After the award of the Special Land Acquisition Officer the petitioner wrote several letters to the concerned authorities requesting them to take steps to handover the possession of the land in question to the petitioner vide Annexures 4 to 7 of the writ petition. However, it appears that in view of an injunction in Civil Suit No. 700 of 1986, Nathua v. State of U.P., favour of the tenure holder in the Civil Court possession could not be handed over to the petitioner. It is alleged in paragraph 14 of the writ petition that Kanhaiya Lal, son of deceased Nathua, tenure, holder, submitted an application to the State Government for releasing the property from acquisition and on that application a letter dated 7.10.1998 was issued by the State Government to the Director of Education for his comments vide Annexure 8 to the writ petition. The District Magistrate also submitted his report on 3.11.1998 vide Annexure 10 to the writ petition.

7. In paragraphs 18 and 19 of the writ petition it is stated that a Minister of State was interested in getting the property released from acquisition vide Annexure 11 to the writ petition. All of a sudden the impugned order dated 26.7.2000/4.8.2000 has been passed releasing the property from acquisition.

8. It is alleged that the impugned order is wholly illegal. It is alleged that the State Government had initiated proceedings for acquisition after being fully satisfied that the disputed land was required by the petitioner for the purpose of playground for a girl's school which was for public purpose, and now arbitrarily it has taken a contrary view. The petitioner has already deposited the requisite amount towards the acquisition charges as far back as on 10.11.1979, and the State Government has also entered into an agreement u/s 41 on 18.2.1983 which was published in the Official Gazette. The State Government has acted arbitrarily without cogent reasons in issuing the impugned notification. It is alleged that the petitioner being an educational institution still requires a playground for the students. It is alleged that the impugned order does not disclose any reason.

9. In Writ Petition No. 52305 of 2000 a counter affidavit has been filed on behalf of respondent No. 3, Kanhaiya Lal and we have perused the same. In paragraph 3 (d) it is alleged that the Manager of the college, Sri Ram Veer Singh in his letter dated 18.1.1999 addressed to the Special Land Acquisition Officer, Moradabad copy of which is Annexure CA-4 has stated that the property is not in

the possession of the institution and for this reason there is no justification for utilizing the same.

10. In Writ Petition No. 26898 of 2001, which is the connected writ petition, it has been stated in Paragraphs 14 and 15 of that writ petition that the Committee of Management was illegally taken over by Kamal Chandra Agarwal by putting up a totally forged and false Management of the institution of which Kamal Chandra Agarwal himself became the President and made Sri Ram Veer Singh as Manager. The said forged Committee was created in 1998 and several petitions are pending regarding the dispute about the Committee of Management. It is alleged in Paragraph 15 of Writ Petition No. 26898 of 2001 that Sri Kamal Chandra Agarwal manipulated the entire proceedings for de-aquisition of the land and for this purpose he got a letter dated 18.1.1999 issued by Sri Ram Veer Singh copy of which is Annexure CA-4 to the Writ Petition No. 52305 of 2000 and Annexure 6 to the Writ Petition No. 26898 of 2001. In Paragraph 16 of the Writ Petition No. 26898 of 2001 it is alleged that when petitioner No. 1, came to know about the facts he wrote a letter dated 22.6.1999 objecting to the proceedings for de-notification. True copy of the letter dated 22.6.1999 is Annexure 7. The petitioner also gave a similar representation to other authorities e.g. Joint Director of Education, Moradabad vide Annexure 8, the petitioner in Writ Petition No. 26989 of 2001 also wrote several letters to other authorities for taking possession of the land in question. However, despite all this the impugned order of release has been passed. It is alleged in Paragraph 23 that the conduct of Sri Kamal Chandra Agarwal was to grab the said land by some means. The tenure holder has allegedly executed a registered agreement to sell the land in favour of Sri Kamal Chandra Agarwal on 15.9.1986 and has also executed a registered Power of Attorney in his favour vide Paragraph 30 of Writ Petition No. 52305 of 2000.

11. We have carefully perused the affidavits in these petition and we are of the opinion that these petitions deserve to be allowed.

12. Admittedly the State Government on being satisfied that the petitioner institution required a playground for its students issued a notification u/s 4 of the Act and thereafter after consideration of the objections issued a declaration dated 22.3.1983, u/s 6 of the Act after recording its satisfaction that the land is needed for a company, namely, Laxmi Narain Jagdish Saran Shiksha Samiti for playground of the college. Thereafter the petitioners also entered into an agreement u/s 41 of the Act and the entire cost of acquisition were also borne by the petitioners. The State Government while issuing the impugned order has not afforded any opportunity of hearing to the petitioners which is clearly illegal inasmuch as the petitioner being beneficiaries were entitled to be heard before the withdrawal of the acquisition as it has to suffer substantial loss.

13. In *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, , the Supreme Court held that where the acquisition is for a company then opportunity of hearing and reasons have to be given by the State Government. In the present case the impugned order does not disclose any good reason. All it says is

that the land is not needed in the public interest, which is here nor there. In para 30 of Writ Petition No. 26898 of 2001 it is alleged that the land is still required for the Girl's College as it has no playground.

14. In para 26 of Writ Petition No. 26898 of 2001 it has been alleged that the impugned order of de-notification was passed without giving opportunity of hearing to the petitioner. This allegation is not seriously disputed.

15. In *Amarnath Ashram Trust Society v. Governor of U.P.* AIR 1998 SC 477, the Supreme Court held that withdrawal of land acquisition proceeding by the State Government after the agreement between a company and State Government was executed and Section 6 notification was issued was arbitrary and illegal.

16. In *State Government Houseless Harijan Employees Association v. State of Karnataka* AIR 2001 SC 437, also a similar view has been taken.

17. In the present case it is not disputed that the society is a company as defined in the Land Acquisition Act. Hence in view of the aforesaid decisions we are of the opinion that the impugned order was clearly arbitrary and illegal. The institution is a girls institution and in our opinion every educational institution should have a playground because there should be a healthy mind in a healthy body. Sport activities are an essential component of every educational institution because students should develop in a balanced manner and this requires sports activities also. Unfortunately in our country women have been suppressed for centuries but now the time has come when their potential must be liberated and they must be given good education. In our opinion good education includes some sports activity also. In every educational institution a playground for sports e.g. badminton, volleyball, Basketball, table tennis, tennis, etc. is a must so that the students can enjoy in schools while pursuing their studies. Hence in our opinion the acquisition was clearly for a public purpose and possession of the playground should have been given forthwith to the institution but for a long period it has been delayed.

18. We, therefore, direct that the possession of the land shall be given forthwith to the petitioner institution so that the playground is available for the girls school immediately. We may also mention that the suit which was filed to prevent taking over possession was to our mind wholly malafide and frivolous and in fact not maintainable. The suit proceedings are hence quashed. We further deprecate the attitude of Kamal Chandra Agarwal respondent No. 4 in Writ Petition No. 52305 of 2000 who got an agreement and power of attorney signed in his favour from the tenure holder. We are satisfied that it was he who was behind the release proceeding for his mischievous ends. The letter of Ram Veer Singh dated 18.1.1999, Annexure CA-4 was clearly motivated and at any event it cannot be treated to mean that the college should not have a playground. In para 30 of Writ Petition No. 26898 of 2001 it is alleged that the College still needs a playground as it has none.

19. The petitions are allowed. No order as to costs.