
(2003) 11 MP CK 0023
In the Madhya Pradesh High Court
Case No : L.P.A. No. 211 of 2003

Malkhan Singh and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-11-2003

Acts Referred:

Constitution of India, 1950 — Article 166(1), 166(3)
Land Acquisition Act, 1984 — Section 17, 4, 5, 5A, 6

Citation : (2004) 2 JLJ 419 : (2003) 4 MPLJ 577

Hon'ble Judges : S.K. Seth, J;Deepak Verma, J

Bench : Division Bench

Advocate : C.L. Yadav, for the Appellant; S. Mukati, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Seth, J.

This intra Court appeal under Clause X of the Letters Patent, is directed against the common order passed by the learned Single Judge on 30.9.2003, whereby W.P. No. 01/2003 (preferred by Appellant herein), W.Ps. No. 50/03, 78/03, 79/03, 80/03, 81/03, 101/03 and 255/03 were disposed of. This order, therefore, shall also govern disposal of LPA No. 222/03 arising out of W.P. No. 101/03; LPA No. 223/03 arising out of W.P. No. 80/03 and LPA No. 224/03 arising out of W.P. No. 79/03.

Appellants in all APAs invoked the writ jurisdiction of this Court to assail the notifications issued u/s 4 read with section 17 of the Land Acquisition Act, 1984 (hereinafter referred to as the "Act" for short). They also assailed the notifications issued u/s 6 of the Act.

After notice, Respondents filed reply and contested the writ petitions. It was pointed out that vast chunk of land was required to develop rehabilitation and resettlement sites for the project-affected families which have been uprooted on

account of Sardar Sarovar Inter State) Dam on River Narmada. In order to meet the requirement, notifications under sections 4 read with 17 and 6 were issued by the Respondents to acquire the lands situated in villages Barda, Semalda and Perkhad, Tahsil Manawar, district Dhar. These notifications, after their publication in the Gazette, have also been published in the local newspapers. Writ petitions were filed only by few among the persons whose lands were acquired.

Appellants challenged the acquisition proceedings mainly on [three grounds, viz., (1)] that notifications under sections 4 and 6 issued by the Collector, Dhar, are not notifications issued by the "State Government" as contemplated under sections 4 and 6 of the Act. It was also contended that the power of the State Government cannot be delegated to the Collector by the Minister alone unless and until that order of the Minister is duly authenticated in the manner prescribed under Clause (1) of Article 166 of the Constitution of India. The second contention of learned Counsel for Appellants is that there was no reason for invoking the urgency clause u/s 17 of the Act and they have been wrongly deprived of an enquiry as contemplated u/s 5A of the Act. Last submission made by learned Counsel for Appellants is that since the Appellants have pointed out alternative sites available for rehabilitation and resettlement of project-affected families, therefore, there was no need or occasion to acquire the lands of the Appellants. Learned counsel for Appellants submitted that learned Single Judge has erroneously proceeded to decide the matter against the Appellants. According to him, the order passed by the learned Single Judge cannot be allowed to stand and it deserves to be quashed. The writ petitions filed by the Appellants accordingly deserved to be allowed.

We have heard learned Counsel for Appellants at length and perused the record. After going through the record, we find that the learned Single Judge, placing reliance on the decision of the Supreme Court reported in *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, , rightly held that the notifications issued under sections 4 and 6 of the Act are not open to challenge as they are in conformity with the legal requirements and satisfy the rigor of provisions of law.

After careful consideration we find no force and substance in the first contention of the learned Counsel for Appellants. The Constitution of India provides for a Cabinet form of government based upon British pattern. Under the Constitution, the Governor of the State is the Constitutional head who exercises all executive powers of the State on the aid and advice of the Council of Ministers. Article 166(3) requires, the Governor to make rules for more convenient transaction of the business of the Government of the State and for the allocation of State business among Ministers except as to matters in which the Governor is by or under the Constitution is required to act in exercise of his own discretion. Exercising these powers, the Governor of Madhya Pradesh has framed "Rules of Business" of the Government of Madhya Pradesh. Under Rule 13 of the Rules of Business, provision has been made to supplement these rules by issuing

instructions from time to time. Instructions issued under Rule 13 are contained in Chapter V of the said Rules. Rule 2A falling under Chapter V enables the Minister in-charge of a particular Department to arrange any particular item of business allocated to the said Department by means of standing order.

In view of these supplementary instructions, directions have been issued from time to time by the Minister-in-charge of the revenue Department of the Government of Madhya Pradesh authorizing District Collector to function and exercise the powers of the State Government in the capacity of ex-officio Deputy Secretary of the Government in relation to provisions of sections 4, 5, 6 and 17 of the Act a would be clear from perusal of Annexure P-18 dated 22.3.1985 filed in W.P. No. 01/03, or Annexure R-1 dated 15.2.1999 filed along with the return in W.P. No. 101/03.

We are in no doubt that the expression "business of the Government of the State" is wider than the expression "eruptive action of the Government of a State" which is used in Article 166(1). It is only the executive action of the State Government has to be expressed to be taken in the name of the Governor whereat under Clause (3) of the Article 166, the Governor has to make rules for the transaction of the business of the Government of the State. The business can be allocated under the Rules of Business or the instruction; issued. As pointed out herein above, Rules of Business empowers the Minister-in-charge of the Revenue Department to make standing; orders with regard to disposal of cases under his charge relating to sections 4, 6 and 17 of the Act. The validity of the order or the action taken by the Collector, in view of the authorization, is not open to challenge. It would be deemed to be the action taken by the State Government, nor it would constitute the delegation of Minister's power as has been held by the Constitution Bench of 7 Judges of the Supreme Court in *Samsher Singh Vs. State of Punjab and Another*, .

In view of the aforesaid discussion and the constitutional frame-work, the order passed by the Minister-in-charge of the Revenue department authorising Collector of a district to deal with the matter pertaining to sections 4, 6 and 17 of the Act, as ex officio Deputy Secretary of the Revenue department would be the action of the State Government and not the action of the Collector of the district. Thus, as and when notifications are issued under sections 4, 6 and 17 of the Act by Collector of a district, the same have to be treated as notifications issued by the concerned State Government. In view of the foregoing discussion, we find no merit and substance in the contention that the notifications in the present case were not issued by the State Government.

Now, coming to the second objection that there was no immediate need to invoke urgency clause, it has also been elaborately discussed by the learned Single Judge. Relying upon the decision of the Supreme Court reported in *First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another*, , learned Single Judge has rightly held that there was an urgency in the matter inasmuch as the land was required for development of rehabilitation and

resettlement sites for the project-affected families who have been uprooted on account of submergence of their lands due to increase in the height of the Sardar Sarovar Dam. The rehabilitation and resettlement are being undertaken in a time-bound programme and if immediate steps are not being taken, then the life of the residents of the areas which are coming under submergence may be under great danger and in peril. In view of the facts and circumstances of the case and specially looking to the fact that the lands were required for the development of resettlement and rehabilitation of project-affected families, the Government rightly invoked the urgency clause and dispensed with the enquiry.

Now, coming to the third objection of Appellants with regard to alternative sites available and, therefore, their lands may not be acquired, suffice it to say that availability of the alternative sites cannot be a ground to resist the acquisition of the land, it is for the authorities concerned to seek and judge which land is more suitable and appropriate to set up the rehabilitation and resettlement sites for the project-affected families. The subjective satisfaction of the Respondents was enough that the said lands alone would be most suitable for the aforesaid purposes. Thus, this satisfaction of the Respondents is not open to challenge in writ petition. Learned Single Judge has taken a proper view of the matter. It may also be pertinent to point out that the entire exercise of resettlement and rehabilitation of the Sardar Sarovar Dam project-affected families is being monitored by the Supreme Court through the aegis of Chairman of the Redressal Committees so nominated and, therefore, also we find no merit and substance in the appeal. The appeal is accordingly summarily dismissed. Let a copy of this order be retained in L.P.A. Nos. 222/03, 223/03 and 224/03.