
(1998) 02 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 2174, 2235, 2237, 2238, 2867, 2868 and 2869 of 1989

Nathu Lal and

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 4

Citation : AIR 1998 Raj 245

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Advocate : D.R. Bhandari, for the Appellant; L.S. Udawat, A.A.G. and Lalit Kawadia, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Gupta, J.—In (he above mentioned seven writ petitions the validity of the notification issued u/s 4 dated 16-5-1988 and the declaration u/s 6. D/- 15-3-1989 has been called in question.

2. The facts common to the petitions are that the respondents issued notification, dated 16-5-1988 which was published in Govt. Gazette on 30-6-1988 to acquire the various lands situate in village Devali Fatehpura for Fatehpur Extension Scheme. Respondent Urban Improvement Trust was the beneficiary. The notifications have been assailed on various grounds in the writ petition but Mr. Bhandari confined his arguments to four grounds. It is, therefore, not necessary to mention all the facts. The grounds pressed by Mr. Bhandari are (i) The acquisition proceedings could be undertaken only u/s 52 of the Urban Improvement Trust Act and as the Presidential assent has not been obtained for the amendment in Section 52 of the Rajasthan Urban Improvement Trust Act, the whole of the proceedings are void, (ii) There was no publication of notification issued u/s 4(1) in the locality, (iii) Opportunity of hearing was not

given to the petitioners, (iv) The land has been acquired indiscriminately as some lands have been left out and only petitioners's land have been acquired.

3. In the reply which has been filed only in writ petition No. 2174/89 Nathulal v. State of Rajasthan it has been averred that publication of the substance of the notification was made in the locality and enquiry u/s 5A was held after issuing individual notices to the petitioners. It has been further averred that there was no discrimination in acquiring the land of the petitioners. Learned counsel for the respondents submitted that this reply may be treated reply in all the writ petitions.

4. Mr. Bhandari, learned counsel for the petitioners, contended that Section 52 of the Raj. Urban Improvement Trust Act, 1950 which is special provision for acquisition of land for the Urban Improvement Trust was amended vide Rajasthan Act No. 29 of 1987 but as the Presidential assent was not obtained in respect of this amendment, the acquisition proceedings are liable to be quashed on this ground alone. His contention is based on the premises that the land acquisition proceedings shall be presumed to have been initiated u/s 52 of the Urban Improvement Trust Act. He urged that the provisions of Section 4(1) of the Land Acquisition Act are mandatory in nature and since the substance of the notification was not published in the locality, the acquisition proceedings are vitiated. His further contention was that the petitioners were not afforded opportunity of personal hearing u/s 5A of the Land Acquisition Act and therefore the declaration is void. He placed reliance on the cases of (1) State of Mysore Vs. Abdul Razak Sahib, (2) Collector (Dist. Magistrate), Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, (3) Khub Chand and Others Vs. State of Rajasthan and Others, ; (4) Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another, and (5) Urban Improvement Trust and etc. Vs. Balveer Singh and Others, .

5. On the other hand Mr. Udawat, learned counsel for the respondent No. 1 contended that the acquisition proceedings have been undertaken under the provisions of the Land Acquisition Act and therefore there is no relevancy of Section 52 of the Act of 1950. He contended that Land Acquisition Act, 1894 which is the Central enactment prevails over the State legislation and all the acquisition proceedings now are initiated under the Act of 1894. His further contention was that all the formalities required u/s 4 of the Land Acquisition Act were complied with and full opportunity of hearing was given to the petitioner before making report u/s 5A.

6. Mr. Kawadia, learned counsel for the respondent No. 3 contended that the notification impugned in the writ petitions has been upheld by the Division Bench in D. B. Civil Special Appeal No. 22/94 vide judgment dated 26-11-1997 and as such the petitions merit dismissal.

7. I have given the argument my thoughtful consideration. Coming to the first contention of Mr. Bhandari regarding Section 52 of the Act of 1950, it may be

stated that the proceedings for acquisition have not been taken under this Section. When the acquisition proceedings have been initiated under the Act of 1894, it is not necessary to address on the issue whether the assent was obtained or not for the amendment of Section 52 of the Act of 1950 and if not, what is its effect. u/s 52 it is stated that even when the land is required for Urban Improvement Trust it shall be acquired under the provisions of Land Acquisition Act. There is no inconsistency in the provisions of the Act of 1894 and the provisions of Rajasthan Urban Improvement Trust Act. There is absolutely no cause to presume that the proceedings were initiated under the Act of 1950-Thus there is no merit in the first contention of Mr. Bhandari.

8. Section 4(1) of the Land Acquisition Act envisage three steps of publication of the notification; (i) in the Government official gazette, (ii) in two daily newspapers and (iii) causing of the public notice of the substance of the notification in the locality. It is not disputed that the notification was published in the official gazette and also it was published in two daily newspapers. The petitioner's contention that it was not published in the locality cannot be accepted in view of the averments in the reply wherein it has been averred that the notification was published in the locality as the copies of the notifications were sent to the local Patwari for pasting them in the locality. After filing of the reply no rejoinder has been filed saying that the Patwari did not publish substance of the notification in the locality. The first three cases relied on by Mr. Bhandari certainly lay down the principle that the provisions of Section 4(1) are mandatory in nature. But when it is established that substance of the notification was published in the locality it cannot be said that there was violation of the mandatory provision. It is also relevant to state that this notification was challenged in S.B.C.W. Petition No. 2232/89 Rajendra Kumar v. State of Raj. which was allowed by the single Bench vide order dated 7-4-1992 but the special appeal preferred against the decision by the respondents was allowed by the Division Bench vide judgment dated 26-11-1997 and the writ petition was dismissed.

9. Apart from this it has been averred in the return that individual notices were issued to all the petitioners to file their objections and some of the petitioners did file objections and the Land Acquisition Officer decided the objections after hearing them and thereafter he sent the report u/s 5A. In the writ petitions only vague averments have been made that no opportunity to produce evidence in support of the objection was given. It has not been stated that as to when did the petitioners pray for further opportunity and it was refused. The report R/3 sent u/s 5A indicates that individual notices were issued to the Khatedars and the persons interested in the land and the report was prepared after giving an opportunity of hearing to them. It is relevant to state that in the notification u/s 4 various lands were proposed to be acquired but in the report u/s 5A some of the lands were given up and it was recommended that they may not be acquired for the reasons stated in the report. The very fact, that in the report it was recommended that various lands notified in the notification u/s 4 may not be

acquired, goes to show that the Land Acquisition Officer applied his mind and considered all the objections raised and thereafter he recommended acquisition of the lands of the petitioners. It is also to be noticed that in the writ petition No. 2174/89 (Nathu Lal v. State) this contention of the respondents has not been refuted that the petitioner's son Ram Lal had appeared on 11-7-1988 and he requested for time to file objection which was allowed. It is evident that full opportunity was given to the petitioners to raise objections regarding acquisition. Thus, it cannot be accepted that opportunity of hearing was not given to petitioners u/s 5A of the Act. The case of Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another, thus does not help the petitioners.

10. The petitioners' contention that as some of the lands have been left out of the acquisition and only their lands have been acquired resulted into discrimination, cannot be accepted. It is the satisfaction of the State Government based on the report sent by the Land Acquisition Officer to acquire all the lands notified or to acquire only some of them. Even if it is assumed that the State Government gave wrong exemption, the petitioners cannot succeed on the plea of Article 14 of the Constitution. It has been held in the case of Yadu Nandan Garg Vs. State of Rajasthan and Others, as follows (Para 5 of AIR) :--

"The wrong exemption under wrong action taken by the authorities will not cloth others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination".

In view of the legal position propounded by the Apex Court the observations made in the case of U.I.T. v. Balveer Singh, (AIR 1985 Rajasthan 71) (supra) do not help the petitioners. Thus, this contention of Mr. Bhandari also fails.

11. No other point was pressed before me.

12. Consequently, the writ petitions are devoid of merit and are hereby dismissed.