
(1971) 11 AHC CK 0015
In the Allahabad High Court
Case No : Special Appeal No. 779 of 1970

Mangal Sen

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-11-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 48, 6

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 189, 199

Citation : AIR 1972 All 378 : (1972) 42 AWR 101 : (1972) RD 22

Hon'ble Judges : T.S. Misra, J; Satish Chandra, J

Bench : Division Bench

Advocate : Brij Bhusan Paul and M.A. Ansari, for the Appellant; V.K. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—On 26th March. 1969. the State Government issued a notification u/s 4(1). Land Acquisition Act, notifying that the land mentioned in the schedule thereto was needed for public purposes. Plots Nos. 283. 284 and 285 along with several other plots of village Jamalpur Mafi were included in this notification. In due course on 13th November, 1969, the State Government issued the notification u/s 6(1) of the Act in respect of the plots which were mentioned in the notification u/s 4. On 27th July. 1970 however, the State Government issued a notification stating that the Governor is pleased to make the following amendments in the notification dated 13th November, 1969. The amendments were the deletion of plot No. 283 and the reduction of the areas of plots Nos. 284 and 285 by one biswa each. The effect of this amendment was that the Section 6 notification stood amended by deletion of plot No. 283 therefrom and reducing the area of plots Nos. 284 and 285 by one biswa respectively. Thereafter the State Government issued yet another notification on the very next day namely July 28. 1970, whereby it was stated that in continuation of the notification dated 26th March. 1969 issued under Sub-section

(1) of Section 4 of the Land Acquisition Act the Governor is pleased to declare u/s 6 of the Act that he is satisfied that the land mentioned in the schedule is needed for a public purpose and that u/s 17 of the said Act to direct the Collector of Aligarh to take possession of the land. The schedule mentioned 3 plots namely 283, 284 and 285. In regard to plots 284 and 285 only one biswa area was included. Thus the position was that at first the Government excluded plot No. 283 and one biswa each of plots Nos. 284 and 285 from the notification u/s 6 issued in November, 1969 but on 28th July, 1970 they issued a fresh notification u/s 6 of the Act in respect of these plots.

2. The appellant instituted a writ petition in this Court challenging the earlier notification under Sections 4 and 6. Various grounds urged in support of that writ petition, however, did not find favour with the learned single Judge of this Court who dismissed the writ petition. Consequently, the appellant filed the present appeal. During the pendency of the appeal the appellant applied for amendment of the writ petition by inclusion of the notifications dated 27th and 28th July, 1970. After hearing learned counsel, we permitted the amendment.

3. Learned counsel for the appellant has raised several points in support of the appeal. The first point was that the Government having withdrawn from the acquisition it could not acquire the plots with respect to which the withdrawal had taken place without issuing a fresh notification u/s 4 and without making a fresh enquiry u/s 5A of the Land Acquisition Act. Section 48(1) the Land Acquisition Act gives liberty to the Government to withdraw from any acquisition of land of which possession has not been taken. Admittedly possession of the plots Nos. 283, 284 and 285 had not been taken when the notification dated 27th July, 1970, was issued. It was urged that the effect of this notification was that the Government had withdrawn from the acquisition. In our opinion, the submission is misconceived. Withdrawal from the acquisition would have taken place if the notification u/s 4 had also been amended, so as to exclude the three plots in dispute. On 27th July, 1970, the position was that these plots were included in the notification u/s 4(1) and the report u/s 5A had, after considering the objections of the appellant in regard to these three plots also, made the requisite recommendations with respect to them. But the Government had not issued a notification u/s 6 in respect of these three plots. The effect of the notification dated 27th July, 1970, is to delete these plots from the notification dated 13th November, 1969, u/s 6.

Thus the 13th November, 1969 notification would henceforth be read as not including these plots. That is why on 28th July, 1970, the Government issued a fresh notification u/s 6 making the requisite declaration with respect to these three plots which had been omitted from the earlier notification u/s 6. Section 6 as it stood after its amendment by the Amending Act 13 of 1967 permitted the State Government to issue more than one notification u/s 6. In this situation it cannot be held that the State Government withdrew from the acquisition proceedings. All- that can be said is that these three plots we're for some reason

deleted from the notification u/s 6 with the result that there was no declaration with respect to these three plots by the notification dated 13th November, 1969 or till 28th July, 1970 when the requisite notification u/s 6 was issued. The decisions relied on by learned counsel are not helpful. In *Brij Nath Sarin Vs. Uttar Pradesh Government and Another*, the Government had withdrawn the notification u/s 4 itself. It was held that thereafter the Government had to restart acquisition proceedings from the beginning with respect to the same land.

4. In *V. Harihara Prasad Vs. K. Jaganna Dhan and Another*, it was held that the mere withdrawal of a notification u/s 4 does not amount to a decision on objections raised u/s 5A in favour of the applicant whose land is sought to be acquired. The Government is entitled to reconsider its previous decision withdrawing the earlier notification u/s 4 and restart acquisition proceedings with respect to the same land. This would show that even the withdrawal of a notification u/s 4 does not mean that the objections u/s 5A have been upheld. The Government is free to restart the proceedings. This decision is not an authority for the proposition that exemption of some land from the notification u/s 6 amounts to withdrawal from the acquisition.

5. Actually the decision of the Calcutta High Court in *H. N. Biswas v. First Land Acquisition Collector*, (1965) 69 Cal 280 would suggest that under circumstances prevailing in the present case the Government can continue the acquisition proceedings by issuing a fresh notification u/s 6 itself. We find no merit in this submission.

6. It was next urged that the State Government had not applied its mind to the facts and therefore its decision to acquire the land in dispute was arbitrary and this aspect was justiciable by this Court in view of the decision of the Supreme Court in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, There are no allegations to this effect. The point has not been established at all by evidence. The notification clearly recited that the Governor had taken into consideration the report u/s 5A and that he considered the land to be fit for acquisition for the purposes mentioned in the notification. Further, the counter affidavit clearly averred that the State Government applied its mind to the objections raised by the petitioner. On this material it cannot be said that it has been established as a fact that the State Government did not apply its mind to the relevant material. The fact that some other land in the vicinity may be more suitable for acquisition is a matter of opinion which question is not justiciable in Courts.

7. It was then urged that the proceedings u/s 5A were vitiated for lack of grant of an opportunity of hearing to the appellant. It is admitted that notices u/s 4 were issued and served on the appellant and that the appellant appeared and filed objections. In paragraph 12 of the writ petition it was stated that the authorities did not Pay any heed to the objections filed by the petitioner and without giving an opportunity of being heard, an ex parte decision was arrived at. This has been controverted in the counter affidavit where it has been stated

that the objectors who appeared in support of the objections were heard and local inspection was also made in the presence of the objectors before the submission of the report u/s 5A, In the rejoinder nothing specific has been said. There is no allegation that the appellant was not given notice of the date of hearing or that he appeared on that day and yet he was not heard. It may be that in spite of notice the appellant himself did not appear before the Land Acquisition Officer on the date fixed for hearing. Moreover, the learned single Judge had summoned the record and was satisfied that there was no substance in this allegation. We have no hesitation in rejecting this point.

8. In the end learned counsel submitted that in view of Section 199 of the Zamindari Abolition Act, the acquisition of the appellants' land was illegal. u/s 199 it is provided that no bhumidhar shall be liable to ejectment In this connection Section 189 (b) is relevant. It provides for extinction of the interest of a bhumidhar. The interest of a bhumidhar in a holding extinguishes when the land comprised in the holding has been acquired under any law for the time being in force relating to the acquisition of land. Thus Section 199 is clearly subject to Section 189 and it cannot be said that the effect of Section 199 is that the holding of a bhumidhar cannot be acquired under any law relating to the acquisition of land, like the Land Acquisition Act. It was urged that the effect of ejectment is extinguishment of rights, vide *Nihal Singh v. Board of Revenue* 1963 RD 167. We have no quarrel with this proposition, but this extinguishment is expressly provided by Section 189 (b). Thus Section 199 cannot be held as extending a protection against extinguishment of rights by acquisition of land under the Land Acquisition Act. TO the same effect is the decision in *V. P. N. Singh v. State of U. P.* 1967 All WR 107.

9. In the result the appeal fails and is accordingly dismissed with costs.