
(1997) 11 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1671, 3734 and 3745 of 1996 and 425 of 1997

Naib Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 114

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

Citation : (1997) 3 RLW 2081 : (1998) 1 WLC 672 : (1997) 2 WLN 640

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.L. Tibrewal, J.—The above writ petitions relate to acquisition of the land under provisions of the Land Acquisition Act, 1894 (hereinafter to be referred to as the Act). As they arise from one and the same acquisition proceeding and common questions of law and facts are involved therein, they can be disposed of conveniently by a common judgment.

2. The petitioners, herein, are recorded Khatedar tenants of their respective land which are under acquisition. Acquisition is being made for the purpose of constructing a new "Mandi Yard" (Market Yard) by Krishi Upaj Mandi Samiti, Srikanpur and emergency provisions of the Act have been invoked. Initially, notification u/s 4(1) coupled with Section 17(4), dispensing with the enquiry u/s 5A, was issued/published on October 6, 1995. Thereafter, declaration u/s 6 of the Act was made vide notification dated, 11th September, 1996. The total land sought to be acquired measures 128.07 Bighas, particulars and description of which have been stated in the notifications. Out of the total land, 70.05 Bighas of land is "Barani" i.e. un-irrigated while 57.22 Bighas of land is irrigated.

3. Prior to the above acquisition and notifications, an earlier notification u/s 4(1) alongwith Section 17(4) was issued on August 18, 1994 but the same was

withdrawn by the State Government on account of some technical flaws in describing the land.

4. There are three groups of persons who have filed the above petitions. Petitions No. 1671/96 and 425/97 have been filed by Naib Singh son of Pratap Singh. The other two petitions have been filed by other persons. In Writ Petition 1671/96 filed by Naib Singh challenge has been made to the notification issued u/s 4(1), while in second writ petition No. 425/97 challenge is made to the declaration made u/s 6. In other two writ petitions challenge is made to both the notifications.

5. Shri Vijay Kumar Agrawal, learned Counsel appearing for the petitioners, with full force at his command, challenged the entire acquisition proceedings on two grounds. The first and foremost attack relates to invocation of emergency powers u/s 17(4) of the Act. Elaborating this ground, learned Counsel contended that compulsory taking of the land is a serious matter and denial of hearing before depriving petitioners of their property without reasonable and good cause, is illegal and arbitrary. According to the learned Counsel, there was no material before the appropriate authority to form the opinion of urgency and take immediate possession of the land without providing any opportunity of hearing to the petitioners and other persons. It was also submitted that there was already a Mandi Yard (Market Yard) at Srikanpur, which was sufficient to the requirements of the agriculturists and traders and there was no necessity of a new Mandi/Market Yard and in any case, the urgency was of not such a nature requiring dispensation of the enquiry u/s 5A of the Act.

6. After giving my careful consideration to the above submissions, I find no force in them.

7. Srikanpur is an important business centre of agricultural produce in the district of Srigananagar. The existing site of the old "Mandi Yard" having run short, there was a consistent demand of traders and other connected persons to construct a new Mandi-Yard and for this purpose, they were agitating the matter by making representations to the authorities from time to time. Copies of some representations (Annex.R-1 to R-6) have been filed in writ petition No. 1671/96. From these representations it is borne out that the existing yard was quite insufficient and inadequate looking to need of the traders and agriculturists. The platform for storing/collecting agricultural produce by the agriculturists for their sale was hardly of the size 20x40" and it was too small to meet the requirement. Undoubtedly, establishment of a market yard has a definite purpose behind it. Such market-yards in market areas have been established in Rajasthan by the Market Committees constituted under the Rajasthan Agricultural Produce Markets Act, 1961. The whole object of this Act is to regulate and provide supervision and control on the transactions of purchase by the traders from the agriculturists in order to prevent exploitation of the latter by the former. The supervision and control can be effective only in specified localities and places and not through extensive area. Hence, establishment and construction of a Mandi/Market Yard is

definitely for the public purpose. Before establishing market committees and market yards, the cultivators in Rajasthan were suffering from handicaps being illiterate and ignorant of the prevailing price of agricultural produce in the markets. They were being exploited by the middleman and profiteers. The establishment of regulated markets under the Act of 1961 provides a hopeful solution to the agriculturists where they can sell their agriculture produce at the prevailing market price. With expansion of business activities of the sale and purchase of agricultural produce by the agriculturists, expansion of an existing market yard or establishment/construction of a new market yard is a necessary requirement of urgent nature.

8. In the back ground of this special feature, the question that calls for consideration is: Whether invocation of emergency power u/s 17(4) is justified in the present case ?

9. For deciding the above question, the legal proposition as explained by the Apex Court, having bearing on the question, may be fruitfully noticed.

10. In *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, the Constitution five Judge Bench of the Apex Court laid down that the power of the State Government has been formulated u/s 17(4) of the Act in subjective terms, but it could be challenged as ultra-vires in a Court of law if it is shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide. The relevant observations are thus:

It is true that the opinion of the State Government which is a condition for the exercise of the power u/s 17(4) of the Act, is subjective and a Court cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government u/s 17(4). The legal position has been explained by the Judicial Committee in AIR 1945 156 (Privy Council) and by this Court in a recent case *Jaichand Lall Sethia Vs. State of West Bengal and Others*, But even though the power of the State Government has been formulated u/s 17(4) of the Act in subjective terms the expression of opinion of the State Government can be challenged as ultra vires in a Court of law if it could be shown that the State Government never applied its mind to the matter or that the action of the State Government is mala fide.

11. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, the Constitution Bench upheld exercise of the power by the State Government u/s 17(4) dispensing with the enquiry u/s 5A for the planned development of Delhi. In *State of U.P. Vs. Smt. Pista Devi and Others*, the Supreme Court, while considering the legality of the exercise of power u/s 17(4) by the State Government dispensing with the enquiry u/s 5A for acquiring housing accommodation for planned development of Meerut, had held that providing housing accommodation is national urgency of which Court should take judicial notice. The ratio of the decision in *Deepak Pahwa v. Lt. Governor of Delhi* 1984 (1) SCC 308 was followed in *Pista Devi's* case, wherein it was held that very

often persons interested in the land proposed to be acquired, may make representations to the authorities concerned, which is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often problem makes the delay more and more acute and increases urgency or the necessity of acquisition.

12. In Rajasthan Housing Board and Others Vs. Shri Kishan and Others, it was again laid down as under:

It must be remembered that the satisfaction u/s 17(4) is a subjective one and that so long as there is material upon which the Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. This is the principle affirmed by decisions of this Court not u/s 17(4) but also generally with respect to subjective satisfaction.

13. In State of U.P. and Another v. Keshav Prasad Singh (1995) SCC 587, it was reiterated that the Government was entitled to exercise power u/s 17(4) invoking urgency notice on the facts available on record. In Chameli Singh and others etc. Vs. State of U.P. and another, a three Judge Bench after making survey of the previous decisions on the point, laid down that the opinion of urgency formed by the appropriate Government to take immediate possession is a subjective conclusion based on the material before it and it is entitled to great weight unless it is visited by malafides or colourable exercise of power.

14. In Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, a three Judge Bench of the Supreme Court again observed on the question as under:

Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g. South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised

only in legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226--indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.

15. In *Smt. Manorama Devi and others Vs. State of U.P. and others*, a Division Bench of the Allahabad High Court upheld the urgency u/s 17(4) for construction of new market of Krishi Utpadan Mandi Samiti.

16. In *Jai Narain and Others Vs. Union of India and Others*, it was again laid by the Supreme Court that the existence of urgency is a matter which is entirely based on the subjective satisfaction of the Government. The Court should not interfere unless the reasons given are wholly irrelevant and there is no application of mind. If the public purpose, on the face of it, shows that the land is needed urgently, that by itself is a relevant circumstance for justifying the action u/s 17(4) of the Act.

17. The purpose of Section 17(4) is to meet the situation in which an enquiry u/s 5A is considered unnecessary and serving no purpose except to delay in getting possession of the land which is urgently needed to complete the project having, public purpose and utility behind it. It is no doubt true that the mind of the officer or the authority concerned has to be applied to the question whether there is urgency of the nature so as to eliminate the enquiry u/s 5A, still the formation of opinion u/s 17(4) is a subjective one which can be reflected in the notification itself. An order or notification containing a recital of such subjective satisfaction of the appropriate Government raises a presumption in favour of existence of such urgency (Section 114 Illustration (e) of the Evidence Act). It is also a settled position of law that once the Court comes to the conclusion that the authority was acting bonafidely within the scope of its powers and had some material, however meagre it may be, on which it could reasonably base its opinion or if the public purpose on the face of it shows that the land is needed urgently, the Court should not and will not interfere.

18. Applying the above principles, at the out-set, it may be stated that there is no material on record to show or even suggest that the power u/s 17(4) has

been exercised by the State Government with some oblique motive or is malafide having no regard to the actual facts. On the other hand, there is material on record that selection of the site was made by a Committee of responsible persons with approval of Senior Town Planner. The objective of new Mandi Yard for transacting business activities of agricultural produce in a regulated manner is linked to the problems exploitation and economic development of the agriculturists. There was a hard pressing need to construct a new Mandi Yard without delay as reflected by various representations. The obvious fact that the existing Mandi Yard was not only inadequate to fulfil the requirements of the agriculturists and traders coupled with the fact that it was hapazard and lacking minimum reasonable facilities of storing/collecting agriculture produce by the agriculturists for sale with transport problems etc. go to show that construction of a new Mandi Yard for a developing business town of Srikaranpur was an urgent need of public importance. In the facts and circumstances and for the reasons stated above, the contention of Shri Agrawal that there was no urgency to invoke special powers u/s 17(4) of the Act is not sustainable and the same can be rejected conveniently.

19. Another contention seriously stressed by Shri Agrawal is that a large chunk of irrigated agricultural land was being acquired which is against the national interest and the society. Shri Agrawal contended that un-irrigated land, adjoining to the land under acquisition is available which could be acquired, which shows total non-application of mind which vitiates the very basis of acquisition.

20. It is true that out of 128.07 Bighas of land, which is under acquisition, 57.22 Bighas of land is of command area while remaining 70.05 Bighas of land is unirrigated. Selection of the site is purely in the domain of the State Government and no judicial scrutiny can be made unless the action is shown to be malafide with oblique motive. However, in the present case, there is enough material to show that selection of the site has been made by a committee of responsible persons after due approval of the Sr. Town Planner. The Committee has taken into consideration other sites also before selecting that site keeping in view the convenience and other facilities of wide road etc. There is nothing on record that any member of the Committee was having any interest in selecting the site. In view of this, I am of the confirmed view that this contention can hardly be entertained to vitiate the acquisition proceedings. It was also half-heartedly contended that withdrawal of earlier acquisition proceeding also shows non-application of mind by the appropriate authority. In this connection, as already stated, earlier acquisition proceeding was withdrawn on account of technical flaws in describing Kila numbers of the land which could later on be made the ground to challenge the proceedings.

21. No other point was raised before me.

22. Consequently, I do not find any merit in these petitions and they are hereby dismissed with no order as to costs.