
(1965) 11 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 66 of 1965

Manmohan Mathur Sudhirchand Mathur

APPELLANT

Vs

Addl. Area General Manager, National Coal Development
Corporation Ltd. and Others

RESPONDENT

Date of Decision : 15-11-1965

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 28, 7(1), 8, 9, 9(1)
Land Acquisition Act, 1894 — Section 4

Citation : AIR 1966 MP 126 : (1968) ILR (MP) 684 : (1966) JLJ 150 : (1966) 11 MPLJ 112

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : R.K. Verma, R.P. Jain and G.C. Jain, for the Appellant; A.P. Sen, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.

By this application under Article 226 of the Constitution, the petitioner, who says that he and some 200 other persons own dwelling houses in "Sadak Dafai" locality in village Chirimiri of Manendragarh Tehsil of district Surguja and who claims to hold a Patta in Bhumiswami rights of certain lands in the locality, prays that a direction be issued to the respondents prohibiting them from carrying on any "depillaring" operations underneath the land on which his house and those of other persons stand.

The material facts are that land in village Chirimiri is a coal-bearing area. On 1st February 1957, the State Government, acting in the exercise of the functions of the Central Government under the Land Acquisition Act, 1894. entrusted to it by the President in the exercise of his powers under Article 258(1) of the Constitution, issued a notification u/s 4(1) of the Land Acquisition Act stating

that the lands specified in the notification, which included Chirimiri village, were needed for the prospecting of coal seams for development of collieries to be owned and worked by the Central Government.

On 7th August 1958, the Central Government issued a notification u/s 9(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957, (hereinafter called the Act) acquiring land measuring 145.75 acres described in Schedule A to the notification and the rights to mine, quarry, bore, dig and search for win, work and carry away minerals in the lands measuring 2141.50 acres described in Schedule B to the notification. The preamble to the notification dated the 7th August 1958, first referred to the notification issued by the State Government on 1st February 1957 u/s 4(1) of the Land Acquisition Act, 1894, and then proceeded to say that no objection had been made to the acquisition of the land specified in the notification dated the 1st February 1957 and that the Central Government, after consulting the State Government, was satisfied that the land and the rights referred to earlier should be acquired.

Thereafter on 16th April 1964 the Additional Area General Manager, Kurasia Colliery, gave a notice to the petitioner saying that by virtue of the notification D/- 7th August 1958 the Central Government had acquired mining rights in village Chirimiri and that the said rights had vested in the respondent No. 2, the National Coal Development Corporation Ltd., under the Central Government's order dated the 30th September 1958, and that the petitioner was in occupation of the land in contravention of the rights of the Corporation. The notice further intimated to the petitioner that there were coal-mines underneath the land in his occupation and very soon the respondent No. 1 would commence depillaring operations, and called upon him to vacate the land within one month of the receipt of the notice and remove the material of the structures belonging to him standing on the land. The notice also added that if the petitioner failed to vacate the land, the Corporation would not be responsible for any damage caused to him or to any property belonging to him.

Shri Verma, learned counsel appearing for the petitioner, argued that the notification issued by the Central Government on 7th August 1958 u/s 9(1) of the Act was invalid inasmuch as it was not preceded by any notification issued u/s 7 of the Act giving notice of the Central Government's intention to acquire the land or the rights acquired by the notification dated the 7th August 1958. It was said that on the issue of a notification u/s 7 of the Act in respect of any land, any person interested in the land has the right to object to the acquisition of the whole or any part of the land or any rights in or over such land within thirty days of the issue of the notification; and that as no notification u/s 7 was issued at all, the petitioner was deprived of an opportunity of lodging his objections to the acquisition. Learned counsel proceeded to say that if the notification issued u/s 9(1) of the Act was invalid and illegal, then the respondents were not entitled to carry on any depillaring operations underneath the land on which the petitioner's house stands and of which he is the Bhumiswami, or to call upon him to vacate

the land.

In the return filed by the respondents it has been stated that according to the scheme of the Act, it was not necessary to comply with Sections 7 and 8 as a part of acquisition proceedings had already been taken under the Land Acquisition Act, 1894, when the State Government issued a notification on 1st February 1957; and that the petitioner has no locus standi to challenge the validity of the notification dated the 7th August 1958 or the acquisition proceedings and has also an adequate alternative remedy by way of a suit. It has also been stated in the return that neither the Union of India nor the National Coal Development Corporation reside or are located within the territorial jurisdiction of this Court; and that, therefore, this Court has no jurisdiction to entertain this petition under Article 226 of the Constitution.

The objections raised by the respondents to the tenability of this petition will be dealt with later. Taking first the petitioner's objection that the notification issued on 7th August 1958 u/s 9(1) of the Act is invalid, that must, in our opinion, be given effect to Section 4 of the Act deals with the preliminary notification respecting intention to prospect for coal in any area and powers of competent authorities thereupon. It says that whenever it appears to the Central Government that coal is likely to be obtained from land in any locality, it may by a notification, giving a brief description of the land and stating its approximate area, give notice of its intention to prospect for coal therein, On the issue of a notification under Sub-section (1) of Section 4 of the Act, the competent authority becomes entitled to do the acts mentioned in Sub-section (3) of that section. Section 5, which is not material here, is concerned with the effect of the notification on prospecting licences and mining leases. Section 6 provides for compensation to be paid for damages caused by any action taken u/s 4 of the Act. Section 7, which is very material here, is as follows-

"7. (1) If the Central Government is satisfied that coal is obtainable in the whole or any part of the land notified under Sub-section (1) of Section 4, it may, within a period of two years from the date of the said notification or within such further period not exceeding one year in the aggregate as the Central Government may specify in this behalf, by notification in the Official Gazette, give notice of its intention to acquire the whole or any part of the land or of any rights in or over such land, as the case may be.

(2) If no notice to acquire the land or any rights in or over such land is given under Sub-section (1) within the period allowed thereunder, the notification issued under Sub-section (1) of Section 4 shall cease to have effect on the expiration of three years from the date thereof."

Under Section 8, any person interested in any land, in respect of which a notification u/s 7 has been issued, can prefer objections to the acquisition. The objections are to be made to the competent authority, in writing, who gives to the objector an opportunity of hearing, either in person or by a legal practitioner,

and thereafter makes a report to the Central Government. By Section 9(1) the Central Government is given power, after considering the report, if any made u/s 8, to make a declaration that the land or any rights therein which were notified for acquisition, should be acquired.

It is also necessary to note Section 28 of the Act. That section, in so far as it is material here, runs as follows-

"28. (1) Every notification issued before the commencement of this Act, whether by the Central Government or by a State Government u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), in which lands were stated to be needed for the prospecting of coal seams for the development of collieries to be worked by the Union of India shall be deemed to have been issued by the Central Government u/s 4 of this Act as if this Act had been in force on the date of the notification.

(2) Every notification issued before the commencement of this Act, whether by the Central Government or by a State Government, u/s 6 of the said Act in which lands were stated to be needed for the development of coal shall be deemed to have been issued u/s 9 of this Act as if this Act had been in force on the date of the notification.

(3) Any objection preferred u/s 5A of the said Act in respect of any land covered by any notification issued u/s 4 of the said Act shall be deemed to be an objection preferred u/s 8 of this Act to the relevant competent authority and may be disposed of by him as if the objection had been made in relation to a notification issued u/s 7 of this Act in respect of such land; and the Central Government may at any time make a declaration u/s 9 of this Act in respect of the land or any part thereof."

In the present case, the notification dated the 1st February 1957 u/s 4 of the Land Acquisition Act was issued by the State Government before the commencement of the Act. On the coming into force of the Act, that notification must be deemed to have been issued by the Central Government u/s 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, as if that Act had been in force on the date of the notification. This is clear enough from the plain language of Section 28(1) of the Act. Now, it is manifest from Section 7 of the Act that if after carrying out a preliminary investigation on the whole or any part of the land notified u/s 4(1) the Government is satisfied that coal is obtainable in that land, then if the Government wishes to acquire the whole or any part of the land or any rights in or over such land, it must by a notification in the Official Gazette give notice of its intention to acquire the whole or any part of the land or any right in or over such land. The use of the expression "the Central Government mayby notification in the Official Gazette, give notice of its intention to acquire.. .." does not mean that if the Central Government is satisfied that coal is obtainable in the area notified u/s 4(1) and decides that the said area or the rights in or over that area should be acquired, then the issue of

a notification for the purposes of acquisition is in the discretion of the Government. The discretion that has been given by Section 7(1) to the Central Government is in the matter of deciding whether acquisition should or should not be made, and not in the matter of the issue of a notification under that provision when it decides to acquire the land or any rights in or over the land.

There is nothing in Section 7 or Section 28 or in any other provision of the Act to support the contention of the learned counsel for the respondents that in a case where a notification u/s 4 of the Land Acquisition Act, 1894, was issued before the commencement of the Act, it is not necessary to comply with the provisions of Section 7, and that a notification u/s 9(1) of the Act can be issued even without there being a notification u/s 7. It is not disputed that where after the issue of a notification u/s 4(1) of the Act if the Central Government is satisfied that coal is obtainable in the notified land, then, if the Government wishes to acquire the land or any right in or over the land, a notification u/s 7(1) of the Act giving notice of the Government's intention to acquire the land must be issued before any declaration of acquisition can be made u/s 9. This is clear from the plain language of Section 7 as well as from Section 9A of the Act.

The latter section, while giving to the Government the power to acquire land in cases of urgency dispensing with the compliance of Section 8, specifically says that in those cases a declaration may be made u/s 9 in respect of the land at any time after the issue of the notification u/s 7. It is noteworthy that Section 9A does not dispense with the necessity of the issue of a notification u/s 7. Section 28 also points to the conclusion that even in a case where a notification u/s 4 of the Land Acquisition Act, 1894, was issued before the commencement of the Act, the issue of a notification u/s 7 is necessary before there can be any declaration u/s 9 of the Act.

The first sub-section of Section 28 says that a notification u/s 4 of the Land Acquisition Act issued before the commencement of the Act shall be deemed to have been issued u/s 4 of the Act. Sub-section (2) says that if a notification u/s 6 of the Land Acquisition Act was issued before the commencement of the Act, then that notification would be deemed to have been issued u/s 9 of the Act. The third sub-section deals with the situation where objections u/s 5A of the Land Acquisition Act in respect of the land covered by a notification u/s 4 of that Act have been preferred before the commencement of the Act. It says that such objections shall be deemed to be objections u/s 8 of the Act and may be disposed of by the competent authority as if they had been made in relation to the notification issued u/s 7 of the Act in respect of the land concerned.

If, as Sub-section (3) of Section 28 clearly shows, the issue of a notification u/s 7 is essential even if objections u/s 5A of the Land Acquisition Act were (Preferred before the commencement of the Act, then a fortiori the issue of a notification u/s 7 is necessary in a case where after the issue of a notification u/s 4 of the Land Acquisition Act and before any objections in respect of the land covered by the notification could be made u/s 5A of that Act, the Act of 1957 came into force.

It is easy to see that the purpose of a notification u/s 4 is to carry on a preliminary investigation with a view to find out whether coal is obtainable in the whole or any part of the land notified under that provision. It is only when Government decides to exercise the power conferred by Section 7 of the Act to acquire the land or any right in or over it and to issue a notification thereunder that the question of inviting objections to the acquisition and of making a declaration of acquisition u/s 9 can arise. Even in these cases of urgency where a declaration about the inapplicability of Section 8 is made, a declaration u/s 9 in respect of the land can be made only after the issue of a notification u/s 7.

Here, admittedly, the notification dated the 7th August 1958 was issued by the Central Government u/s 9(1) of the Act without first making any notification u/s 7. The notification dated the 7th August 1958 is not, therefore, valid. If that notification is invalid, then the Central Government cannot claim that pursuant to that notification it has the right to carry on depillaring operations underneath the land on which the petitioner's house stands and in respect of which he holds a Patta. The respondent No. 1, the Additional Area General Manager, was, therefore, not right in asking the petitioner to vacate the land on the basis that by virtue of the notification dated the 7th August 1958 his (petitioner's) possession became unauthorised.

Turning now to the respondents objection to the tenability of the application, the contention that the petitioner has no locus standi to challenge the acquisition is unsubstantial. As the petitioner's dwelling house stands on the land affected by the notification dated 7th August 1958 and as he also holds a Bhumiswami Patta, he is clearly a person affected by the notification and by the intended depillaring operations underneath the land on which his house stands. The petitioner has no doubt the alternative remedy of a suit for challenging the validity of the notification dated the 7th August 1958 u/s 9(1) of the Act and for an injunction restraining the respondents from giving effect to that notification. But the remedy of a suit cannot be regarded as expeditious when both to the petitioner and the respondents the question whether the petitioner is entitled to remain on the land and whether the respondents can carry on depillaring operations by virtue of the notification dated the 7th August 1958 is one of urgency calling for an early decision.

There is no force in the objection that this Court has no jurisdiction to entertain the petition. Under Article 226 of the Constitution, as it now stands, the power conferred by Clause (1) thereof can be "exercised" by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. As the property or the land affected by the notification dated the 7th August 1958 is within the territorial jurisdiction of this Court, the cause of action doubtless arises also in the territory in relation to which this Court exercises jurisdiction. This Court has, therefore, jurisdiction to entertain this petition

notwithstanding that the National Coal Development Corporation is located at Karachi or that the seat of the Union of India is at Delhi or that the notification dated the 7th August 1958 was issued at New Delhi.

For the above reasons, this petition is allowed, and the respondents are restrained from carrying on any depillaring operations underneath the land on which the petitioner's house stands so as not to affect his rights and thus from giving effect to the notification dated the 7th August 1958 against the petitioner. The applicant shall have costs of this petition. Counsel's fee is fixed at Rs. 150/-. The outstanding amount of security deposit shall be refunded to the petitioner.