
(1998) 08 MP CK 0040
In the Madhya Pradesh High Court
Case No : L.P.A. No. 56 of 1994 (G)

Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd.	APPELLANT
Vs	
Central India Machinery Mfg. Co. Ltd. and Others	RESPONDENT

Date of Decision : 05-08-1998

Acts Referred:

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

Citation : (1999) 2 MPJR 340

Hon'ble Judges : A.K. Mathur, C.J.; S.P. Shrivastava, J

Bench : Division Bench

Advocate : Arun Mishra, for the Appellant; J.P. Gupta and Mr. K.B. Chaturvedi, G.A., For State, for the Respondent

Final Decision : Allowed

Judgement

Feeling aggrieved by the quashing of a notification issued u/s 4 (1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), along with the other proceedings consequent thereupon, the beneficiary has now come up in the present Letters Patent Appeal seeking redress praying for the reversal of the impugned order passed by the learned single Judge dated 26.8.1994, allowing the writ petition filed by the respondent no. 1.

We have heard the learned counsel for the appellant as well as the learned counsel representing the contesting respondents, and have carefully perused the record.

The facts in brief, shorn of details and necessary for the disposal of this case lie in a narrow compass. The petitioner, respondent no. 1 which is a manufacturing company engaged in the business of manufacture of machine tools and engineering goods decided to establish its Division in the village Singhwari, District Bhind, situate near the village Malanpur.

The respondent no. 1, purchased various portions of agricultural holdings situate in village Singhwari, tehsil Gohad, District Bhind, through the sale deeds dated

9.4.1984, 11.4.1984, 7.4.1984, 29.10.1984, 23.11.1984, 5.12.1984 and 24.12.1984.

The aforesaid respondent moved an application for its registration before the Director of Industries, Madhya Pradesh under the Scheme for U.T. Right grant of subsidy by the Central Government to industrial unit in backward areas, on 9.1.1985, and was so registered.

A notification issued by the State Government u/s 4 (1) of the Act, dated 3.8.1984, was published in the Madhya Pradesh Gazette (hereinafter referred to as the Gazette) dated 24.8.1984. Under this notification, an area of 39.503 hectares of land situated in village Singhwari, in tehsil Gohad, District Bhind, was proposed to be acquired indicating the public purpose for the same as Audyogik Sthapana, meaning thereby that the area in question was required for the purposes of establishing the industries.

An other notification u/s 4 (1) read with section 17 (1) of the Act, was published on 26.9.1984, indicating that an area of 35.826 hectares of land situate in village Singhwari along with an area of 39.706 hectares of land situate in village Gurikha and an area of 92.658 hectares of land situate in village Malanpur, in the district of Bhind, was proposed to be acquired for the public purpose of Audyogik Sthapana. This notification was published in the Gazette dated 12.10.1984.

It may be noticed that section 4 (1) of the Act, was amended by the Central Act No. 68 of 1984, which came into force from 24.9.1984, providing for the publication of the notification in two daily newspapers circulating in the locality where the land sought to be acquired was situate, of which at least one had to be published in the regional language.

The learned single Judge in his order impugned in the present appeal had come to the conclusion that the notification u/s 4 (1) of the Act, in question, specifying only the total area proposed to be acquired without there being anything making it possible for any one to pinpoint as to which land is the subject-matter of acquisition was a fatal defect and indication in the notification that the plan could be inspected in the office of the Land Acquisition Officer was not sufficient to cure the said defect as everyone in the locality was not expected to visit the office of the Land Acquisition Officer and find out the land which was sought to be acquired. According to the learned single Judge, the aforesaid defect was more than sufficient to quash the acquisition proceedings. In support of this finding, the learned single Judge had placed reliance upon the decisions of the Apex Court in the case of Khub Chand and Others Vs. State of Rajasthan and Others, at page 1077, in the case of Smt. Somavanti and Others Vs. The State of Punjab and Others, , in the case of Narendra Bahadur Singh and Another Vs. State of Uttar Pradesh and Others, , in the case of Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, and in the case of Narendrajit Singh and Another Vs. The State of U.P. and Another, 5 at page 129.

However, the learned single Judge went further and holding that the notification

had to be in consonance with the provisions of the Act as amended by the Parliamentary Act No. 68 of 1984, yet the mandatory provision requiring publication of the notification in two daily newspapers circulating in the locality, of which at least one in the regional language had not been complied with; came to the conclusion that there was no alternative left but to quash the notification and all other consequent proceedings taken thereafter.

The learned counsel for the appellant has strenuously urged that in the present case, the notification u/s 4 (1) of the Act, had been published prior to the coming into force of the Central Act No. 68 of 1984, and therefore, the non-compliance of the requirement as provided for under the amended provision could not be taken to have rendered the said notification void so as to nullify the further proceedings undertaken consequent upon the said notification.

It has further been urged that the notification in question could not be taken to be suffering from the defect of vagueness as the name of the village where the land in dispute was situate had clearly been mentioned in the notification indicating further that the plan could be inspected in the office of the Land Acquisition Officer and in such a situation on the exact location of the land sought to be acquired could be found out without any difficulty.

It has further been asserted that in any view of the matter even if the notification in question is taken to be suffering from a fatal defect, taking into consideration the conduct of the respondent no. 1, and the facts and circumstances brought on record, no justifiable ground had been made out for the interference by this Court while exercising the discretionary jurisdiction as envisaged under Article 226 of the Constitution of India and nullify the proceedings undertaken consequent upon the notification.

The learned counsel for the respondent no. 1 has however tried to support the impugned order on the basis of the reasonings contained therein.

We have given our anxious consideration to the rival contentions of the learned counsel for the parties.

It is not in dispute that the requirement in regard to the publication of the notification as stipulated under the amendment referred to hereinabove which came into force with effect from 24.9.1984, had not been complied with.

In fact, in paragraph 9 of the counter-affidavit/return filed by the Madhya Pradesh Audyogik Kendra Vikas Nigam Limited, the respondent no. 4, in the writ petition, it was clearly stated that since the notification u/s 4 (1) of the Act, had been published in the Gazette dated 24.8.1984, the question of publishing the notification in any daily newspaper did not arise.

In the counter-affidavit/return filed on behalf of the State of Madhya Pradesh, Director of Industries, M.P., Bhopal as well as the Additional Collector and Bhoo Arjan Adhikari, Bhind, who were impleaded as respondents no. 1 to 3, in the writ petition, it was asserted that it was not mandatory to publish the notification in

two daily newspapers circulating in the locality where the land sought to be acquired was situate. It was claimed that this requirement was only directory and it was not necessary to publish the notification in daily newspapers circulating in the locality.

In their counter-affidavit/return, the aforesaid respondents have taken a definite stand that the notification u/s 4 (1) of the Act, on the basis whereof the land in dispute was sought to be acquired was the notification dated 26.9.1984, which was published in the Gazette dated 12.10.1984.

It was further asserted that it was this notification which was displayed in the locality of the village concerned, and a copy whereof had been displayed at the Chopal of the aforesaid village, and another copy of the same was also displayed on the land of the aforesaid village which was sought to be acquired. Apart from it, the information of the said notification was also given to the residents of village concerned by beat of drums.

In support of the aforesaid assertions, the respondents no. 1 to 3 had placed reliance on the various endorsements made on the back of the copy of the notification dated 26.9.1984, indicating that the substance of the notification was published at convenient places in the locality in question. The service report is dated 30.10.1984.

Considering the facts and circumstances indicated hereinabove, there can be no escape from the conclusion that the notification u/s 4 (1) of the Act, dated 3.8.1984, which had been published in the Gazette dated 24.8.1984, stood abandoned and superseded by a fresh notification u/s 4 (1) of the Act read with section 17 of the Act, dispensing with the hearing of objections contemplated u/s 5-A of the Act. Further, taking into consideration the clear-cut and categorical stand of the respondents, to which a reference has already been made above, it stands established that the requirement which stood provided with the enforcement of the Central Act No. 68 of 1984, in respect of publication of the notification in two daily newspapers, of which at least one had to be in the regional language remained uncomplied with.

A valid notification u/s 4 (1) of the Act is a sine qua non for initiation of proceedings for acquisition of property. As observed by the Apex Court in its decision in the case of Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others, , it is settled legal position that publication of the notification u/s 4 (1) of the Act, in the Gazette and substance thereof in the locality are mandatory requirements and the omission thereof renders the notification void.

We are of the clear opinion that while the provisions contained in section 4 (1) of the Act, do not require the service of the personal notice, it definitely requires the service of the notification in the locality where the land sought to be acquired is situate and that too in the manner prescribed.

The Apex Court has consistently taken the view that the compliance of the

requirement in regard to the publication of the notification u/s 4 (1) of the Act in the Gazette as well as the publication of the substance of the notification in two daily newspapers in circulation in the locality as prescribed vide the amendment brought into force by the Central Act No. 68 of 1984, is a mandatory requirement and the non-compliance of such a mandatory requirement is fatal and renders the notification u/s 4 (1) of the Act, void and legally inoperative.

In the aforesaid circumstances, in our considered view it is not open to the appellant now to fall back on the notification u/s 4 (1) of the Act, dated 3.8.1984, which had been published in the Gazette dated 24.8.1984, so as to get over the fatal defect of the non-compliance of the mandatory requirement in regard to the publication of the notification in two daily newspapers as contemplated under the amended provision of section 4 (1) of the Act, which came into force with effect from 24.9.1984.

Further, we are of the view that the notification dated 3.8.1984, had in fact been abandoned and never acted upon. It stood superseded with the fresh notification issued u/s 4 (1) of the Act, dated 26.9.1984, which had been published in the Gazette dated 12.10.1984, which was made the basis for the acquisition in question and in fact, had been acted upon.

In connection with the aforesaid, it should not be lost sight of that the power to issue a notification includes the power to rescind it as per the provisions of the General Clauses Act. It is, therefore, always open to the Government to rescind a notification u/s 4 of the Act and withdrawal u/s 48 (1) of the Act is not the only way in which a notification u/s 4 (1) of the Act, can be brought to an end. In such cases, an administrative order or issuance of a fresh notification is sufficient unlike the cases u/s 48 of the Act, where statutory order is necessary. This, however, has to be done before possession is taken.

The finding of the learned single Judge on this aspect of the matter, therefore, does not require any interference.

So far as the finding recorded by the learned single Judge holding the notification in question to be suffering from fatal defect of vagueness is concerned, suffice it to say that in the case of an acquisition of a large area of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the cases of a small area, it may be practically difficult to specify the particular public purpose for which each and every item of land comprised in the area is needed. As observed by the Apex Court in its decision in the case of State of Tamil Nadu v. L. Krishnar, (1996) 1 SCC 250, it is not appropriate to insist upon the Government particularising the use of each and every bit of the land so notified would be put to.

Since we have upheld the finding of the learned single Judge on the question in regard to the notification u/s 4 (1) of the Act, being vitiated in law on account of the non-compliance of the mandatory requirements in regard to the publication

of the notification in two daily newspapers having circulation in the locality where the land proposed to be acquired is situate which is a fatal defect, it is not necessary to go into this aspect of the matter relating to vagueness any further.

In the aforesaid circumstances, the real question which arises for consideration is as to whether the entire proceedings consequent upon the notification u/s 4 (1) of the Act, which is found to be vitiated in law on account of a fatal defect are void ab initio. Such a question was considered by the Apex Court in quite detail in its decision in the case of State of Rajasthan and Others Vs. D.R. Laxmi and Others, .

The Apex Court in its aforesaid decision had approved of the view expressed by H.W.R. Wade, in his treatise "Administrative Law" to the effect that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances, and the Court may refuse to quash an order which may be hypothetically a nullity, because of the plaintiff's lack of standing, or that he does not deserve a discretionary remedy, because of his having waived his rights, or for some other legal reason. In any such case the "void" order remains effective and is, in reality, valid, indicating that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another.

The Apex Court in its aforesaid decision had clarified the position in law that an order or action, if ultra vires the power, becomes void and it does not confer any right. But such an action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or has acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

The Apex Court had emphasised that when the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. It was also indicated that the extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is, therefore, clear that it all depends on the facts and circumstances of a particular case.

While it is true that the State has to exercise its statutory power in a reasonable and fair manner more particularly where the subject-matter is acquisition of the property/land, a person feeling aggrieved by a notification u/s 4 (1) of the Act has also to be vigilant and must act for the redressal of his grievances with the utmost despatch. As observed by the Apex Court in its decision in the case of Aflatoon and Others Vs. Lt. Governor of Delhi and Others, , to have sat on the fence and allowed the Government to complete the proceedings on the basis that the notification u/s 4 (1) of the Act and the declaration u/s 6 of the Act were valid and then to attach the notification on grounds which were available at the time when the notification was published would be putting a premium on dilatory

tactics.

Laches on the part of an aggrieved person feeling prejudiced by a notification u/s 4 (1) of the Act, seeking redress by approaching the Court of equity having discretionary jurisdiction may be taken to be fatal especially when the approach is at a time when the awards have already been passed or were about to be passed.

Further, in a situation where the Government has allotted a large portion of the land after the acquisition proceedings had been finalised and the rights of the third parties have accrued in the land in question who are not before the Court, it will be an other instance when the intervention of equity may not be called for at all.

It may, however, be noticed that in the cases where the property forming the subject-matter of acquisition proceedings is purchased, by the person aggrieved or feeling prejudiced by a notification u/s 4 (1) of the Act, subsequent to the publication of the notification in the Gazette, such transferees on the strength of such purchases which are obviously unlawful and cannot be utilised against the State so as to clothe a transferee with a colour of title as against the State, there could be no justification for any interference in the proceedings under Article 226 of the Constitution of India while exercising the extraordinary jurisdiction as envisaged therein. In this connection, it may be noticed that the Apex Court in its decision in the case of *Yadu Nandan Garg Vs. State of Rajasthan and Others*, , clearly observed that such a sale is only an encumbrance on the State and when the acquisition is finalised and the possession is taken, the State u/s 16 is entitled to have the possession with absolute title free from all encumbrances. The transferee cannot get any title much less a valid title to the property.

In its decision in the case of *State of Rajasthan (supra)*, the Hon"ble Supreme Court while considering as to whether the entire proceedings consequent upon the notification u/s 4 (1) of the Act, which was found to be suffering from a fatal defect have to be treated as void had observed that in this regard the conduct of the parties and the effect thereof has to be considered. Reliance was placed on the observations made by a three-judge Bench of the Apex Court in its decision in the case of *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, , to the effect that once possession was taken, the land stood vested in the State free from all encumbrances, title to the land so vested in the State is subject only to determination of the compensation and to payment of the same to the owner. Divesting the title of the land vested in the Government and reverting the same to the owner is not contemplated under the Act. Only section 48 (1) of the Act gives power to withdraw from acquisition that too before possession is taken.

It was clarified by the Apex Court in the aforesaid decision in the case of *State of Rajasthan (supra)* that exercise of the power to quash the notification u/s 4 (1) of the Act, and declaration u/s 6 of the Act, in such circumstances, would lead to

incongruity and the High Court, therefore, should not interfere with the acquisition and quash the notification and declaration u/s 4 and 6 respectively.

The Apex Court had made it amply clear that the High Court had no doubt discretionary powers under Article 226 of the Constitution of India to quash the notification u/s 4 (1) of the Act and declaration u/s 6 of the Act, but it should be exercised taking all relevant pragmatic considerations. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226 of the Constitution of India.

The Apex Court had emphasised that an order or action if ultra vires the power, becomes void and it does not confer any right, but the action need not necessarily be set at naught in all events.

In fact, as clarified by the Apex Court in its decision in the case of Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, , the power under Article 226 of the Constitution is discretionary. It has to be exercised only in furtherance of interests of justice and not merely on the making out of a legal point and in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 of the Constitution and it is open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. It was made amply clear that there are many ways of affording appropriate relief and redressing a wrong. The quashing of the acquisition proceedings is not the only mode of redress and it is ultimately a matter of balancing the competing interests.

In the aforesaid circumstances, we are clearly of the view that the present one was not a case where there was no alternative but to quash the notification in question as concluded by the learned single Judge. Such a finding in our considered opinion cannot be sustained.

In the present case the notification u/s 4 (1) of the Act had been published on 12.10.1984. The notification u/s 6 of the Act was published in the Gazette on 8.3.1985. Exercising the powers u/s 17 of the Act, the enquiry contemplated u/s 5-A of the Act had been dispensed with. The petitioner who is the respondent no. 1 herein knew that the Government had decided to industrialise the backward district of Bhind, providing employment potentials and for taking measures for securing various facilities like roads, lights, water, sanitation, power etc. and had in fact, declared Malanpur as "Growth Centre Malanpur". The land situate nearby the village Malanpur i.e., Singhwari where the plots in dispute are located was also proposed for being acquired for the purpose. An industrial complex at Malanpur was going to be established at a huge cost. The petitioner-respondent

no. 1 appears to have started purchasing the land situate in the village Singhwari in his bid to steal a march looking forward the further potentialities of such land. Out of the seven sale deeds through which the petitioner-respondent no. 1 had acquired the land in dispute, three sale deeds had been executed prior to the issuance of the notification u/s 4 (1) of the Act. The remaining four had been executed after the issuance of the said notification.

It may further be noticed that after the issuance of the notification u/s 6 of the Act, in the proceedings u/s 9 of the said Act, compensation for the acquired land was determined by the Competent Authority vide the order passed on 15.5.1986. The writ petition giving rise to the present appeal was, however, filed on 7.8.1985.

During the pendency of this appeal, the appellant had filed an affidavit asserting that the appellant had invested approximately forty-five crores only for the development of the Malanpur-Ghirongi Industrial Area Growth Centre, and the total investment of the Units would be approximately two thousand five hundred crores. The industrial area where the land is situate is categorised as Backward "C by the State Government and the Central Government. It was further pointed out that in this industrial area 108 SSI Units and 41 large and medium scale units have been set up and some of the major industrial units have already started production.

In another affidavit, the appellant has stated that the award in respect of the land of village Singhwari acquired in the first phase for industrial area, Malanpur had been passed on 15.5.1986 by the Land Acquisition Officer, and an other award in respect of the land at Malanpur acquired for the first phase of the industrial area, Malanpur, was passed on 15.5.1986, by the Land Acquisition Officer.

Copies of the affidavits filed by the appellant referred to hereinabove had been served on the respondents. No counter-affidavit denying or controverting the assertions made therein have been filed.

It must not be overlooked that a just balance has to be struck between the competing interests of the individuals whose land is acquired and that of the public corporation set up for public needs and promotion of public purpose.

In fact, in its decision in the case of Food Corporation of India through its District Manager, Faridkot, Punjab and Others Vs. Makhan Singh and Another, , the Apex Court had clarified that it is the bounden duty of the court while ascertaining compensation to see that it is just, not merely to the individual whose property is taken, but also to the public which is to pay for it; even if it be a public corporation.

Considering the totality of the circumstances, we are of the considered opinion that interests of justice would have been served by enhancing the amount of compensation at a figure three times above the amount determined as

compensation for the acquired land which is the subject-matter of the sale deeds dated 7.4.1984, 9.4.1984 and 11.4.1984, referred to hereinabove; and the intervention of equity was not at all called for so far as the remaining land in dispute was concerned.

In view of our conclusions indicated hereinabove, sufficient ground has been made out for interference in the impugned order.

In the result, this appeal succeeds.

The impugned order passed by the learned single Judge is set aside with the direction that the respondent no. 1 shall be entitled to the compensation in respect of the land which was the subject-matter of the three sale deeds referred to hereinabove, at a figure three times above the amount of compensation determined therefor in the proceedings u/s 9 of the Act.

Except to the extent indicated hereinabove, the reliefs claimed by the respondent no. 1 in the writ petition shall stand refused.

There shall however be no order as to cost.