(1982) 10 AHC CK 0044

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 325 of 1979

Luxmichand and Others APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 06-10-1982

Acts Referred:
Land Acquisition Act, 1894 — Section 17, 4, 41, 48, 5A

Citation : (1982) 10 AHC CK 0044

Hon'ble Judges : Satish Chandra, C.J;A.N. Varma, J

Bench : Division Bench

Advocate : H.S. Nigam, for the Appellant; S.N. Upadhya and V.B. Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—The Petitioners are the tenure-holders of certain agricultural plots of land in respect of which the State Government on 11th of October, 1978 issued a Notification u/s 4 of the Land Acquisition Act. The Notification u/s 6 of the Land Acquisition Act was published on 11th of November, 1978. The Petitioners challenged the validity of these Notifications on two grounds. The first submission was that the case was not one of urgency and the State Government had no jurisdiction to exclude the provisions of Section 5A of the Land Acquisition Act so as to exclude objections by the tenure holders. The second ground is that the acquisition was bad for non-compliance of second proviso to Section 6(1) of the Land Acquisition Act. In the Notification issued u/s 4, it was stated that since the case was of urgency, the provisions of Section 5A are excluded. The purpose of acquisition was stated to be for construction of a godown for the Central Warehousing Corporation at Pilkhani, district Saharanpur. Learned Counsel stresses that the recommendation by the District Magistrate for acquisition of land for the Corporation was made somewhere on 9th of Feb., 1978. The Notification in question was issued on 11th of October, 1978. This itself shows that there was no urgency in the patter because the authorities themselves took nearly eight months to issue the Notification u/s 4. Reliance in this connection has been placed upon Smt. Manohari Devi Balwal v. State of U.P. reported in 1979 All CJ 163. In that case also the District Officer made his report in March, 1978 while the Notification was issued on 17th of Aug., 1978. It was held that the delay of five months itself shows that there was really no urgency in the matter. It was however observed:

It may be that if necessary facts are brought on record a delay of even five months may be held to be not undue but in the absence of relevant facts the Circumstances that delay normally takes place in the Government Departments cannot by itself constitute sufficient ground to justify abrogation of the valuable right of the Petitioner to file objection against the proposed acquisition of their land.

2. The factual situation in that case was that the relevant facts to explain the time consumed in issuing the notifications were not brought on the record of the case before the Court. In the next place, the purpose of acquisition was to establish an Industrial Estate, which normally takes a long time to accomplish. On these facts, the Bench relied upon a Supreme Court decision reported in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, , in which it was emphasised that the question of urgency will partly depend upon the inherent nature of the acquisition and in the next place on the nature of urgency that is, whether the urgency is of such a nature that even the summary proceedings u/s 5A should be dispensed with. It was incumbent upon the authorities to place the relevant facts before the Court to satisfy it, showing that it was such a case of such urgency.

3. In our opinion both these decisions are distinguishable on facts. In the present case it has been stated in the counter-affidavit that there was an acute shortage of storage space for food-grains and as such the Government of India adopted a policy for construction of huge base depots and other godowns for scientific storage of foodgrains in the country. The Central Warehousing Corporation is a National Storage Agency established under Warehousing Corporation Act, 1962. The Government of India allotted two base depots for being constructed by this undertaking one at Muzaffarnagar and another at Saharanpur. At Saharanpur it was proposed to construct a godown of 50,000, M.T. The project was estimated to cost Rs. 1.63 crores and is being partly financed by the World Bank. The requirement of having a proper storage space at Saharanpur was urgent and the Collector, Saharanpur reported the matter to the State Government and recommended that the land in question be acquired after dispensing with the provisions of Section 5A of the Land Acquisition Act. This recommendation was made in the letters dated 9th of February, 1978 and 10th of March, 1978. The Warehousing Corporation also pleaded with the Government to the same effect by its letters dated 2nd of March, 1978 and 15th of April, 1978. The State Government on receipt of these reports and recommendations referred the matter to the Land Acquisition Committee constituted by the Board of Revenue,

U.P. Government for its opinion. The said Committee went into the matter in detail and approved the recommendation to acquire the land in dispute urgently after dispensing with the provisions of Section 5A. The requisite survey and enquiry was conducted. The prescribed agreement was executed between the Government and the Warehousing Corporation and the same was published as required u/s 48 of the Land Acquisition Act. As soon as the formalities and requisite conditions were fulfilled the Notifications under Sections 4 and 6 of the Act were published on 14th of October, 1978, namely the same day on which the agreement was published in the Gazette.

4. In our opinion, in the present case, the Respondents have satisfactorily explained the time taken in concluding the formalities necessary before issuance of the Notifications under Sections 4 and 6 of the Land Acquisition Act. Further the purpose of acquisition namely the construction of godowns for scientific storage of foodgrains was in our opinion, inherently urgent. The State Government did act arbitrarily in excluding the application of Section 5A of the Laud Acquisition Act.

5. For the Petitioners reliance was also placed on another decision of this Court in the case of Dr. Nanak Chand Chaturvedi v. State of U.P. reported in 1979 All CJ 105, in which the same view as in the case of Smt. Manohari Devi Balwal (supra) was expressed and on the facts of that case it was held that as the delay between the decision to dispense with the requirements of Section 5A and the actual publication of Notifications under Sections 4 and 6 had not been explained by the Government, it cannot be said that there existed any real and genuine urgency entitling the Government to dispense with the requirement of Section 5A.

6. This decision again is clearly distinguishable. That was a case where the purpose of acquisition was stated to be construction of a market-yard for Krishi Utpadan Mandi Samiti, Murad-nagar, which in our opinion, is a purpose which is inherently different from the purpose for which acquisition is being sought in the present case namely the construction of godowns for food-grains. Secondly, in that case, it was observed by the Bench that the Government had failed to furnish to the Court any explanation for the delay between the decision to dispense with the requirements of Section 5A and the actual publication of Notification u/s 4, In the present case, we find that the Government has discharged that burden and fully explained the circumstances which had occasioned the delay. In the; supplementary counter-affidavit of Sri M.C. Joshi the Joint Secreatary, Co-operative Department, U.P. Shasar(SIC) Lucknow, filed on behalf of the Government detailed facts have been stated explaining the time-lag between the receipt of the recommendation of the District Magistrate, Saharanpur to the effect that the land in question was urgently required for the construction of godowns by the Central Warehousing Corporation for storage of foodgrains and that the case was one of such urgency that the provisions of Section 17(iv) of the Land Acquisition Act dispensing with the requirements of Section 5A be also invoked and the publication of Notification (sic). On receipt of

the recommendations, the Government asked for detailed information which was sent by the District Magistrate which was examined at the Government level, as a result of which it was found that the case seemed one of urgency warranting application of Section 17(iv). Thereupon the matter was referred to the Land Acquisition Committee as per Acquisition Rules for the Companies. The Land Acquisition Committee sent its approval which was received by the Government on 26-8-1976. Thereupon, the Central Warehousing Corporation was asked to execute the deed of agreement as required u/s 41 of the Act. Upon the receipt of that agreement which was vetted by the Law Department of the Government the same was sent back for formal execution and signature of the Managing Director of the Corporation at Delhi. After the same was duly signed it was sent to the Government and thereupon, a Notification u/s 4 of the Act was sent for publication to the Government Press, Allahabad. Some public holidays intervened between 1-10-78 and 14-10-1978 on account of which there was some delay in the publication of Notification. The Notification u/s 4 was published on 14-10-1978 and immediately thereafter the Notification u/s 6 of the Act was also sent for publication to the Government Press and the same was published on 11-11- 1978. Before that a reminder had also been sent on 7-11-1978 to the Government Press for publication of the Notification.

7. These facts fully explain the period of the time between the recommendation to dispense with the requirements of Section 5A and the publication of the Notification u/s 4. In the facts and circumstances of the present case, therefore, we do not think that the decision to dispense with the requirement''s of Section 5A was taken arbitrarily or without any valid reasons. We are also satisfied that the purpose for which the acquisition of the disputed land was sought was inherently urgent warranting prompt action.

8. The third case relied on by the learned Counsel in support of the petition is (1982) 8 All LR 352 : AIR 1982 All (SIC)5, (Ajadul Bux v. State of U.P.). This case is clearly distinguishable. There the Notification u/s 4 was issued on 15th of December. 1969 by which the provisions of Section 5A of the Act were also dispensed with. The Notification u/s 6 was, thereafter issued more than two years later on 18th of February, 1972. Further, in that case, unlike the present case, no material whatever was brought on the record of the case on behalf of the State Government in justification of the urgency and explaining the enormous delay between the publication of the Notifications under Sections 4 and 6. In these circumstances, both the notifications Under Sections 4 and 6 were struck down by this Court as being invalid.

9. We, therefore, find no merit in the first point.

10. The second submission is, in our opinion, equally without any merit. The second proviso to Section 6(i) is that "Provided further that no such declaration shall be made unless the compensation to be awarded for property is to be paid by a company, or wholly, or partly out of public revenues or some fund controlled or managed by a local authority."

11. Learned Counsel submitted that this provision requires deposit of compensation before the issuance of the declaration u/s 6. In the present case, the Notification u/s 6 of the Act was published on 11th of November, 1978, while the requisite compensation was deposited on 20th of June, 1979. In the counter-affidavit, it has been stated that the Central Government paid the token amount of Rs. 100/- to the State Government on 13th of July, 1978. In its turn the State Government sent the money to the Collector for depositing it in the treasury which deposit was effected on 28th of June, 1979. Re that as it may, the aforesaid second proviso does not require actual deposit of the compensation awardable for the acquired property before the making of the declaration u/s 6(i). It emphasises that the declaration shall not be made unless the compensation is to be paid by a company or out of public revenue etc. It does not require the actual deposit of the compensation in advance of the making of the declaration.

12. No other point was pressed.

13. The writ petition fails and is accordingly dismissed with costs.

