

(2014) 05 AHC CK 0106

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 16645 and 73189 of 2010, 44710, 45899, 47940, 48264 and 49952 of 2011 and 25683 and 25685 of 2012

Mahendra Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

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

Citation : (2014) 6 ADJ 501 : (2014) 105 ALR 586 : (2014) 5 AWC 4726 : (2014) 125 RD 70 : (2015) 1 UPLBEC 493

Hon'ble Judges : Mahesh Chandra Tripathi, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : Shiv Kant Mishra, Ravi Agrawal, Durga Prasad Tiwari, Vinod Upadhyay, Pankaj Dubey, Santosh Srivastava and Shashi Nandan, Advocate for the Appellant; Ramendra Pratap Singh, Yashwant Verma and Suresh Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—These writ petitions challenge the acquisition of land through Yamuna Express Way Industrial Development Authority for planned development. Common questions of facts and law have been raised in these writ petitions which writ petitions have been heard together and are being decided by this common judgment. Under the U.P. Industrial Area Development Act, 1976, an authority namely; Taj Express Way Development Authority was constituted vide notification dated 24.4.2001. Different villages were notified under the development area from time to time. Taj Express Way Industrial Development Authority was re-named as Yamuna Express Way Industrial Development Authority (hereinafter referred to as "the authority") The objective of the constitution of the authority is to exploit the growth potential generated by proximity to Delhi and the execution of Yamuna Express Way project in order to facilitate residential, commercial, industrial, institutional and recreational

investments. Further more to provide a broad land use pattern considering the growth potential and emerging needs of the area and to provide high quality infrastructure and service facilities that would improve the quality of life and attract out migration from Delhi. The main emphasis of the State Government to create a modern composite and efficient city comparable to international standards in terms of Urban design and aesthetics where quality of life would be distinctive, so that proactively it attracts investors in Industrial, Institutional, Recreational and Residential development, ensuring balance between the ecology and proposed development. With the establishment of the area as an Industrial Development, it has to be assured physical, social and economic integration of the existing villages, abadis and its population. The Taj Expressway project was conceived in the year 2001. The said project envisaged the construction of an Access Controlled Expressway stretching over about 160 Kms from Noida to Agra and for development of 25 million square meters of land along the said Expressway. In implementation in the Economic Times as also other national dailies offers were invited from a Joint venture partner by the answering respondent. The State Government invited bids from interested persons for the construction of the expressway and development of land parcels for selection of a Joint Venture Partner. However bids were rejected and the project could not take off. Subsequently fresh advertisements were issued in November, 2002 by the State Government for the construction of the expressway between Noida and Agra as well as for development of five land parcels along the said expressway either on joint venture basis or on the option of the bidder to be undertaken without any equity participation by the answering respondent.

2. The above project was challenged in this Court by Public Interest Litigation being writ petition No. 40074 of 2003, Ashutosh Srivastava v. State of U.P., which writ petition was subsequently dismissed as infructuous on 21.11.2007. Another writ petition No. 30322 of 2005 was filed assailing the award of contract as well as the concession agreement, which writ petition was dismissed on 14.3.2008, judgment in Ashutosh Srivastava Vs. State of U.P. and Taj Express Way Authority After dismissal of the aforesaid writ petition, proceedings for acquisition of land were initiated.

3. The project was an integrated project consisting of acquisition of land for expressway, interchange and five land parcels. At every stage of land acquisition, writ petitions were filed challenging the acquisition, which shall be subsequently noted hereinafter.

4. The present group of writ petitions are writ petitions challenging the acquisition of land for land parcels which was an integral part of the project for carrying out development. Challenge in these writ petitions confines to acquisition of agricultural land of village Jaganpur Afjalpur, Salarpur, Dungarpur Reelka of district Gautam Budh Nagar, village Jikarpur of District Aligarh, village Chaugan, Pargana Etmadpur, District Agra and village Chalesar, Pargana Etmadpur, district Agra. The grounds of challenge of land acquisition in above

writ petitions being almost similar, it is sufficient to note the facts in writ petition No. 48264 of 2011, Mahendra Singh v. State of U.P. in detail which is being treated as a leading writ petition. In writ petition No. 48264 of 2011, counter-affidavit has been filed by the State of U.P., Yamuna Express Way Industrial Development Authority and U.P. Infratech Ltd.

5. The writ petition No. 48264 of 2011 has been filed by nine writ petitioners claiming to be owners with transferable rights of different plots in village Jaganpur Afjalpur, district Gautam Buddha Nagar. The notification u/s 4, read with Section 17(1) and 17(4) of the Land Acquisition Act, 1894 were published in U.P. Extra-ordinary Gazette on 24.4.2009 proposing to acquire 334.5341 hectares of land. The provisions of Section 17(1) and 17(4) of the Land Acquisition Act, 1894 were applied and the inquiry u/s 5-A was dispensed with. The purpose for acquisition as mentioned in the notification was "for Planned Development in district Gautam Budh Nagar through Yamuna Express Way Industrial Development Authority" Section 4 Notification reads as under:

"Dated Lucknow, April 24, 2009

Under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act No. 1 of 1894), the Governor is pleased to notify for general information that the land mentioned in the scheduled below, is needed for a public purpose namely for Planned Development in district Gautam Budh Nagar through Yamuna Express Way Industrial Development Authority.

2. The Governor, being of the opinion that the provisions of sub-section (1) of Section 17 of the said Act, are applicable to said land inasmuch as the said land is urgently required, for Planned Development in district Gautam Budh Nagar through Yamuna Express Way Industrial Development Authority and it is as well necessary to eliminate the delay likely to be caused by an inquiry u/s 5-A of the said Act, the Governor is further pleased to direct under sub-section (4) of Section 17 of the said Act that the provisions of Section 5-A of the said Act shall not apply."

6. Notification u/s 6 of the Act was issued on 4.6.2009 for the aforesaid land. After issuance of the notice u/s 9 of the Land Acquisition Act, 1894, possession of 266.3876 hectares of land was taken on 18.8.2009. Possession of different areas of land was further taken on different dates up to 1.6.2011. Award was declared on 18.8.2011. Writ petition No. 48264 of 2011 has been filed praying for the following reliefs:

(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned notification No. 1347/77-3-2009-60 Arjan-09 Lucknow dated 24.4.2009 issued u/s 4(1)/17 of Land Acquisition Act and impugned notification No. 1946/77-3-09-60 Arjan-09 Lucknow dated 4.6.2009 issued u/s 6 of Land Acquisition Act in respect of the petitioners land comprising different plot number of the Revenue Village Jaganpur-Afzalpur, Pargana Dankaur, Tehsil Sadar, District Gautam Budh Nagar and also for writ order direction in the nature of mandamus

commanding the respondents not to take any action not to make any construction on the land of the petitioner. No other writ petition has been filed or pending for the relief sought for in this writ petition by the petitioner before this Hon"ble Court.

(ii) To issue a writ, order or direction in the nature of mandamus commanding the respondent not to take any action and not to make any construction on different plot number of the petitioners of the Revenue Village Jaganpur-Afzalpur, Pargana Dankaur, Tehsil Sadar, District Gautam Budh Nagar.

(iii) To issue such other and further writ, order or direction, which this Hon"ble Court may deem fit and proper in the nature and circumstances of the present case."

7. Compensation was received by the petitioners in August, 2011. The writ petition was filed by the petitioners on 20.8.2011.

8. Writ petition No. 47940 of 2011, Om Prakash and two others v. State of U.P., has been filed challenging the same notification which has been challenged in writ petition No. 48264 of 2011 i.e. dated 24.4.2009 and 4.6.2009 under Sections 4 and 6 respectively relating to village JaganpurAfjalpur. Writ petition No. 16645 of 2010, Vedi and two others v. State of U.P. and others, writ petition No. 73189 of 2010 Sardar v. State of U.P. and others, writ petition No. 44710 of 2011, Jagat Singh and four others v. State of U.P. and others, have been filed challenging the notification dated 17.1.2009, issued u/s 4 read with Section 17(1) and 17(4) of the Act and declaration dated 24.2.2009 pertaining to village Salarpur by which notification, land measuring 368.6122 hectares of land were sought to be acquired for planned and industrial development in district Gautam Budh Nagar through Yamuna Express Way Industrial Development Authority. All these writ petitions challenge the same notifications on almost similar grounds.

9. Writ petition No. 45899 of 2011 has been filed by Prakash Chandra Mathur and others challenging the notification dated 31.3.2009, issued u/s 4 read with Section 17(1) and 17(4) for acquisition of 85.0460 hectares in village Dungarpur Reelka. Declaration u/s 6 was issued on 28.5.2009 for the aforesaid land.

10. Writ petition No. 49952 of 2011 Atar Singh and 53 others has been field challenging the notification dated 31.3.2009 issued u/s 4 read with Section 17(1) and 17(4) for village Jikarpur proposing to acquire land measuring 65.7492 hectares. Declaration u/s 6 was issued on 28.5.2009. Writ petition No. 25683 of 2012. has been filed by Mohan Singh challenging the notification u/s 4 read with Section 17(1) and Section 17(4) dated 31.3.2009 proposing to acquire 311.2347 hectare of land in village Chaugan, district Agra for development under Yamuna Express way project through Yamuna Express Way Industrial Development Authority. Last writ petition being writ petition No. 25685 of 2012 has been filed by Ram Swaroop and four others challenging the notification dated 31.3.2009, issued u/s 4 read with Section 17(1) and Section 17(4) of the Land Acquisition Act, 1894 for acquisition of land of revenue village Chalesar.

11. We have heard Sri Shiv Kant Misra, Sri Pankaj Dube, Sri Ravi Agrawal for the petitioners. Sri Suresh Singh has appeared for the Authority. Sri Yashwant Verma and Sri Shashi Nandan, learned Senior Advocates have appeared for J.P. Infratech. Learned Standing Counsel has appeared for the State.

12. Learned Counsel for the petitioners have raised almost similar grounds of challenge in support of the writ petitions. Learned Counsel for the petitioners submits that acquisition of land was in essence for a private respondent i.e. J.P. Infratech. Acquisition has been alleged to be tainted with mala fide and an abuse of power. It is submitted that notifications have been issued in colourable exercise of power and the entire acquisition exercise is based upon political consideration. It is further submitted that there was no material to invoke urgency provisions u/s 17(1) and 17(4). Inquiry u/s 5-A has wrongly been dispensed with.

13. Learned Counsel appearing for the respondents refuting the submissions of learned Counsel for the petitioners has submitted that Yamuna Express Way Project for construction of six lanes express way, interchange and land parcels is an integrated project. Challenge to land acquisition for the said project has already been upheld by this Court as well as by the Apex Court in several decisions. It is submitted that the arguments of learned Counsel for the petitioners challenging the acquisition as mala fide and in colourable exercise of power has been rejected by this Court as well as by the Apex Court. Invocation of urgency clause has also been upheld. It is submitted by learned Counsel for the respondents that several writ petitions challenging the same notifications which are under challenge in the leading writ petition as well as in some other writ petitions have already been upheld by the Division Bench of this Court details of which alongwith copy of the orders have been referred to in the counter-affidavit filed by the respondents. It is submitted that all these writ petitions are liable to be dismissed in view of the earlier judgements delivered by this Court and Apex Court upholding the land acquisition for the aforesaid project. Learned Counsel for the parties have referred to and relied on various judgements of this Court and Apex Court which shall be referred to while considering the submissions in detail.

14. There have been writ petitions challenging the land acquisition pertaining to the project in question, it is relevant to note the details of the writ petitions. The first writ petition which was decided by the Division Bench of this Court challenging the acquisition of land for Yamuna Express Way Project was writ petition No. 48978 of 2008 Balbir Singh and another v. State of U.P. and others, decided on 5.10.2009. The Division Bench repelled the submissions of the petitioner that acquisition is for a private company and the acquisition is in colourable exercise of power. The writ petition was dismissed which judgment is reported in 2009 (10) ADJ 441. The second judgment which was delivered in Nand Kishore Gupta and Others Vs. State of U.P. and Others, again upheld the notifications acquiring the land for Yamuna Express way Project. Against the

aforesaid two judgements, Special Leave Petitions were filed in the Supreme Court and the Apex Court. Its judgment and order dated 8.9.2010 upheld the above two judgements of the High Court, which is in *Nand Kishore Gupta and Others Vs. State of U.P. and Others*, with two other connected appeals. The Division Bench of this Court rendered another judgment in *Narendra Road Lines Pvt. Ltd. Vs. State of U.P. and Others*. In the aforesaid bunch of writ petitions which were decided on 2.7.2010 there were several writ petitions in which notifications which are under challenge in these writ petitions were also subject-matter of challenge. The subject-matter of challenge in *Narendra Road Lines Pvt. Ltd.* (supra) was acquisition of land for development of land parcels. The present batch of writ petitions also relate to acquisition of land development for land parcels. Against the Division Bench judgements of *Narendra Road Lines* (supra), Special Leave to Appeal was filed in the Apex Court being Special Leave to Appeal (Civil) No. 17808 of 2010, which was dismissed by the Apex Court on 16.12.2010.

15. The submission raised by learned Counsel for the petitioners that acquisition of land was mala fide and was for a private company was repelled in the aforesaid three Division Bench judgments of this Court and has also been affirmed by the Apex Court. In the case of *Nand Kishore Gupta* (supra), Apex Court repelled the aforesaid contention and held that the land acquisition was not for the private company rather it was for the public purpose. The contention that acquisition was a colourable exercise of power was also rejected. It is useful to quote observations of the Apex Court made in paragraphs 48, 54 which are to the following effect:

48. Again, we also cannot ignore that the aspects of the transparency have been examined by the Division Bench of the Allahabad High Court in a P.I.L., which was dismissed by a well-considered judgment, which remained unchallenged. We have already made reference to that judgment. Nobody has so far argued that any specific partial treatment was offered to the Company nor has it been pointed out at any stage that there was anything amiss with the tendering process or that the tender of contract to the Company herein was a foregone conclusion. We, therefore, cannot subscribe to the contention that this acquisition was a colourable exercise of power. We must say that there was a full transparency in the whole process and the whole process was checked, rechecked and re-re-checked, leaving no scope to infer any bias in favour of the Company.

54. It was tried to be canvassed before us that there would be a difference in concepts of a public purpose and the work useful to the public. We are not much impressed by this argument in view of the fact that there is absolutely no evidence to suggest that this is an acquisition for the Company, basically on account of the fact that the acquired land is not to vest with the Company. This was clearly a Project conceived and justified by the State Government, while the concessionaire was to be chosen only to implement the Project. The Project was

going to be implemented on the basis of principles of BOT. Therefore, after the operating period is over, the assets of the Project were to be transferred to the State Government. There was going to be no vesting of land as in case that if the acquisition was being effected under Part VII of the Act. We, therefore, do not accept the argument that this was either a colourable exercise of power or was meant for the Company. We are not impressed by the argument that this was an acquisition for the Company. The High Court, in Balbir Singh's judgment, has correctly come to the conclusion that this acquisition was not meant only for the Company and on that count, it could not be said that this is not for the public purpose.

16. Learned Counsel for the petitioners tried to distinguish the aforesaid judgements of the Apex Court submitting that the said judgment was not considering the land acquisition for land development i.e. for land parcels. It is relevant to note that the Apex Court has laid down that the entire project i.e. six lanes express way, acquisition for interchange as well as for development of land parcels was an integrated project. The acquisition for five land parcels was also specifically noted by the Apex Court in paragraph 58 which is quoted below:

"58. It cannot be forgotten that the creation of land parcels would give impetus to the industrial development of the State creating more jobs and helping the economy and thereby helping the general public. There can be no doubt that the implementation of the Project would result in coming into existence of five developed parcels/centers in the State for the use of the citizens. There shall, thus, be the planned development of this otherwise industrially backward area. The creation of these five parcels will certainly help the maximum utilization of the Expressway and the existence of an Expressway for the fast moving traffic would help the industrial culture created in the five parcels. Thus, both will be complimentary to each other and can be viewed as parts of an integral scheme. Therefore, it cannot be said that it is not a public purpose."

17. The invocation of urgency clause under Sections 17(1) and 17(4) which was upheld by the High Court, was approved by the Apex Court in paragraph 93, which is to the following effect.

"93. We have deliberately quoted the above part of the High Court judgment only to show the meticulous care taken by the High Court in examining as to whether there was material before the State Government to dispense with the enquiry u/s 5A of the Act. We are completely convinced that there was necessity in this Project considering the various reasons like enormousness of the Project, likelihood of the encroachments, number of appellants who would have required to be heard and the time taken for that purpose, and the fact that the Project had lingered already from 2001 till 2008. We do not see any reason why we should take a different view than what is taken by the High Court."

18. The Division Bench judgment in the case of Narendra Road Lines (supra) was a judgment which extensively dealt with challenge to land acquisition for land

development i.e. land parcels. Various grounds of challenge were repelled including the innovation of urgency clause by Division Bench of this Court by a detailed judgment against which SLP has been dismissed. Division Bench of this Court has upheld the invocation of urgency clause. It is useful to quote paragraphs 107 and 108 which are to the following effect:

"107. The State Government has produced before us the records in which at each stage beginning from the proposals, the State authorities have applied their mind on the material, before them and have recorded satisfaction that the land is urgently required for public purpose for fulfilling the "Yamuna Expressway Project". The possibility of encroachment in such large areas was found to be real and apparent threat putting the entire project into difficulty. The judicial review in such cases is limited to the availability of the material for applying sub-section (4) of Section 17, for dispensing with the enquiry.

108. In these cases the materials produced before us would show that the project was considered by the State Government to be of great public importance. The construction of expressway was to be completed within a specified time, and is linked to the Common Wealth Games, 2010, beginning in October 2010. The large areas sought to be developed along the expressway are being encroached upon by various kinds of constructions. It was, therefore, felt necessary in public interest to complete the project within specified time under the concession agreement dated 7.2.2003, and to avoid encroachments over the land causing complications of taking over possession, the provisions of sub-section (4) of Section 17 after declaring opinion of the applicability of Section (1) of Section 17, were applied to dispense with the hearing of objections u/s 5A of the Act. On the principles of law settled by the Supreme Court, in the cases cited as above, we are of the opinion that the State Government did not commit any illegality in arriving at a decision under sub-section (4) of Section 17, to dispense with the requirements of hearing the objections u/s 5A of the Act."

19. In writ petition No. 48264 of 2011, Mahendra Singh v. State of U.P. and others, in the counter-affidavit filed by the respondent No. 5 in paragraph 6 details of 11 writ petitions have been mentioned in which same notifications dated 24.4.2009 and 4.6.2009 were under challenge, which writ petitions were dismissed on 2.7.2010 on the same day in terms of the judgment of Narendra Road Lines (supra). The notifications dated 24.4.2009 and 4.6.2009 pertaining to village Jaganpur Afjalpur were upheld by this Court in subsequent judgements also. It is useful to quote the Division Bench judgment dated 29.9.2011 in writ petition No. 57018 of 2011. By following earlier judgements the writ petition was dismissed and notification dated 24.4.2009 and 4.6.2009 were upheld:

"In the present writ petition, the petitioners have sought a writ of mandamus commanding the respondents not to give effect to the Notification dated 24.4.2009 issued u/s 4(1)/17(1) of the Land Acquisition Act, 1894 and the Notification dated 4.6.2009 issued u/s 6/17(1) of the Land Acquisition Act, 1894 and not to dispossess and interfere into the peaceful possession of the

petitioners over the plot Nos. 122, 123, 124 and 234 area 2110 sq. meters in revenue situated at Village Jaganpur Afjalpur, Tehsil Sadar, Pargana Dankaur, district Gautam Budh Nagar as also a writ of certiorari quashing the aforesaid Notifications and for deciding the representation.

We have heard the learned counsel for the petitioners, the learned standing counsel appearing for respondent Nos. 1, 2 and 3 and Sri Suresh Singh, learned counsel appearing for respondent No. 4 and have perused the averments made in the writ petition and its annexures.

Learned counsel for the petitioners then invited the attention of the Court to the decision of the Apex Court in the case of Sri Radhy Shyam (Dead) Through LRs and others v. State of U.P. and others, being Civil Appeal No. 3261 of 2011 decided on 15.4.2011 and contended that the acquisition proceedings are liable to be quashed as there was no ground for invoking the urgency clause and denying the opportunity of filing objections.

We may mention here that this Court in the case of Narendra Road Lines Pvt. Ltd. v. State of U.P. and others and other connected matters decided on 2.7.2010 had upheld the acquisition proceedings which order has also been upheld by the Apex Court in the case of Nand Kishore Gupta v. State of U.P. and others, decided on 8.9.2010 being Appeal Civil No. 7468 of 2010 as the said Appeal Civil has been dismissed.

That being the position, we do not find any good ground to quash the Notifications as prayed for by the learned counsel for the petitioners.

The writ petition is dismissed."

20. The notifications dated 24.4.2009 and 4.6.2009 which are under challenge in the first two writ petitions having been upheld, we see no reason to take any different view.

21. In writ petition Nos. 16645 of 2010, 73189 of 2010 and 44710 of 2011 which relate to Notification dated 17.1.2009 and 24.2.2009 pertaining to village Salarpur, it has been stated in the counter-affidavit filed by the respondent No. 5 that challenging the same notification writ petition No. 45125 of 2009 was filed which was dismissed on 2.7.2010, following the Division Bench judgment in Narendra Road Lines Pvt. Ltd. Vs. State of U.P. and Others

22. Coming to writ petition No. 45899 of 2011 in which notifications dated 31.3.2009 and 28.5.2009 have been challenged. The same notifications were under challenge in writ petition No. 25950 of 2010, Preetam and others v. State of U.P. and others, which writ petition was dismissed on 11.7.2011. The Division Bench while dismissing the writ petition held as follows:

"At the very outset, we may mention here that while the writ petition was entertained on the ground that the judgment in the writ petition challenging similar Notification has been reserved and an interim protection was granted, the

said writ petition has already been decided on 2.7.2010 being Civil Misc. Writ Petition No. 29682 of 2009 against which the SLP has also been dismissed by the Apex Court.

Learned counsel for the petitioner then invited the attention of the Court to the decision of the Apex Court in the case of Sri Radhy Shyam (Dead) Through LRs and others v. State of U.P. and others, being Civil Appeal No. 3261 of 2011 decided on 15.4.2011 and contended that the acquisition proceedings are liable to be quashed as there was no ground for invoking the urgency clause and denying the opportunity of filing objections.

We may mention here that this Court in the case of Narendra Road Lines Pvt. Ltd. v. State of U.P. and others and other connected matters decided on 2.7.2010 had upheld the acquisition proceedings which order has also been upheld by the Apex Court in the case of Nand Kishore Gupta v. State of U.P. and others, decided on 8.9.2010 being Appeal Civil No. 7468 of 2010 as the said Appeal Civil has been dismissed.

That being the position, we do not find any good ground to quash the Notifications as prayed for by the learned counsel for the petitioner.

The writ petition is dismissed."

23. In writ petition No. 49952 of 2011, in paragraph 6 of the counter-affidavit filed on behalf of respondent No. 4, it has been stated that challenging the same notifications, writ petition No. 42030 of 2009 and 53927 of 2009 were filed which writ petitions were dismissed on 2.7.2010 by the Division Bench of this Court, following the Division Bench judgment in Writ Petition No. 29682 of 2009 M/s. Narendra Road Lines Pvt. Ltd. v. State of U.P. and others, delivered on the same date.

24. In last two writ petitions, being writ petition Nos. 25683 of 2012 and 26685 of 2012, challenge to the notifications are on the same ground which have been noted above. It is apparent that out of the above 9 writ petitions, the notification in first seven writ petitions under challenge, have already been upheld by the different Division Benches of this Court as noted above. All the grounds which have been raised by learned Counsel for the petitioners to challenge the notifications have been repelled by the judgment of the Apex Court in Nand Kishore Gupta (Supra) and Division Bench judgment of this Court in Narendra Road Lines (supra), which fully covers all the arguments which have been raised in the writ petitions. We feel ourselves bound by the judgment of coordinate Bench of this Court in Narendra Road Lines (supra) and do not find any reason to take a different view in the matter. In view of the foregoing discussions, all the writ petitions deserve to be dismissed and are hereby dismissed.