
(2008) 08 AHC CK 0074
In the Allahabad High Court

Nandpuri Sahkari Grih Nirman Samiti Ltd.	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 3, 4, 6
Transfer of Property Act, 1882 — Section 106

Citation : (2009) 1 AWC 585 : (2009) 106 RD 206

Hon'ble Judges : H.L. Gokhale, C.J.;Vedpal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

H.L. Gokhale, C.J.—Heard Mr. Deepak Seth, learned Counsel for the petitioner. Mr. Syyed Hussain, learned Additional Advocate General appears for the State-respondents. Sri Mohd. Arif Khan, appears for intervener.

2. The petitioner claims to be a co-operative housing society formed by some 50 members, who are employees of the income tax department. The petitioner claims to have purchased a property known as Rasulpur House and land adjoining thereto bearing old House No. 1-C, Mahanagar, and new No. 545/1, Mahanagar at Lucknow, recorded at Khasra No. 261, in a public auction made by the Tax Recovery Officer of the income tax department. It has purchased the property to put up its housing society over there. The sale is stated to have been confirmed by the auctioning authority and the sale certificate is issued on 28.3.1979 in favour of the society and the sale is duly registered with the Sub-Registrar, Lucknow on 22.5.1979.

3. The respondent No. 4-Deputy Director (Animal Husbandry) of State of U.P. is stated to be the tenant of this property, which is of the area of 5 bighas and 15 biswas. He is having, an office and workshop over there and State wants to expand it. The first respondent-State of U. P. has issued notifications to acquire this property under the Land Acquisition Act, 1894. Notification u/s 4 of the Act was issued on 27.12.1986 and one u/s 6 on 17.2.1988. The petition seeks to

challenged these two notifications. The petition has been opposed by filing a counter-affidavit on behalf of the respondents. A rejoinder and further pleadings are also filed.

4. The principal challenge in the writ petition is two folds. The first is that the acquisition is vitiated by mala fides and the second is that the notification u/s 4 of the Land Acquisition Act has lapsed for the reason that the declaration u/s 6 of the said Act has not been made within one year from the date of publication of Section 4 notification.

5. As far as the first submission is concerned, it is on three different footing. Firstly, it is stated that the proceedings for acquisition were initiated twice in the past and were subsequently dropped. Thus, it is pointed out that first attempt to acquire this property was made in the year 1983. A letter dated 26.7.1983 is annexed at Annexure-6 to the writ petition, which is a communication of the Land Acquisition Officer, Lucknow informing the then Secretary of the petitioner-society that the acquisition proceedings then initiated had been dropped. The second attempt to acquire the very property was made when a notification u/s 4 of the Act was issued on 17.1.1985. The same was objected by the petitioner-society by filing its objection on 12.9.1985. It is submitted on behalf of the petitioner that the proceeding is deemed to be dropped since no declaration was subsequently made u/s 6 of the Act.

6. This submission was countered on behalf of the respondents by submitting that merely because attempts were made earlier to acquire the property twice, it does not make the subsequent acquisition mala fide, nor can the principle of res Judicata be invoked with respect to the acquisition proceedings. In our view, the submission is well taken and no inference of mala fides can be drawn on any such counts. Merely because attempts were made earlier in this behalf on two occasions and the proceedings were dropped, it cannot make the third attempt a mala fide act.

7. The second limb of argument of mala fide is that the petitioner had filed a suit to evict the respondent No. 4 from the suit property, being Suit No. 63 of 1983. Prior thereto, a notice to quit was given on 11.5.1982, by invoking the provision of Section 106 of the Transfer of Property Act. The suit was dismissed by the trial court by a speaking order. It is submitted on behalf of the petitioner that the respondents-State got the suit dismissed by making a false statement that the State had acquired the property. As against this, it is pointed out on behalf of the respondents that at the highest, it could be said to be an erroneous statement since the declaration u/s 6 of the Act itself had not been issued by that time, but it cannot make the subsequent notification in any way mala fide. The respondents pointed out that whereas the petitioner-Society claims to have purchased this property in February/March, 1979, the respondents have been trying to take over this property since October, 1977. They rely upon the letter dated 9.10.1977 from the then Deputy Director, Animal Husbandry to the Land Acquisition Officer to take the steps to purchase the property from the owner

thereof. It is material to note that the revision petition filed by the petitioner against dismissal of this suit has been dismissed by the High Court by its order passed on 8.12.1999. The order discloses that the revision was dismissed since nobody was present on behalf of the petitioner, but it gives reasons for dismissal of the revision. The recall application filed by the petitioner is still pending.

8. We fail to see as to how the action by the State to acquire the property could be called as mala fide merely because the petitioner had filed a suit for evicting the State from the suit premises. If the State is of the opinion that the public purpose requires the property to be acquired, it initiates the necessary steps. The prior filing of the suit by the landlord to evict the State, which is a tenant, cannot by itself make the subsequent initiation of the acquisition proceedings in any way mala fide. A reference may profitably be made to the judgment of the Apex Court in *State of Andhra Pradesh and Ors. v. Goverdhanlal Pitti* AIR 2003 SC 1430 : 2003 (3) AWC 2417 (SC), in this behalf. In that matter, the school building, which was in the heart of the old city of Hyderabad, was in possession of the State as tenant since many years. The landlord obtained an order from the High Court directing the eviction of the school building on the ground that it had become dilapidated and required reconstruction. In fact, during the pendency of the eviction proceedings, the owner of the building approached the High Court, seeking early eviction on the ground that the condition of the building was dangerous for the school and the High Court allowed that writ petition and directed the State Government to vacate and handover the possession of the school building to the owner within a specified period. The State instead of vacating that building, proceeded to acquire it. The land owner had challenged the acquisition of the building on the ground that the acquisition is only with a view to frustrate the decree of eviction and to avoid the compliance of the order passed by the High Court. The Apex Court turned down the argument and observed that the acquisition of school cannot be said to be mala fide or in colourable exercise of power. The school was catering to the educational needs of the children residing in the heart of the city and continuance of the school at the same location would serve public purpose of fulfilling educational needs of children in the old city. The Apex Court, in fact? held that the order of eviction as well as the direction to vacate issued by the High Court only provided just, reasonable and proximate cause for resorting to acquisition.

9. The third limb of this argument is that the definition of "public purpose" u/s 3(f) of the Land Acquisition Act provides in Sub-clause (vi) thereof that public purpose includes the provision of land for a co-operative society. The petitioner itself is a co-operative society and, therefore, taking away the land from a co-operative society cannot be said to be for a public purpose. It is said to be misutilization of the sovereign power by the State, which is a tenant. Reliance is placed on the Government circulars issued from time to time particularly those of dated 9.4.1980 and 27.10.1986, that it is desirable not to acquire the land of co-operative society. In support of this plea of misutilization of sovereign power. Mr. Seth, learned Counsel for the petitioner, relied upon a Division Bench judgment

of this Court in the case of Suresha Nand Juyal alias Musa Ram (Now Deceased) v. State of U.P. and Anr. 1995 (2) ARC 566 . In that matter, the State had resorted to acquire a property of which it was a tenant. The Division Bench held that it was misutilization of sovereign power and, therefore, set aside the acquisition. Mr. Seth very fairly pointed out that this judgment has been reversed by the Apex Court in Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR"s and others, He however, submitted that there is no comment in this judgment on the finding that it was misutilization of sovereign power. As far as this aspect is concerned, such an allegation can no longer be attributed to any such acquisition by the State, where it is a tenant after the judgment in State of Andhra Pradesh v. Goverdhanlal Pitti (supra). In fact, what the Court had observed in paragraphs 16 and 17 of that judgment is very relevant for our purpose, which is as follows:

16. Relationship inter se of the State as tenant with the respondent as the owner-cum-landlord of the building is regulated by rent control legislation. The rights and liabilities of State as tenant are distinct from its "right of eminent domain" of all properties. The school was catering to the educational needs of the children residing in the heart of the city. It cannot be seriously disputed that the continuance of the school at the same location would serve public purpose of fulfilling educational needs of children in the old city.

17. The High Court of Andhra Pradesh held the action of acquisition of the property by the State as malicious in law only because before passing of the adverse orders by the Court against it, no action for acquisition of the building which was in its occupation since 1954, was initiated. In our opinion, even if that be the situation that the State as tenant of the school building took no step to acquire the land before order of eviction and direction of the High Court, it cannot be held that when it decided to acquire the building, there existed no genuine public purpose.

10. There is no substance in the submission based on Section 3(f) of the Act either. This section defines the expression "public purpose" for the purposes of explaining as to what is the public purpose when State acquires the land for any public purpose. Amongst others, acquiring the land in support of a cooperative society by the State is stated to be for the public purpose. That does not lead to the conclusion that the land of a co-operative society cannot be acquired by the State and, if it is so done, it would run counter to public purpose. The circulars issued by the Government and referred by the petitioner only express the desirability that the lands of the co-operative society may not be touched. That is a statement of public intention of the State. It cannot be read to mean that in no case the lands of the co-operative society can be acquired. The State has to weigh the public purpose in acquiring the land for its departmental activities as against the housing society of the petitioner. It is for the State to decide what is more important. The requirement of the State for its departmental office cannot be said to be an irrelevant consideration or an object, which will run counter to

the public purpose, when it is having its offices much prior to the petitioner acquiring an interest in this property. Nothing is developed on the particular parcel of land by the petitioner and in the event of the land being acquired, the petitioner will be compensated. It is not the case that they have started any construction for the housing society on that parcel of land, or its buildings have come up and then the State has intervened. That being so, the petitioner can certainly collect their compensation and shift to another appropriate parcel of land when available.

11. The next ground of challenge in the petition is that the declaration u/s 6 of the Act is not made within one year from the date of publication of the notification u/s 4 of the Act. In this connection, it is submitted that u/s 4(1), the last date of any such publication of the notification, whether it is in the official Gazette, or in the newspaper, or in the locality, which is referred to, as the date of publication of notification. Sub-clause (ii) of the first proviso to Section 6(1) provides that no declaration in respect of any particular land covered by a notification u/s 4(1) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification. In this behalf, it is pointed out that Section 4 notification was published in daily newspaper "Pioneer" on 6.3.1987, though later on, it is stated that public notice was issued on 11.3.1987, but particulars thereof are not given. Hence, it is submitted by the petitioner that one year will have to be counted from 6.3.1987. Thereafter it is pointed out that the declaration u/s 6 of the Act is published on 17.2.1988, but no further information is given about the press releases, which are normally made subsequently. It is, therefore, submitted that the State should be called upon to give these particulars and this will show that the declaration is made one year subsequent to the issuance of the notification u/s 4 of the Act.

12. As against that, it is pointed out on behalf of the respondents that as stated in their supplementary-affidavit, the publication of the notification u/s 4 was made in daily newspaper "Pioneer" on 6.3.1987 and a public notice was issued on 11.3.1987, and the publication of the notification u/s 6 of the Act was done on 17.2.1988. Obviously, the declaration must have been made earlier, hence the declaration is within one year from the notification u/s 4 of the Act.

13. The respondents relied in this behalf on the judgment of the Apex Court in Urban Improvement Trust, Udaipur Vs. Bheru Lal and Others, In that case, the relevant dates for consideration was 17.5.1993/ 19.5.1993 when the substance of the notification u/s 4 was published in the local newspapers and 17.5.1994, which is the date on which declaration u/s 6 was made. The Court held that the date 24.5.1994 when such declaration was published in the official Gazette is not required to be considered and that the notification u/s 6(1) is made within the prescribed period. The Apex Court laid down in that matter, in paragraph 14, as follows:

14. u/s 6(1) declaration is to be made within a period of one year from the date

of publication of the notification u/s 4(1) of the Act. Hence, Section 6(1) does not require that such declaration could not be published in the official Gazette after expiry of one year from the date of publication of the notification u/s 4(1). Time-limit of one year is prescribed to a declaration to be made that land is needed for a public purpose under the signature of a Secretary or authorized officer to such Government.

14. In our view, the objection raised by the petitioner is clearly answered in this judgment. The period of one year is to be counted between the last date of publication u/s 4(1) and the declaration u/s 6(1) of the Act. That having been done within one year, no fault can be found on that count. The relevant of the last date of publication of the declaration u/s 6 is for the purposes of calculating the period of two years u/s 11A of the Act. That period of two years is to be reckoned from the last date of the three modes of publication prescribed u/s 6(2), as held by the Apex Court in *Kunwar Pal Singh (Dead) by L.Rs. Vs. State of U.P. and Others*, As far as the period of one year for making declaration u/s 6(1) of the Act is concerned, it is to be counted from the last date of the publication of the notification u/s 4(1) of the Act and making of the declaration u/s 6(1) of the Act, and not the last date of publication of the declaration u/s 6(2) of the Act. That date is relevant for the purposes of calculating the period of two years, within which the award is to be made as mandated u/s 11A of the Act.

15. Thus, there is no merit in the petition.

Civil Misc. Application (Impleadment) No. 38643 of 2008:

16. Before parting with this matter, we may mention that an application for impleading into this proceeding was made by one Usman Ali, by filing an impleadment application on 21.4.2008. He contended that the concerned land was supposed to be owned by one Raja Azaz Rasul Khan Saheb, who had two sons, namely, Irfan Rasul Khan and Jamal Rasul Khan. Irfan Rasul Khan is stated to have given this property to Usman Ali by a registered gift deed on 18.4.1964. According to him, the property came to be auctioned for the arrears of taxes of Jamal Rasul Khan, when it was not owned by him exclusively. He came to know about this auction sometimes in year 2002 and, therefore, filed a suit, being Suit No. 164 of 2002, for declaration that the auction was bad in law. He has subsequently applied for joining in this petition as a necessary party. He has filed a separate writ petition, bearing Writ Petition No. 2146 of 2007, to challenge this acquisition, but he wants to be joined in this petition also.

17. The application of Usman Ali to join into this proceeding is opposed by the petitioner as well as by the State-respondents. The State has very much contended that the gift deed appears to be of doubtful nature. It does not describe as to how much of the property is given by way of gift. If this deed was effected in the year 1964, there is no explanation as to why no rent was demanded from the respondent No. 4-Deputy Director (Animal Husbandry) at any point of time. In fact, the Deputy Director (Animal Husbandry) was

depositing the rent in the civil court after the suit for. ejectment was filed by the petitioner. The alleged gift deed is never acted upon.

18. It was also pointed out on behalf of the petitioner that whereas the property is situated at Lucknow, the gift deed is stated to be registered at Barabanki, which is not permissible. It is also pointed out that the Sub-Registrar at Barabanki has also given in writing that no such document was registered in his register as also the register does not contain the entry or registration of any such document at the number where it is claimed to be registered.

19. We have noted the submission of both the counsel.

20. The question is whether the petitioner was bound to join this Usman Ali, as respondent. The petition has been filed way back in the year 1988, to challenge the acquisition of the property by the State. This Usman Ali had never communicated to anybody that he was the owner of this property, until he filed his own suit sometimes in the year 2002 for declaration of his status. Besides, until the authenticity of the gift deed was established, there was no occasion for the petitioner to join any such party as respondent to the petition. They have purchased the property, in question, in auction and their ownership thereof was recognized. They are concerned with the acquisition of the land by the State and hence, they were required to take action against the State. Such third party, like Usman Ali was neither necessary nor proper party. There is no substance in the application of Usman Ali, to join in the petition. The same is, therefore, rejected.

21. When this petition was admitted on 20.4.1988 and notices were issued to the respondents, the Division Bench directed that until further order of the Court, no further action shall be taken in pursuance of the notifications, in question. The matter had reached earlier for final hearing before a Division Bench on 23.1.2002. The Division Bench noted that the acquisition was only for the purpose of office, workshop and stores of the Deputy Director, Animal Husbandry, to which there will be no impediment for the Government, if it continues as tenant in accordance with law. The Court noted the statement of one Mr. Rajiv Gupta, Secretary of the Animal Husbandry Department, Government of U.P., who was present in Court on that date, that it was not advisable to proceed with the acquisition any further. The Court, therefore, observed that in that view of the matter, the acquisition proceedings may not be continued and the respondents shall continue in occupation as tenant unless evicted in accordance with law. The Court, therefore, without going into the merit of the acquisition, disposed of the same on the basis of the submission made on behalf of the State Government. The State filed an appeal to the Apex Court, being Civil Appeal No. 8366 of 2003. The Apex Court, vide its order dated 17.10.2003, noted that there was dispute in regard to the fact, whether concerned Secretary to the Government gave an undertaking to withdraw the acquisition notification voluntarily or for reasons of Judicial pressure. The Apex Court thought it proper that the impugned order should be set aside and the matter be remanded back to the High Court, to decide the issue on merits. The Apex Court, therefore, requested the High Court

to dispose of the writ petition as early as possible, and allowed the appeal. Now when the matter reached for final hearing and has been heard at length, we dismiss the writ petition hereby and uphold the notifications under Sections 4 and 6 of the Act, issued by the respondents and consequently, the acquisition of the property., The interim order passed by the Division Bench on 20.4.1988 that no further action shall be taken in pursuance of the notifications, in question, will stand vacated.

(B) Writ Petition No. 2146 (M/B) of 2007:

22. This writ petition is filed by the above referred Usman Ali. Respondent No. 1-Union of India, is the first respondent to this petition. State of Uttar Pradesh and its officers are respondents No. 2 to 5, and the above referred Nandpuri Sahkari Grih Nirman Samiti Ltd., Lucknow, is respondent No. 6 to the petition.

23. Heard Mr. Mohd. Arif Khan with Mr. R. K. Srivastava, for the petitioner. Mr. D. D. Chopra, appears for respondent No. 1-Union of India, Mr. Syed Hussain, learned Additional Advocate General for the State of U.P., appears for State-respondents 2 to 5. Mr. Deepak Seth, appears for respondent No. 6-Nandpuri Sahkari Grih Nirman Samiti Ltd., Lucknow.

24. The first prayer of this petition is to quash the recovery proceedings including the impugned registered sale certificate dated 22.5.1979 issued and executed by opposite party No. 1-Union of India through Commissioner, Income Tax in respect to the property in question in favour of opposite party No. 6. The said certificate is annexed at Annexure -1 to this writ petition. Although above is the first prayer of this writ petition, when the matter was heard, Sri Mohd. Arif Khan has made a statement on behalf of the petitioner that he is not pressing this prayer in this writ petition for the reason that he has already filed a suit, being Suit No. 164 of 2002 in the civil court for the declaration that the auction leading to the sale of the property was bad in law. Mr. Khan made a statement that as far as that prayer is concerned, it will be canvassed in the suit. Though the petitioner is not pressing prayer No. (i) in this petition, we may record the objection of the counsel appearing on behalf of the first respondent-Commissioner of Income Tax, that as far as this prayer is concerned, the remedy of the petitioner is to challenge the recovery certificate by taking appropriate steps under the provisions of Income Tax Rules, which the petitioner has not taken. The petitioner has thus, confined this petition to the remaining prayers.

25. Now we turn to the remaining prayers of the petition. Prayer No. (ii) of the petition is to quash the above referred impugned notifications dated 17.12.1986 and 17.2.1988. Prayer No. (iii) of the petition is to seek a writ of mandamus restraining the opposite parties from acquiring the land in question and changing its nature during the pendency of this writ petition and prayers (iv) and (v) of the petition are to award cost and to issue any other such orders, as may be necessary, respectively.

26. The basis of this petition is the same, as stated above, namely, that the

petitioner-Usman Ali has received the concerned property in a gift made in the year 1964 by its erstwhile owner. The locus of this petitioner to file this writ petition is challenged on behalf of the respondents-State as well as on behalf of the M/s. Nandpuri Sahkari Grih Nirma Samiti Ltd. It was pointed out on behalf of the State that they were disputing the authenticity of the gift deed on the grounds, which are already noted. It was also submitted in that behalf that if there was any such deed, the same was not acted upon for the last over 40 years, and the petition to challenge the notifications issued in the year 1986 and 1988, is clearly bad for laches.

27. Mr. Seth, learned Counsel appearing for the society, submitted that the petitioner-Usman Ali has never exercised any right of ownership, nor has he claimed it any time by communicating it to the Government, counsel for the respondents, therefore, submitted that the petition should be dismissed since the petitioner has no locus to maintain this writ petition.

28. As noted above, prayers (ii) to (v) of this petition are to challenge the notices of acquisition dated 17.12.1986 and 17.2.1988 and the subsequent acquisition. Inasmuch as those notices of the acquisition are already held to be valid on merit, while deciding Writ Petition No. 2782 (L./A.) of 1988, these prayers also cannot be entertained. In the circumstances, we do not deem it necessary to give any finding on the locus of the petitioner to file this writ petition, though we hold that the petition suffers from serious laches.

29. In the circumstances, this petition is also dismissed. The parties shall bear their own costs.