
(2009) 10 AHC CK 0192
In the Allahabad High Court

Modern Public School Ghiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17, 4, 5A, 6, 9

Citation : (2009) 10 AHC CK 0192

Hon'ble Judges : Sunil Ambwani, J; Ashok Srivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Ashok Srivastava, JJ.—Heard learned Counsel for the petitioner and learned standing counsel appearing for respondent nos 1 and 2 and Sri Ramendra Pratap Singh appearing on behalf of respondent No. 3.

2. By this writ petition, the petitioner has prayed for quashing the notification dated 10.6.2009 under Sub-section 1 of Section 4 of Land Acquisition Act. By the said notification the State Government has formed an opinion that the provisions of Sub-section 1 of Section 17 of the Land Acquisition Act are applicable to the land and has invoked Sub-section 4 of Section 17 of Land Acquisition Act dispossessing Section 5A of the Act.

3. Shri Ramendra Pratap Singh appearing for Greater Noida Development Authority and the Standing Counsel appearing for the State Government have raised preliminary objections to the maintainability of the writ petition. It is stated that the writ petition under Article 226 of the Constitution of India challenging the notification u/s 4(1) read with Section 17(4) notifying intention of the State Government to acquire the land is not ordinarily maintainable unless the petitioners demonstrate incurable irregularity or vagueness in regard to property acquired and demonstrate to the Court that there is no public purpose whatsoever in acquiring the land.

4. Shri Ramendra Pratap Singh has relied upon Chakresh Sharma Sri Jagdish Prasad Sharma and Smt. Manju Sharma Vs. The State of U.P., Upper Zila Adhikari, Land Acquisition Officer and New Okhla Industrial Development Authority, and Kamal Singh Vs. State of U.P. and Others, to submit that the writ petition is premature, as the notification u/s 4(1) of the Land Acquisition Act is only a proposal for acquisition of the land. The declaration u/s 6 of the Act has not been published as yet. It is contended by him that the notification issued u/s 4(1) of the Act, normally, cannot be quashed unless there are exceptional circumstance like the one where the notification u/s 4(1) of Act suffers from incurable irregularity, such as lack of authority or total vagueness in regard to the property to be acquired and the public purpose vide Kanpur Development Authority v. Mahabir Sahkari Avas Samiti Ltd. (2005) 10 SCC 320. In Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors. (2007) 1 SCC 641 the Supreme Court held that such a notification can be challenged on the ground of ambiguity, indefiniteness and vagueness of public purpose.

5. It is contended that the land has been acquired for Planned Industrial Development and that notification u/s 6(1) of the Land Acquisition Act has not been published so far.

6. The Court has consistently taken a view except for a departure in Kshama Sahakari Avas Samiti Ltd. Vs. State of U.P., Collector, Land Acquisition Officer and Agra Development Authority, which was considered in Chakresh Sharma's case (Supra) that ordinarily this Court would not interfere with notification u/s 4(1) of the Act. We do not find that there are any such allegations in the writ petition that there is no public purpose whatsoever in acquiring the land or that notification is entirely vague with regard to property acquired and the public purpose. A Special Leave to Appeal is pending against the judgment in Kashama Sahkari Avas Samiti's case.

7. The apprehension that there will be no time left after the notification u/s 6(1) is published and that the State Government will demolish the constructions, take over possession forcibly are not well founded. The publication of the notification under Sub-section (1) of Section 6 may authorise the State Government to take possession but that notice u/s 9 has to be given before possession is taken.

8. This Court is overburdened with cases and would not prefer to decide the cases, which have not matured and raise the issues, which may ultimately be treated to be academic in nature. The Court has consistently refused to entertain the writ petitions against the notifications under Sub-section (1) of Section 4 of the Act even if Sub-section (4) of Section 17 of the Act apply.

9. The writ petition is accordingly dismissed as premature without deciding any point on merits with liberty to the petitioner to raise all the grounds, which have been taken in the writ petition or such ground, which may become available to it to challenge the acquisition of the land, if the State Government issues notification under Sub-section (1) of Section 6 of the Act including the

applicability of Sub-sections (1) and (4) of Section 17 of the Act.