
(2010) 02 MP CK 0067
In the Madhya Pradesh High Court
Case No : W.A. No. 462 of 2009

Laxmi Narayan Mishra

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Land Acquisition (Companies) Rules, 1963 — Rule 4, 4(1), 4(2)
Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14

Citation : (2010) ILR (MP) 1509 : (2010) 1 MPHT 301 : (2010) 2 MPLJ 236

Hon'ble Judges : S.C. Sinho, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Challenge in the writ appeals is to legality of the Order dated 8.4.09 passed by the single Bench dismissing the writ petitions challenging the land acquisition for establishing Mega Cement Plant by M/s Bhilai J.P. Cement Ltd. Land which has been acquired is situated in village Sakariya and Birouhali of Tahsil-Raghurajnagar, District-Satna. Provision of Chapter VII were complied with and thereafter notification u/s 4(1) of Land Acquisition Act was issued on 9.7.2008.

For establishing a Mega Cement Plant with the production capacity of 2.2. million tones of cement per year, the land admeasuring 235.59 acres had been acquired. About 72.77 acres of land could not be purchased because of unwillingness of respective owners. The said land is situated in between the area already purchased by private negotiations by Company. Therefore, the State Govt. resorted to acquire the same under the provisions of Land Acquisition Act, 1894. State Govt. wrote a letter (R-3/2) to the Collector on 27th December, 2007 pointing out the aforesaid fact that the Company had purchased 139.49 acres land by private negotiations out of 211.22 acres which was required. Remaining 76.22 acres of land could not be purchased as the land owners did not agree to sell their land to the Company. The propriety of land acquisition was ordered to

be examined. Collector, in turn, wrote a letter (R-3/3) on 7.1.2008 to the SDO, Raghurajnagar, District-Satna sending a copy of the aforesaid letter (R-3/2) and to submit the report by 12.01.2008. The SDO directed Tahsildar, Raghurajnagar to collect the information and send the same. Collector wrote a letter (R-3/4) on 27.2.2008 to send the report by 1.3.2008 with respect to the land in question. Tahsildar, Raghurajnagar sent report (R-3/5) dated 1.3.2008 pointing out 19 aspects in the report. The inquest of spot inspection was prepared. The inquest indicated that land was situated in midst of the land purchased by M/s Bhilai JP Cement Ltd. and the land was useful to them, it was un-irrigated land, map of it also tallied and found to be correct, panchnama and the report were forwarded by the SDO to the Collector vide letter (R-3/6) on 1.3.2008. The Collector, called for the information from Deputy Director, Agriculturists Welfare and Agricultural Development, District-Satna who vide letter (R-3/8) dated 5.3.2008 written to the Collector intimated that land was cultivable and was fertile, department was not having any objection in acquisition of the land in case the agriculturists were not having any objection. Crux of the report was that department was not having any objection, however, the agriculturists had not agreed for sale as such the proceedings under Chapter. VII were initiated and report was called as envisaged under rule 4 of the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as "the Rules of 1963"). The Collector sent the report to the State Government vide letter (R-3/7) on 5.3.2008. After examining the report, the State Government wrote a letter (R-3/9) on 14.5.2008 for execution of the agreement u/s 41 of the Land Acquisition Act, Thereafter agreement was entered into between the State and the Company, and the State Government issued notification u/s 4 and a declaration u/s 6 of the Land Acquisition Act. Notification u/s 4 was issued on 30th June, 2008 and declaration u/s 6 was issued on 8.8.2008. In the notification u/s 4 the purpose for the acquisition was specified as acquisition for establishment of Mega Cement Plant of M/s Bhilai J.P. Cement Ltd. The writ petitions were preferred before the single Bench assailing the acquisition of the land. Single Bench has dismissed the writ petitions. Aggrieved thereby, the instant writ appeals have been preferred.

Shri Raghvendra Kumar and Shri Hitendra Singh, learned Counsel appearing for Appellants have submitted that acquisition could not be for a public purpose and for a company at the same time. Notification u/s 4 and declaration u/s 6 suffers with illegality inasmuch as public purpose has been defined as acquisition for establishment of Mega Cement Plant of M/s Bhilai J.P. Cement Ltd., acquisition for a company could not be treated as a public purpose. Learned Counsel have further submitted that rule 4 of the Rules of 1963 has not been complied with in its pith and substance. Due enquiry was not held as contemplated into the various aspects envisaged under the aforesaid rule. The enquiry got conducted through Collector was merely an eye-wash, report of Tahsildar was obtained and it was forwarded to the State Government, therefore, it could not be said that the enquiry was made in terms of the rule 4 of the Rules of 1963.

Shri R.P.Agarwal, learned Sr. Counsel appearing with Shri Sanjay Agarwal for M/s

Bhilai J.P. Cement Ltd. and Shri Samdarshi Tiwari, learned GA appearing for State/Respondents have supported the acquisition and have submitted that provision of Chapter VII of the Land Acquisition Act has been duly followed. Substantial part of the land which was required for the purpose of Company was purchased by Company through private negotiations, however, the owners of 76.22 acres of the land did not agree for selling their land in private negotiations as such communication was made to the State Government for acquisition of the land, pursuant thereto the State Government directed holding of enquiry under rule 4. The rule 4 was duly complied with in the instant case. In the notification u/s 4 and declaration u/s 6 purpose for which the acquisition has been made has been specified. Acquisition had been made for a company, it is a method of describing the acquisition for the Company M/s Bhilai J.P. Cement Ltd. Thus, there was no illegality in the notification u/s 4 or declaration u/s 6 of the Land Acquisition Act. They have also referred to the correspondence made between the State Government and Collector (R-3/2 to R- 3/7) to contend that provision of rule 4 has been complied with. There is no merits in the appeals, the decision rendered by the single Bench deserves affirmance.

The first question for consideration is whether notification u/s 4 and declaration u/s 6 can be said to be illegal as against column of public purpose acquisition has been mentioned for company.

Shri Raghvendra Kumar and Shri Hitendra Singh, learned Counsel appearing for Appellants have relied upon decision of Apex Court in *Devinder Singh and Ors. v. State of Punjab and Ors.* (2008) 1 SCC 728 in which the Apex Court has laid down that a declaration has to be made either for a public purpose or for a Company, it cannot be for both. However on facts, we find in the instant case that notification u/s 4 and declaration u/s 6 were for acquisition for the Company.

When we peruse the notification issued under prescribed proforma of Section 4 it has been mentioned, as against column of public purpose for which the acquisition has been made is for the establishment of Mega Cement Plant of M/s Bhilai J.P. Cement Ltd. In our opinion, it is clearly mentioned by naming company that acquisition is for said Company. It is a method of description in the prescribed proforma of issuance of notification u/s 4 that as against public purpose column, the acquisition is for a Company, has been mentioned by naming said Company. Similar is the position with respect to declaration u/s 6 of the Land Acquisition Act, thus, acquisition has been clearly mentioned to be for the purpose of Company. It could not be said that it was not mentioned in the aforesaid notification and declaration issued u/s 4 and 6 of the Act respectively that acquisition was not for Company. It was for a company has been clearly specified and it is not in dispute that provision of Chapter VII were resorted to.

In the instant case, it appears that provisions of Chapter VII were complied with. The challenge is that enquiry was not held in terms of rule 4 of the Rules of 1963 as such there was violation of said rule 4 while making the acquisition for a Company. M/s Bhilai J.P. Cement is a Ltd.Co. As per the case set up by the

Respondent/M/s Bhilai J.P. Cement Ltd. it has been established in collaboration with Steel Authority of India Ltd. Whatever that may be, we find that the provision of rule 4 of the Rules of 1963 stands complied with.

It is apparent from the communication placed on record that effort was made by the Company to acquire the land by private negotiations, however, out of total requirement of 211.22 acres, Company could purchase 134.49 acres by private negotiations, remaining land owners of 76.22 acres land did not agree for selling the property by way of private negotiations and to execute the sale deeds, as such request was made by the Company through MP TRIFAC for acquisition of the land as such the State Govt. directed the Collector, District-Satna to send a report as to desirability to acquire the land in accordance with the rules. Addl. Collector, Satna had in turn asked the report from SDO, Raghurajnagar vide letter (R-3/3) dated 7.1.08. On that SDO had asked the Tahsildar to conduct inquiry on the points which were specified and to send other relevant informations. It appears that report was not sent by 12.1.08 as such another letter (R-3/4) was written by the Joint Collector to SDO, Raghurajnagar to submit the report by 1.3.2008. On 1.3.2008, after conducting the spot inspection, Tahsildar had sent a detailed report containing the information on 19 points. The spot inspection was also made on 18.1.2008. In inquest it was mentioned that crop was sown by the owners, the land was situated in the midst of land already purchased by M/s Bhilai J.P. Cement Ltd. by way of private negotiations. The land was un-irrigated. Map tallied with the situation of the spot. Collector had also called for the report (R-3/8) from the Office of Deputy Director, Agriculturists Welfare and Agricultural Development, District-Satna in which it was mentioned that land was cultivable and fertile, however, it was not controverted as mentioned in the Panchnama that land was un-irrigated. Agriculture Department was not having any objection in case agriculturists were not having any objection. Objection of agriculturists was not material as they did not agree for the sale of the land by private negotiations as such the procedure envisaged under chapter VII of the Land Acquisition Act was resorted to and followed. The report was forwarded by the Collector along with the letter of the Deputy Director, Agriculturists Welfare and Agricultural Development, District-Satna. The State Government on the basis of report after due satisfaction that it was necessary to acquire the land has directed acquisition of the land vide communication (R-3/9) dated 14.5.2008 and directed execution of the agreement u/s 41 of the Land Acquisition Act. Said agreement was also executed is not in dispute.

Section 39 of the Land Acquisition Act provides that previous consent of appropriate Government and execution of agreement is necessary. The provisions of section 6 to 16 (both inclusive) and section 18 to 37 (both inclusive) shall not be put in force in order to acquire land for any company unless the consent of the appropriate Government has been obtained and unless the Company has executed the agreement provided u/s 41 of the Act. Section 40 also provides that such consent shall not be given unless the appropriate

Government, either on the report of the Collector u/s 5A, Sub-section (2) or by an enquiry held as provided in the section. Once an agreement is entered into u/s 41, it is required to be published u/s 42.

It was submitted that Rule 4 of the Rules of 1963 has been violated. Rule 4 of the Rules of 1963 read as under:

Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings - (1) Whenever a company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely-

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;

(ii) that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the company is in a position to utilize the land expeditiously, and

(vi) where the land proposed to be acquired is good agricultural land that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity, to make any representation in this behalf, hold an inquiry into the matters referred to in Sub-rule (1) and while holding such enquiry, he shall-

(i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the company; and

(iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation- For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under Sub-rule (2), the Collector

shall submit a report to the appropriate Government and a copy of the same shall be forwarded by the Government to the Committee.

(4) No declaration shall be made by the appropriate Government u/s 6 of the Act unless-

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any, submitted u/s 5-A of the Act; and

(ii) the agreement u/s 41 of the Act has been executed by the Company.

Rule 4 provides that Company can make an application to the appropriate Government for acquisition of any land and Collector has to submit a report on the aforesaid matter enumerated under rule 4(I)(i) to (vi), i.e., to say ; the Company has made its best endeavour to find out the lands in the locality suitable for the purpose of acquisition, the Company has made all reasonable efforts to get such lands by negotiations, the land proposed to be acquired is suitable for the purpose and is not excessive, Company can utilize the land expeditiously and lastly where the land proposed to be acquired is good agricultural land that no alternative suitable site can be found so as to avoid acquisition of that land. Rule 4(2) of the Rules of 1963 provides that Company has to be given a reasonable opportunity to make any representation in this behalf while holding an inquiry into the matters referred to in Sub-rule (I). The Collector shall also consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land. Collector has also to consider under Rule 4(2)(ii) and has to opine as to approximate amount of compensation likely to be payable in respect of the land. He has further to ascertain under Rule 4(2) (iii) whether Company offered a reasonable price to the persons interested in the land which is proposed to be acquired.

In the instant case, enquiry has been held under Rule 4 and the matters enumerated u/s 40 and rule 4 have been duly taken care of in the report sent by the Collector to the State Government. When we consider the report (R-3/5), the objective of the Company its constitution and other details were mentioned, the purpose for which the acquisition was proposed had also been mentioned to be in the interest of public. It was also mentioned that company had made all possible efforts to purchase the land by private negotiations, it has already purchased the land on the basis of mutual agreement, on the basis of prevailing guidelines, at the rate of Rs. 3 Lacs per acre, approximately 155.10 acre had been purchased by getting the sale deeds executed. Remaining owners claimed higher value of their land as such land admeasuring 75.63 acres could not be purchased . as such there was necessity for acquisition of land. As to the aspect whether Company was in a position to utilize the land, it was opined that the land was urgently required and effective functioning of the plant was adversely affected and it would not be possible to complete the work without acquisition of land in question. The report sent by Collector also contained the information on the

aspect whether there was any other alternative land available and suitability of the disputed land. It was mentioned in the report that disputed land was situated in the midst of the land already purchased by the Company and adjacent to it . The map of the land was annexed with report and there was no other alternative land available considering the situation of the land. The land was un-irrigated one. The spot inspection was made before sending the report. As per guidelines effort was made to offer reasonable compensation for purchase of land by private negotiations. Value of the irrigated land was Rs. 2,18,623 per acre and that of un-irrigated land was Rs. 1,21,457. Company had proposed a sum of Rs. 3,00,000 per acre to the owners, but they did not accept the reasonable offer made by the Company. Company has to offer employment to one of the member of the family as per policy. The Company was agreeable to deposit the compensation and 10% additional amount in advance in cash for acquisition of the land. The Public at large would not be put at inconvenience in any manner by the proposed acquisition. Land was not used by public at large for the purpose of Nistar, land admeasuring 75.63 acre was not available nearby the land in question. The land which was available was insufficient considering the requirement of which a separate case was prepared. Other informations were also submitted. Report of the Agricultural Officer as envisaged under Rule 4(2) was also obtained and forwarded to the State Govt. Thus, it is apparent that the provision of Rule 4 stood complied with in the instant case, due enquiry as to the relevant aspects envisaged under Rule 4 has been held.

Learned Counsel for Appellants have relied upon decision of Apex Court in *Devinder Singh and Ors. v. State of Punjab and Ors.* (supra) so as to contend that provision of Rule 4 is required to be complied with, unless it is complied with acquisition has to be quashed. In the said decision no enquiry whatsoever under Rule 4 was conducted. In the instant case, due enquiry has been held in all the aspects as envisaged under Rule 4 as apparent from the report. Thus, applying the aforesaid decision in the instant case we cannot quash the notification/declaration as provision has been complied with. Appellants' counsel also placed reliance on a decision of Apex Court in *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, in which it was held that decision making process pursuant to enquiry has to be by applying the mind by the appropriate Government. In the instant cases, we find that mind has been duly applied and only thereafter Government has ordered acquisition of the land in accordance with law.

Resultantly, we find dismissal of the writ petitions by the single Bench to be proper. The appeals are found to be merit less, they are hereby dismissed. No costs.