

(2002) 10 AHC CK 0188

In the Allahabad High Court

Case No : C.M.W.P. No. 43250 of 2000 and 3301 of 2001

Manveer Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 3, 4, 5A, 6

Citation : (2003) 1 AWC 116

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : S.G. Hasnain, for the Appellant; B.D. Madhyan, S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition along with connected Writ Petition No. 3301 of 2001 are being disposed of by a common judgment.

2. Heard learned counsel for the parties.

3. The petitioners have challenged the impugned notification dated 21.11.1996 published by public notice dated 24.8.1999 u/s 4(1) of the Land Acquisition Act and the notification dated 23.8.2000 published through public notice dated 23.8.2000 u/s 6/17 of the Land Acquisition Act vide Annexures-7 and 10 to the writ petition. The petitioners have also prayed for a mandamus directing the respondent not to proceed in the matter of acquisition proceedings and not to demolish the constructions on the land in dispute.

4. The petitioner No. 1 claims to be owner of plot No. 30 and the petitioner No. 2 of plot No. 31 in village Wajidpur, paragona and Tahsil Khurja, district Bulandshahr. It is alleged in paragraph 3 of the writ petition that the said land has been used by the petitioners as abadi land. The khasra entries are Annexures-1 and 2 to the writ petition. In paragraph 4 of the writ petition, it is alleged that the petitioners have raised constructions over the said land and then

sought permission to change the nature of the land u/s 143 of the U.P.Z.A. and L.R. Act. On the application of the petitioner, the S.D.M., Khurja after receiving report of the Tahsildar and other officers of the revenue department passed an order dated 12.8.1999 declaring the land as abadi land. True copies of the orders in this connection are Annexure-3 and 4 to the writ petition. After declaration of the land as abadi land, they were recorded as such in the revenue record vide Annexures 5 and 6.

5. In paragraph 7 of the writ petition, it is alleged that the State Government issued a notification u/s 4 of the Land Acquisition Act on 21.11.1996 alleged to have been published on 21.11.1996 and also in two daily newspapers, "Rashtriya Sahara" and "Dainik Jagaran" on 21.12.1996 and 5.8.1998 and the said declaration has been mentioned in the public notice dated 24.8.1999 and notification was issued u/s 4/17 of the Act through the aforesaid notice. True copy of the public notice is Annexure-7 to the writ petition. The said notice/declaration dated 24.8.1999 states that the land is sought to be acquired for construction of a market yard for Mandi Samiti, Khurja.

6. In paragraph 9 of the writ petition, it is alleged that according to the public notice dated 24.8.1999, it has been declared that the notification u/s 4 of the Land Acquisition Act was notified on 21.11.1996 which was published in the Gazette dated 21.11.1996 and thereafter published in two newspapers on 21.12.1996 and thereafter on 5.4.1998. However, the public notice has been made only on 24.8.1999 and hence it is alleged that there was no urgency for dispensing with Section 5A of the Act. It is also alleged that there was no public purpose for the acquisition.

7. In paragraph 11 of the writ petition, it is alleged that the petitioners made representation to the Director, Land Acquisition on 28.9.1999 stating that there were constructions over the land in question which is abadi land. True copy of the representation is Annexure-8 to the writ petition. In paragraph 12 of the writ petition. It is alleged that on the representation of the petitioner, the Director, Land Acquisition sought a report from the Collector with regard to the site and nature of the plots. The revenue authorities made an inspection and submitted a report on 24.2.2000 in respect of the said plots and other plots. In this report, it has been mentioned that the said plots are abadi. True copy of the report is Annexure-9 to the writ petition. In paragraph 13 of the writ petition, it is alleged that the some other plots can be acquired instead of the plots of the petitioners.

8. In paragraph 14 of the writ petition it is alleged that despite the report of the revenue authorities the Collector, Bulandshahr published a public notice on 23.8.2000 u/s 6/17 of the Act, copy of which is Annexure-10 to the writ petition. The said notice has been published in two newspapers.

9. In paragraph 15 of the writ petition, it is alleged that all the proceedings prescribed u/s 6/17 of the Act were done simultaneously on the same day, i.e., 23.8.2000 and hence, this procedure is illegal. In paragraph 16 of the writ

petition, it is alleged that the newspapers in which the said notice u/s 6/17 of the Act were published are not widely circulated newspapers and all the acquisition proceedings cannot be done simultaneously on the same day. In paragraph 17 of the writ petition, it is alleged that the acquisition proceedings are not for public purpose. In paragraph 18 of the writ petition, it is alleged that no Gazette publication has been made of the notice u/s 6 and the procedure under the said provision has not been followed and the proceedings have lapsed as they are beyond the prescribed time.

10. Two counter-affidavits have been filed in this case. In the counter-affidavit on behalf of the State Government, it is stated in paragraph 5 thereof that the petitioner had tried to get the land in dispute declared as abadi but the S.D.M. has subsequently set aside the order declaring the land as abadi. The order of the S.D.M. dated 14.9.2000 setting aside the earlier order dated 12.8.1999 declaring the land as abadi is Annexure-C.A. 1 to the counter-affidavit. In paragraph 8 of the counter-affidavit, it is stated that the publication of the Gazette notification u/s 4 of the Act was made on 21.12.1996 and 5.4.1998 and the general information was made on 24.8.1999. The delay has occurred due to the fact that the acquiring body has made available the necessary amount only on 12.8.1999. However, the urgency was already existing and hence, the notification u/s 6 was issued well within time.

11. In paragraph 10 of the counter-affidavit, it is alleged that the S.D.M. has himself inspected the spot and passed the order dated 14.9.2000 referred to above. The petitioner has not shown any permission from any competent authority for sanction of the map for the construction. At the time of the initial notification u/s 4, the land was recorded as agricultural land. The order u/s 143 of U.P.Z.A. and L.R. Act was passed after the initial notification u/s 4 and even that order has subsequently been set aside as stated above. In paragraph 12, It is stated that the Gazette notification was published on 23.8.2000 and the notification was also published in two newspapers on the same day. It is stated that the simultaneous publication does not vitiate the acquisition proceedings. True copy of the U. P. Gazette notification dated 23.8.2000 u/s 4(1) read with Section 17 of the Land Acquisition Act is Annexure-C.A. 2. In paragraph 13, it is denied that there was any bungling. It is further stated that the newspapers in which the notices were published are widely circulated in the locality. The public notice was also given on 23.8.2000 and the same was also made available to the Gram Pradhan on the same day. All this was done as the matter was important and the proceedings would have lapsed if the publication u/s 6 would not have been done well within time. In paragraph 14 of the counter-affidavit, it is stated that the publication of the notification u/s 6 was in accordance with law. In paragraph 15 of the counter-affidavit, it is stated that all the legal formalities regarding the publication were complied with. In paragraph 16 of the counter-affidavit, it is stated that the substance of the notice was made available to the Gram Pradhan on 28.3.2000. It is alleged that the entire acquisition proceedings are in accordance with law. The two newspaper publications are Annexures-C.A.

3 and 4 to the counter-affidavit.

12. In paragraph 18 of the counter-affidavit, it is stated that the acquiring body was made available the requisite money, and hence on making available the requisite money, the necessary publication u/s 4 was made on 24.8.1999 and thereafter a proposal was sent to the Director, Land Acquisition by the Collector, Bulandshahr, on 10.9.1999. Some time was taken by the Director and the State Government before the final publication u/s 6 but it is well within the time. In paragraph 25 of the counter-affidavit, it is stated that the public notice dated 28.3.2000 u/s 6 of the Land Acquisition Act is in accordance with law. In paragraph 27 of the counter-affidavit, it is stated that the land in dispute is agricultural land and the petitioner wants to take illegal advantage by saying that he has raised constructions. In paragraph 29 of the counter-affidavit, it is stated that the Mandi Samiti, Khurja, is facing great difficulty in carrying out its activities.

13. A counter-affidavit has also been filed on behalf of the Mandi Samiti, Khurja. In paragraph 3 of the same, it is stated that the land has been acquired for construction of the market yard of Mandi Samiti, Khurja. The said construction of market yard is urgent and the acquisition is for planned development. The provisions of Section 17 of the Land Acquisition Act have been applied as it is an urgent scheme which brooks no delay because of the fact that the old existing market yard was highly congested and unable to handle the large arrivals of agricultural produce. The existing market yard lacks the facilities of storage, parking, etc. and it has outlived its utility. Residential colonies have grown at that place and therefore there is crying need to shift the whole sale trade from the old market yard which is situate in a densely populated area to a place outside the city and construct a hygienic market yard.

14. In paragraph 5 of the counter-affidavit, it is stated that the land in dispute was agricultural holding on the date of the notification u/s 4 of the Act. For the purpose of saving the land from acquisition or claiming exorbitant compensation, the petitioner moved an application u/s 143 of the U.P.Z.A. and L.R. Act, and the S.D.M. without making proper enquiry allowed the application and declared the land as abadi. However, when the Mandi Samiti came to know about the order, it moved an application and on that application, the S.D.M. by the order dated 14.9.2000, has cancelled his earlier order.

15. In paragraph 7, it is stated that the land in dispute is not abadi. In paragraph 8, it is stated that there is no construction on the land in dispute but the petitioner has built some boundary walls. In paragraph 9, it is stated that the notification u/s 4 was issued on 21.11.1996 and it was also published in two newspapers on 21.12.1996 and 5.8.1998 but the last publication of the notification was done by affixing public notice at the place where the land in dispute is situate on 24.8.1999. Therefore, the last publication of the notification would be deemed to be 24.8.1999 and the notification u/s 6 was issued on 23.8.2000. Hence, the notification u/s 6 has been issued within one year from

the date of publication of notification u/s 4. The delay in publication was due to the official lapses and that would not affect the acquisition. It is stated that there is urgency in the matter as the market yard has to be constructed soon. In paragraph 10 of the counter-affidavit, it is denied that the plots are abadi site and have big rooms. In paragraph 11, it is stated that the report from the office of the Director of Land Acquisition was manipulated and was a result of the political pressure to abandon the land and acquire some other land. The land in question was selected by the Committee consisting of responsible officers and it is more suitable land for construction of a market yard. The petitioner would get adequate compensation. It is denied that there are houses and shops over the land in dispute. The notification u/s 6 has been issued on 23.8.2000, within one year from the last publication of notification u/s 4 of the Land Acquisition Act. In paragraph 12, it is stated that there is nothing illegal in simultaneous publication. The acquisition would have lapsed if the notification had not been made in the Gazette dated 23.8.2000. In paragraph 14, it is stated that it is not impossible to publish notification u/s 6 simultaneously on 23.8.2000 and also get it published in two local newspapers on the same day. There is no improper motive involved and it is a straightforward scheme of acquisition of the land for the construction of market yard.

16. We have also perused the rejoinder-affidavit.

In our opinion, there is no merit in this petition. The acquisition of the land for the market yard of a Mandi Samiti is clearly for a public purpose and there is urgency as stated in the counter-affidavit. This Court in Civil Misc. Writ Petition No. 15586 of 2001, *Ram Charittar and Ors. v. State of V. P. and Ors.*, decided on 4.10.2002, following several decisions of the Supreme Court and of this Court has held that the Court cannot go into the question whether the purpose for which the land was needed is for public purpose or not.

17. In *Jage Ram and Others Vs. State of Haryana and Others*, it was held by the Supreme Court that unless it is shown that there was colourable exercise of power, the Court cannot go behind the declaration of the Government and find out in a particular case whether the purpose for which the land was needed was a public purpose or not. In *State of U.P. Vs. Smt. Pista Devi and Others*, the Supreme Court held that even if there are some superstructures standing on the land, they cannot be left out from the acquisition. In *Ajay Krishan Shinghal, etc. Vs. Union of India and Others*, it was held that acquisition for planned development is a public purpose. In *Bal Krishan Gulati v. State of U. P. and Ors.* 1991 (2) AWC 1210 it was held that where there is a recital of urgency, the Court should not ordinarily interfere. In *M/s. Garg Farms and Ors. v. State of U. P. and Ors.* 1989 (2) AWC 1137 this Court held that if the Government formed the opinion that the matter was one of urgency u/s 17(2) and it had some material for this opinion, the Court should not interfere. In *Kunwar Lal and Ors. v. State of U. P. and Ors.* (1989) 1 UPLBEC 772. it was held that dispensation of enquiry u/s 5A depends on subjective satisfaction of the State Government. It was also

held that where the declaration has been made by the State Government u/s 6(3) that a particular land is needed for a public purpose, the said declaration shall be conclusive evidence of the fact that It is so needed. The same view has been taken by this Court in Ram Narain Rai v. State of U. P. 1991 (1) AWC 341. 18. It may be pointed out that Section 3(a) of the Land Acquisition Act states :

"(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth."

19. The above definition shows that even building and trees will be deemed, by a legal fiction, to be land for the purpose of Land Acquisition Act as they are attached to or permanently fastened to the earth vide Chaturbhuj Pande and Others Vs. Collector, Raigarh, , S. P. Gupta v. State of U. P. 7980 ACJ 583 etc. Hence, it cannot be said that when land is being sought to be acquired, the buildings or trees standing thereon have to be exempted. No doubt compensation has to be given for the building and trees also, but it does not mean that exemption from acquisition must be granted to the building or trees, or the land on which the building or trees stands. If a contrary view is taken it can disrupt the entire scheme for which the acquisition is being done.

20. The allegations of the petitioner that they had residential houses on the land in dispute have been denied by the respondents. The order declaring the land in question as abadi has also been subsequently cancelled by the S.D.M. However, even assuming that there was some construction on the land in question, this Court cannot interfere with the acquisition because the word "land" in Section 3 of the Land Acquisition Act includes "buildings and trees" also. Hence, even assuming that the land was abadi or there were constructions on the land in question, in our opinion, the said land can be acquired under the Land Acquisition Act and this Court cannot interfere. Moreover, we are of the opinion that in fact, the land in question was agricultural land and it was only after the notification u/s 4 that the petitioner tried to give a colour that the land was abadi and there were constructions.

21. In our opinion, there was no illegality in the notification u/s 6 issued on 23.8.2000 as it was within one year from the publication of the notification u/s 4 on 24.8.1999.

22. The construction of market yard of Mandi Samiti is clearly for public purpose as it will serve the agriculturists and it is urgent.

23. Thus there is no merit in this petition and it is dismissed accordingly. No order as to costs .