
(2011) 05 MP CK 0053

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1759 of 2008

Maresh Bharadwaj

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 36, 4, 48(1)

Citation : AIR 2011 MP 189 : (2011) 3 MPHT 263 : (2012) 1 MPJR 14

Hon'ble Judges : S.K. Gangele, J;Brij Kishore Dubey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Gangele, J.—This Public Interest Litigation has been filed against the notification dated 06.06.2007, Annexure P-5 issued by the State Government u/s 48(1) of the Land Acquisition Act, 1894, (herein after referred to as the "Act of 1894") releasing the land mentioned in the notification from acquisition.

2. In the year 1985 the Chambal Ayacut Pradhikaran requested the Collector to acquire some land for construction of residential houses of the officers and employees. Consequently, notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 were issued. The aforesaid notifications were challenged by some of the land-owners before this Court. This Court quashed the notification on the ground that the proper procedure had not been followed. One of the common order dated 27.10.1994 is passed in Misc. Petition No. 44 of 1986, Ramshri v. State of Madhya Pradesh and Ors. and Misc. Petition No. 58 of 1986, Shantilal Agrawal v. The State of Madhya Pradesh and Ors. Thereafter, again notifications were issued under Sections 4 and 6 of the Act of 1894 on 05.05.91, 02.05.91 and 13.06.1991 as mentioned in the award dated 18.10.91, Annexure P-2. Objections were filed and finally the Authority passed an award u/s 11 of the Act of 1894 on 18.10.91. Total land of 9.689 hectares of different survey numbers, details of which are as under, was acquired:

Sr. No. Survey Numbers Area (In hectares)

1. 873/2 0.313
2. 874/2 0.418
3. 875/2 0.125
4. 1017 0.711
5. 1018 0.554
6. 1026 0.575
7. 1027 0.575
8. 1028 0.428
9. 1029 0.031
10. 1030/1 0.470
11. 1031/2 0.324
12. 1032/1 0.543
13. 1033 0.428
14. 1034 0.408
15. 1035 0.251
16. 1036 0.366
17. 1038 0.209
18. 1039 0.042
19. 1041 0.157
20. 1042 0.784
21. 1043 0.669
22. 1044 0.261
23. 1045 0.733
24. 1046 0.314

Total area: 9.689

3. The aggrieved persons filed applications before the Collector for reference u/s 18 of the Act of 1894. The aforesaid applications were rejected by the Collector vide order dated 23rd March 2002. Thereafter, some persons filed civil revisions before this Court, which were registered as Civil Revision No. 620/2002 and Civil Revision No. 624/2002. The learned Single Judge of this Court vide order dated

2nd November 2006 dismissed the aforesaid revisions.

4. After dismissal of the civil revisions some of the aggrieved persons submitted applications before the State Government in regard to release of their land. A proposal was sent to the State Government, which was rejected by the Secretary, Revenue Department vide order dated 5th November 1998, copy of which has been filed as Annexure P-3 along with the petition. Thereafter, again the Collector Morena wrote a letter to the Commissioner on 21.12.1995 mentioning the fact that because possession of the land had not been taken over, hence, it could be released from acquisition. Copy of the letter has been filed as Annexure A-5 by intervenors, Kaptan Singh and Vijay Pal Singh. In the aforesaid letter the Collector recommended for release of land from acquisitions, details of which are as below:

Land Acquired Area of land of which possession received. Area of land of which possession not received.

Survey No. Area in Hectares

1026 0.575 - -

1028 0.428 0.428 -

1030/1 0.470 - 0.470

1033 0.428 0.428 -

1034 0.408 0.408 -

1043 0.669 - 0.669

5. Thereafter, another letter was also sent by the Collector to the Commissioner on 02.01.1996. Then, the impugned order, Annexure P-5 dated 06.06.2001 has been passed by the Revenue department of the State Government in regard to release of following land of different survey numbers from acquisition:

Sr. No. Survey Numbers Area

1. 874/2 0.418

2. 1026 0.575

3. 1030/1 0.470

4. 1045 0.733

5. 873/2 0.313

6. 1039 0.042

7. 1044 0.261

8. 1042 0.784

6. It has been mentioned in the notification issued u/s 48(1) of the Act of 1894 that possession of the aforesaid land had not been taken over by the department. Thereafter, the Commissioner on 10th October 2007 wrote a letter to the State Government for cancellation of the notification dated 06.06.2007 annexing therewith the letter of Collector, Morena, Annexure P-7 dated 10th October 2007. It has been mentioned in the letter that the land has been recorded in the Revenue Record as Government land and possession of the land is of the State Government. The land was required for construction of various Government offices and residential quarters.

7. The contention of the Petitioner in the present petition is that the department passed the impugned order, Annexure P-5 releasing the land from acquisition with malafide intention and on wrong assumption of the fact that possession of the land has not been taken over, however, possession of the land had already been taken over and for assessing the factum of possession the relevant entries in revenue record have not been considered by the Authorities. The Petitioner further submitted that he is a public spirited person and a conspiracy has been created by the land owners with the connivance of the Authorities in order to grab the Government land.

8. The State in its return supported the cause of the Petitioner. The State has clearly stated in the return that the possession of the land which has been released from acquisition by the impugned notification had already been taken over by the Collector and possession of Chambal Ayacut has been recorded in the revenue records. Earlier, the Authorities on wrong assumption without verifying the fact recommended to the Government for release of the land from acquisition on the ground that possession of the land had not been taken over, which is contrary to the record of the case.

9. The intervenors in their intervention applications opposed the petition. They have raised objection in regard to maintainability of the petition on the ground that the Petitioner has not filed this petition in public interest. It has further been contended that earlier also vide notification dated 27th June 1995 a land of area 0.919 hectares of Survey Numbers No. 875/2, 1032/1 and 1035 of village Joura Khurd Tehsil and District Morena was released by the Revenue Department from acquisition and the intervenors / affected persons vide notification, Annexure P-5 are also entitled the same relief. It is further contended that possession of the land is with the intervenors and owners, hence, the impugned notification is in accordance with law.

10. Learned Counsel for the Petitioner has contended that the impugned notification has been issued with malafide object of the Authorities to provide benefit to the land owners who have already lost their claim in the Court. He further submitted that by the impugned notification a valuable land of the city of Morena has been released in favour of the land owners on wrong assumption of facts. The petition filed by the Petitioner is a real public interest litigation because there is no personal interest of the Petitioner in quashing the impugned

notification.

11. Learned Additional Advocate General, appearing on behalf of the State, supported the Petitioner. He submitted that as per the record possession of the land had already been taken over and the land is also recorded in the Revenue record in possession of Chambal Ayacut. It is needed for a Government purpose although the Chambal Ayacut has been abolished.

12. Learned Counsel for intervenors, Mr. N.K. Jain, Sr. Advocate, appearing for intervenors, Prem Narayan and others; Mr. V.K. Bharadwaj, Sr. Advocate, appearing for intervenor, Shantilal and Mr. Yogesh Chaturvedi, Advocate, appearing on behalf of intervenors, Kaptan Singh and Vijay Pal Singh, have contended that the impugned notification is in accordance with law. Possession of the land in question has never been taken over from the land owners and it is in their possession. It has further been submitted that the land belongs to land-owners the State cannot acquire the land to keep the land with it when the object of acquisition of land for requirement of Chambal Ayacut has already been over because Chambal Ayacut has already been abolished. In support of their contentions, learned Counsel placed reliance on the judgments of the Hon"ble Supreme Court in the cases of Sugana Saraswathi and Anr. v. Govt. of T.N. and Anr., (2004) 13 SCC 660; Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, and Neetu Vs. State of Punjab and Others, .

13. In regard to maintainability of the petition, the Petitioner has specifically pleaded that he has no personal interest in the matter and he has filed this petition in the interest of public at large. The Petitioner is a resident of district Morena and he is a social worker. He is Divisional President of an Organization known as "All India Anti Corruption Committee". Hon"ble the Supreme Court in the case of State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , has considered the concept of public interest litigation and also considered various earlier judgments and judgment of Apex Courts of other countries in this subject and held as under:

25. Public interest litigation has been defined in Black's Law Dictionary (6th Edn.) as under:

Public interest.-Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government.

26. Advanced Law Lexicon has defined "public interest litigation" as under:

... the expression "PIL" means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights

or liabilities are affected.

27. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows:

10. ... Public interest law is the name that has recently been given to efforts providing legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others." (Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra and Others,

(emphasis supplied)

28. This Court in People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, defined "public interest litigation" and observed that (SCC p.242, para 2) the public interest litigation is a cooperative or collaborative effort by the Petitioner, the State or public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon the poor, downtrodden and vulnerable sections of the society.

14. After considering its earlier judgments and also judgments of the Apex Courts of other countries, Hon"ble the Supreme Court has issued the following guide-lines in regard to Public Interest Litigation:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the Petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entering a PIL

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

15. On the basis of the afore quoted directions issued by the Hon"ble Supreme Court and looking to the facts of the present case, in our opinion, this petition filed by the Petitioner is to be treated as Public Interest Litigation and it is a genuine Public Interest Litigation.

16. In regard to merits of the case, the Collector in his letter dated 11th May 2010, copy of which has been filed as Annexure R-1 along with the return, has specifically mentioned that the provisions of Section 48(1) of the Act of 1894 are not applicable to the land in question because the possession of the land had been taken over long back by the State and the State is in possession of the land. It has further been submitted that the land is required for construction of Government buildings and residential quarters of the employees. It has further been stated that as per the Revenue record and the report of the Additional Collector dated 20.03.2008 the possession of the land has been mentioned in the Khasra Entry as of "Chambal Ayacut Authority Residential Scheme". It has further been stated that the possession of the land had been taken over and it is in possession of the State Government.

17. We have also perused the record of the case which has been produced by the State. As per the aforesaid record the Tehsildar had taken possession of the land in the year 1986. Apart from this, in Khasra entries the land has been mentioned in possession of Chambal Ayacut. Earlier, also the then Collector in his letters dated 10th October 2007 and 14th March 2008 mentioned the fact that the land has been recorded in the name of "Chambal Ayacut" and it is in possession of the Government. Apart from this, the Revenue department vide an order dated 5th November 1998, copy of which has been filed as Annexure P-3, has rejected the proposal in regard to release of the land from acquisition. No record has been produced by the Authorities of the department to the effect that the land-owners are in possession of the land. The intervenors, Mr. Kaptan Singh and Mr. Vijay Pal Singh filed copies of letters written by the then Collector dated 21.12.1995 and 02.01.1996. In the aforesaid letters it has been mentioned that the land could be released from acquisition because possession of the land has not been taken over. However, in the aforesaid letters the fact about the entry in Khasras or the Revenue record have not been mentioned. It appears that in order to give benefit to the land-owners the then Collector had written the aforesaid letters.

18. Hon"ble the Supreme Court in the case of Jasbir Singh Chhabra and Others

Vs. State of Punjab and Others, has held, as under in regard to exercise of power of judicial review over the administrative actions and acceptance of charge of malus animus:

34. It is trite to say that while exercising power of judicial review, the superior courts should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of mala fides is always on the person who moves the court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to mala fides and the courts should resist the temptation of drawing dubious inferences of mala fides or bad faith on the basis of vague and bald allegations or inchoate pleadings. In such cases, wisdom would demand that the court should insist upon furnishing of some tangible evidence by the Petitioner in support of his/her allegations.

35. It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced by extraneous considerations. The Court is duty-bound to carefully take note of the same. In this context, reference can usefully be made to the decision of the Constitution Bench in E.P. Royappa Vs. State of Tamil Nadu and Another, In that case, the Petitioner, who was at one time holding the post of Chief Secretary of the State, questioned the decision of the Government to post him as an officer on special duty. One of the grounds on which he attacked the decision of the Government was that the Chief Minister of the State, Shri K. Karunanidhi was ill-disposed against him.

36. While dealing with the question in E.P. Royappa (supra) whether the transfer and posting of the Petitioner was vitiated due to mala fides, Bhagwati, J. speaking for himself and Y.V. Chandrachud and V.R. Krishna Iyer, JJ. observed: (SCC pp.41-42, paras 91-92)

91. Now, when we examine this contention we must bear in mind two important considerations. In the first place, we must make it clear, despite a very strenuous argument to the contrary, that we are not called upon to investigate into acts of maladministration by the political Government headed by the second Respondent. It is not within our province to embark on a far-flung inquiry into acts of commission and omission charged against the second Respondent in the administration of the affairs of Tamil Nadu. That is not the scope of the inquiry

before us and we must decline to enter upon any such inquiry. It is one thing to say that the second Respondent was guilty of misrule and another to say that he had malus animus against the Petitioner which was the operative cause of the displacement of the Petitioner from the post of Chief Secretary. We are concerned only with the latter limited issue, not with the former popular issue. We cannot permit the Petitioner to sidetrack the issue and escape the burden of establishing hostility and malus animus on the part of the second Respondent by diverting our attention to incidents of suspicious exercise of executive power. That would be nothing short of drawing a red herring across the trail. The only question before us is whether the action taken by the Respondents includes any component of mala fides; whether hostility and malus animus against the Petitioner were the operational cause of the transfer of the Petitioner from the post of Chief Secretary.

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the Petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against Ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set-up these considerations are wholly irrelevant in judicial approach but because otherwise, functioning effectively would become difficult in a democracy.

(emphasis supplied)

19. After applying the afore quoted principle of law laid down by the Hon''ble the Supreme Court in the facts of the present case, in our opinion, the action of Authorities in issuing the impugned notification, Annexure P-5, is malafide because the Authorities have not taken into consideration the earlier decision of the department which was communicated to one of the land-owners, Mr. Tikaram vide letter dated 5th November 1998 to the effect that the department has refused to release the land from acquisition and the fact that the possession of

the State Government is over the land is recorded in the Revenue record and further fact that the Collector and Additional Collector in their report informed the department that the State Government is in possession of the land in question.

20. Section 48(1) of the Act of 1894 gives power to the Government to withdraw from acquisition of any land of which possession has not been taken. The relevant provision is as under:

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.-(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which opossession has not been taken.

21. The power under the aforesaid provision can be exercised by the State only if the possession of the land has not been taken over. In the present case, from the record it is clear that possession of the land in question had been taken over. Apart from this, the award passed by the Competent Authority has become final because the revisions and writ petitions filed against the said award were dismissed. In this view of the matter, in our opinion, the impugned notification issued by the Revenue Department is malafide, arbitrary and without any power and authority and against the provisions of Section 48(1) of the Act of 1894.

22. Consequently, the petition filed by the Petitioner is hereby allowed. The impugned notification dated 06.06.2001, Annexure P-1 is hereby quashed. Looking to the facts of the case, in our opinion, the Petitioner has espoused a good cause, hence, a cost has to be awarded in favour of the Petitioner. Hence, the State is directed to pay a cost of Rs. 20,000/-(Rupees Twenty Thousand only) to the Petitioner within a period of three months from the date of receipt of a copy of this order.