
(1983) 10 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ No. 358 of 1978

Mela Ram and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-10-1983

Acts Referred:

Constitution of India, 1950 — Article 166
Land Acquisition Act, 1894 — Section 6
Rajasthan Land Acquisition Act, 1953 — Section 17(4), 4, 5A, 6
Rajasthan Land Revenue Act, 1956 — Section 260

Citation : AIR 1984 Raj 116 : (1983) WLN 507

Hon'ble Judges : K.S. Lodha, J

Bench : Single Bench

Advocate : M. Mridul, for the Appellant; H.N. Calla, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.S. Lodha, J.—The petitioners have filed this writ petition challenging the acquisition proceedings of the land in dispute. The facts giving rise to this writ petition may be summarised as under:--

The petitioners are the joint khatedar tenants of the agricultural land comprising of 16 1/4 Killas in Square No. 2 and 10 Killas in Square No. 3. The land was initially purchased by petitioner No. 1 out of the joint family funds of the petitioners and is being used as joint family property by all the petitioners. It is alleged by the petitioners that on account of some ill-will against the petitioners, who were not co-operating with the authorities in the Nasbandi Operation Programme started in the days of emergency, the authorities wanted to harass the petitioners. With that in view. the local authorities raised a false plea of the requirement of the aforesaid agr cultural land for the so-called public purpose of constructing a bus stand and motor garage with a waiting room etc. and. therefore, a notice u/s 4 of the Rajasthan Land Acquisition Act. 1953 (hereinafter called "the Act") was issued on 28-3-1977 and it was served upon petitioner No.

1 on 5-4-1977. The said notice is Annexure 1. No notices were, however, served on petitioners Nos. 2 and 3. Petitioner No. 1 filed his objections u/s 5 of the Act in writing challenging the aforesaid notice. The said objection dated 11-5-1977 is Ex. 1A. The case of the petitioners further is that without giving any notice to non- petitioners NOS. 2 and 3 as required by Sub-section (1) of Section 5 of the Act, the authorities, namely, the Collector, Sriganganagar, got published another notice being Notification No. F12/13/Rev. 771456 dated 16-3-1978 in the Raiasthan Raipatra dated 30-3-1978. This notice is Annexure 2. This notice purports to have been issued u/s 6 of the Act. The case of the petitioners is that this notification u/s 6 is in fact not a declaration u/s 6 inasmuch as the Collector, Sriganganagar. could not have issued such a notification and the delegation of powers in his favour in this respect was invalid. It has further been urged that the powers of making a declaration u/s 6 of the Act have been conferred on the Collector by pres-sing into service the provisions of Section 260 of the Raiasthan Land Revenue Act although those provisions are not at all attracted. Not only powers u/s 6 have been delegated to the Collector in this manner but powers u/s 17 (4) of the Act have also been delegated to him which delegation also is invalid and against the spirit of the Act. The petitioners' case further was that as a matter of fact, the land in dispute was not at all required for any public purpose and that the so-called public purpose of constructing a bus stand and motor garage along with a waiting room etc. is merely sham and in any case, the land in dispute is not at all suitable for that purpose. A number of other grounds have also been raised by the petitioners in the writ application but the other grounds have not been canvassed by the learned counsel for the petitioners at the time of arguments. The writ petition was originally filed on 1-6-1978 but with the permission of the Court, the same was amended and an amended writ petition has already been submitted. Non-petitioners Nos. 1 to 3 have filed a joint reply tra-versing the allegations of the petitioners. Non-petitioner No. 4, the Municipal Board, Sribijaynagar, has filed a separate reply on almost the same lines.

2.-3. I have heard the learned counsel for the parties and have perused the record.

4. In my opinion, this writ petition deserves to be accepted on two grounds and I need not go into the other grounds.

5. The first ground on which, in my opinion, the writ application should succeed is that the delegation of the powers made by Annexure 5 is bad inasmuch as Section 6 of the Act envisages the satisfaction of the State Government about the need of the land for a public purpose or for a company and after that satisfaction, the declaration of the satisfaction has to be made by the Sectetary to the Government or by some other officer duly authorised to certify its orders. The State Government cannot delegate the power of its satisfaction to any other officer So far as the delegation of the powers to make the declaration u/s 6 is concerned, there is no provision under the Act for such a delegation. Therefore, the delegation in favour of the Collector is without any legal sanction. It may

again be pointed out that according to Section 6 of the Act, the declaration has to be made under the signatures of a Secretary to the Government or some officer duly authorised to certify its orders. Here again, there is no question of any delegation of powers and the declaration has to be made either by the Secretary to the Government or some officer duly authorised to certify its orders. By the term "an officer duly authorised to certify its orders" is clearly meant the authorisation under the Rules of Business of the State framed under Article 166 of the Constitution. The learned Government Advocate appearing for the State has clearly admitted that under the Rules of Business of the State of Rajasthan, the Collector is not authorised to certify the orders of the Government. Therefore, also the Collector could not be deemed to be a person duly authorised to certify the orders of the State Government.

6. The matter does not rest here. The delegation of powers to the Collector u/s 6 has been made by pressing into service Section 260 of the Rajasthan Land Revenue Act. In my opinion, Section 260 of the Rajasthan Land Revenue Act has absolutely no application to the present case. Section 260 of the Rajasthan Land Revenue Act authorises the State Government to direct that any duties imposed and powers conferred by that Act or the Rules made thereunder or by any other law for the time being in force or the rules made under such other law on any officer or authority appointed or constituted under that Act or the Rules made thereunder, shall be performed and exercised by any other lawfully appointed or constituted officer or authority specified in the notification. Now u/s 6 of the Act no powers have been conferred on any officer or authority appointed or constituted under the Rajasthan Land Revenue Act and, therefore, any powers vested in any authority under the Act cannot be delegated by virtue of Section 260 of the Rajasthan Land Revenue Act. Therefore, also the delegation in respect of the declaration to be made u/s 6 of the Act by Annexure 5 is bad and under this so-called delegation of powers, the Collector could not have made the declaration.

7. u/s 6 of the Act, the declaration has to be made after considering the report, if any, made u/s 5A sub-section (2) of the Act. Section 5A (2) envisages the disposal of the objections in respect of the notice under Sub-section (5) of Section 4 and then the Collector has to make a report to the State Government, containing his recommendations on the objections together with the report of the proceedings held by him for the decision of the State Government. Then proceedings have to be taken for making the award and taking possession as envisaged by Sections 9 to 16, Section 17 of the Act, however, provides for cases of urgency etc. where possession can be taken even before the award is made. Section 17 (4), further provides that in the case of any land to which in the opinion of the State Government, the provisions of sub-section (1) or sub-section (2) are applicable, the State Government may direct that the provisions of Section 5A shall not apply and if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the order under subsection (1) of Section 4. Sub-sections (1) and (2) of Section 17 provide that

in case of urgency, in respect of waste or arable land, or owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land etc., the possession of such land may be immediately taken by the Collector even before making the award. Now the direction that the provisions of Section 5A shall not apply can be given only by the State Government. Such a direction cannot be made by any other authority nor has the State Government any power to delegate this power of making a direction envisaged by sub-section (4) of Section 17 to any other officer. Now in the present case, the State Government purports to have delegated its power u/s 17 (4) also to the Collector. AS already stated above, there is no such power vested in the State Government to delegate its powers of making directions under subsection (4) of Section 17 and, therefore, this delegation vide Annexure 5 is also without any legal sanction and is, therefore, void. It appears that it was on account of the so-called delegation vide Annexure 5 that the Collector without making any enquiry u/s 5A of the Act and without submitting his report to the State Government as required by that section proceeded to make a declaration u/s 6 of the Act vide Annexure 2. The said notification u/s 6 is, therefore, bad and no proceedings can be taken in pursuance of such a notification.

8. For the reasons stated above, the notification Ex. 2 issued by the Collector. Sriganaganagar, is liable to be struck down and no proceedings for acquisition in pursuance of this notification can be allowed to be taken.

9. Although as already stated above, the writ application deserves to be accepted on the aforesaid two grounds. I may, of course, make a reference to one more ground, which was cursorily raised by the learned counsel for the petitioners and that ground is that the proceedings of acquisition were bad inasmuch as the notice envisaged by Clause (1) of Sub-section (5) of Section 4 was not served upon the petitioners Nos. 3 and 3. I, however, do not find force in this contention inasmuch as although it has been stated by the petitioners in para No. 2 of the writ petition that the disputed land was purchased in the name of the petitioner No. 1, it was purchased by the joint family funds and was being used by the petitioners jointly as a joint family property, they have not been able to show that in fact the land stood in the names of all the three petitioners in the revenue records. When the land was purchased in the name of petitioner No. 1 alone and the names of the other petitioners did not find place in the revenue record as the joint or co-owners of this land, there was no question of any notice being given to them under Clause (1) of Sub-section (5) of Section 4 of the Act.

10. For the reasons stated above, this writ petition is accepted and the proceedings of acquisition from the stage of the notification u/s 6, Annexure 2 are set aside. The petitioners have already filed their objections to the notice u/s 4 vide Annexure 1A. The Collector should dispose of those objections as required by Section 5A of the Act and then proceed in accordance with law.