
(2009) 07 RAJ CK 0042
In the Rajasthan High Court

Nirmal Kumar Ajmera and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Land Acquisition (Mines) Act, 1885 — Section 4
Land Acquisition Act, 1894 — Section 12, 18, 21, 3, 4

Citation : (2009) 3 WLN 456

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The petitioners have challenged the Notification dt. 08.01.1991, published u/s 4 of the Land Acquisition Act, 1894 ("the Act", for short) and the Declaration dt. 17.04.1993, published u/s 6 of the Act.

2. In a nutshell the facts of the case are that the petitioners are son of Shri Bithal Das Ajmera. On 27.07.1953, Shri Bithal Das Ajmera bought a piece of land falling in khasra No. 16 Village Vijay Mahal, near Jal Mahal area in Jaipur. The said land was initially mutated in his name. Unfortunately, in 1972 both Bithal Das Ajmera and his wife expired. Since the petitioners were their surviving legal heirs, both the petitioners jointly inherited khatedari rights in the said land. The Tehsildar, Jaipur carried out the necessary mutation proceedings. He mutated their names in the revenue records of 15.04.1974. In order to develop the area around Jal Mahal and to install a ropeway from Nahargarh Peak to the Jal Mahal area, the Government published a notification u/s 4 of the Act on 08.01.1991. It was published in the State Gazette on 17.10.1991. The State Government also issued and served a notice dt. 27.04.1992 in the name of Bithal Das Ajmera. Through the notice, the Land Acquisition Officer, JDA, Jaipur invited objections from Shri Bithaldas in respect of the land measuring 1 bigha comprised in Khasra No. 16. Ultimately, the notice was served upon the petitioners. The petitioners submitted their initial objections on 23.05.1992 and supplementary objections on

21.09.1992. Subsequently, on 17.04.1993, the State Government published a declaration u/s 6 of the Act and published it in the extra-ordinary Gazette of the State of Rajasthan on 19.04.1993. According to the petitioners, the notification and the declaration are absolutely vague. Hence, this petition before this Court.

3. Before entering into the contentions raised by the petitioners, it is imperative to deal with the preliminary objection raised by Mr. S.N. Kumawat, the learned AAG for the State. According to the learned Counsel, the petitioners have already filed their reference u/s 18 of the Act. Therefore, this writ petition is no longer maintainable. For, through this writ petition, the petitioners have merely challenged the Notification and the Declaration mentioned above.

4. On the other hand, Mr. Anant Kasliwal, the learned Counsel for the petitioners, has contended that merely by entering into a reference u/s 18 of the Act, the petitioners are not precluded from challenging the validity of the Notification u/s 4 of the Act and the Declaration u/s 6 of the Act. For, according to the learned Counsel, the reference is made on extremely limited grounds namely, objections with regard to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. According to Section 18 of the Act, a reference does not permit the Court to go into the validity or invalidity of the Notification u/s 4 of the Act or of the Declaration u/s 6 of the Act. Therefore, notwithstanding the pendency of the reference, the writ petition is still maintainable.

5. Heard the learned Counsels on the preliminary objection.

Section 18 of the Act is as under:

18. Reference to Court.-(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) In other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Of course, it is true that the jurisdiction of the reference Court is a limited one; the Court can never go beyond the four issues mentioned in the provision.

Therefore, the Court is precluded from examining the validity of the Notification u/s 4 of the Act and of the Declaration u/s 6 of the Act. However, once a reference has been made to the Court, by this very act the petitioners can no longer question the validity of Section 4 and Section 6 of the Act. Moreover, once an award has been passed and a reference has been made, the chapter with regard to the validity of Notification u/s 4 of the Act, or Declaration u/s 6 of the Act comes to naught. Since much water has flown from the time when the Notification u/s 4 of the Act and the Declaration u/s 6 of the Act are made, the writ petition loses its significance. It is reduced to merely an academic exercise. In such circumstances, this Court should not entertain a writ petition.

6. Even otherwise, the case is an extremely weak on merits.

7. Mr. Kasliwal, the learned Counsel for the petitioners, has raised the following contentions before this Court: firstly, Notification u/s 4 of the Act, dt. 08.01.1991, had shown the name of petitioner's father, who had expired much before issuance of the Notification. According to the petitioners, their father, Shri Bithal Das Ajmera had expired on 16.09.1972. The land was mutated in the petitioners' name on 15.04.1974. Yet while issuing the Notification u/s 4 of the Act on 08.01.1991, the name of their father was shown. Therefore, the Notification was issued showing the name of a person who had already expired. Thus, according to the learned Counsel, the said Notification is invalid. In order to buttress this contention, the learned Counsel has relied upon the case of I.I.S. Employees' House Building Coop. Society LTD. v. State of Karnataka (2005) 12 SCC 483.

8. Secondly, since the name of the father was shown in the Notification, therefore, the petitioners were deprived of their valuable right to file objections u/s 5A of the Act.

9. Thirdly, the Notification u/s 4 of the Act did not reveal the public purpose for which the land was being acquired. According to the said Notification, the land was being acquired for "Jal Mahal Yojana". However, the nature of the "Jal Mahal Yojana" was not spelt out. Subsequently, it was discovered that the "Jal Mahal Yojana" entailed acquiring of the land for the benefit of certain hotels complex, and for construction of the commercial premises around the Jal Mahal area in Jaipur. The learned Counsel has also contended that in the definition given in Section 3(f) of the Act the expression "public purpose" does not include the "commercial purpose". Therefore, if the land is being acquired for commercial purpose, it does not fall within the definition of the expression "public purpose". Moreover, the said definition specifically excludes acquisition of land for companies. Therefore, the land is not being acquired for public purpose.

10. Fourthly, the said Notification was not published in two daily newspapers.

11. Fifthly, the list of the Notification was not placed at convenient places. Therefore, the mandatory requirements of Section 4 of the Act have not been fulfilled.

12. Sixthly, according to Section 6 of the Act, the Declaration u/s 6 of the Act has to be made within a period of one year from the date of publication of Notification u/s 4 of the Act. According to the learned Counsel, the Notification u/s 4 of the Act was published on 08.01.1991, yet the Declaration u/s 6 of the Act was published on 17.04.1993 i.e. after a lapse of one year. Therefore, the said Declaration was made beyond the period of one year as required by Section 6 of the Act. Hence, the said Declaration is legally untenable.

13. On the other hand, Mr. S.N. Kumawat, the learned Counsel for the State, has submitted the following counter-contentions before this Court : firstly, the Notification u/s 4 of the Act was based on the Jamabandhi for the year 1974. In the said Jamabandhi in column 4, the name of the Khatedar was still shown as Bithal Das Ajmera. Therefore, the State was justified in showing the name of Bithal Das Ajmera in the said Notification. Secondly, even if the said Notification showed the name of a person who had already expired, nonetheless the petitioners possibly cannot claim that they were deprived of their valuable right to file the objections. For, according to the petitioners themselves, they had filed the objections on 23.05.1992 and subsequently, they had also filed supplementary objections on 21.09.1992. Therefore, it does not lie in the mouth of the petitioners to claim that because the name of their deceased father was shown, any prejudice was caused to their interest. Since they had appeared and filed their objections, an opportunity to protect their interest was granted.

14. Secondly, in their pleadings, the petitioners have not pleaded that the Notification u/s 4 of the Act was not published in two daily newspapers. The contention in para 13 is with regard to the non-publication of Declaration u/s 6 of the Act in two daily newspapers. The learned Counsel has contended that in fact the Declaration u/s 6 of the Act was published in Dainik Navjyoti and Mahanagar, both are daily newspapers in Hindi in the locality. Therefore, the contention that the mandatory requirements of Section 6 of the Act have not been fulfilled, is unacceptable. Thirdly, there is nothing in the definition of the expression "public purpose" which prohibits the State from acquiring a land for commercial purpose. In fact, Section 21(vii) clearly states that "the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government by a local authority, for such a provision a land can be acquired." Even if the "Jal Mahal Yojana" is commercial project, there is nothing in the Act which prohibits the Government from acquiring the land for commercial purpose.

15. Thirdly, the Jaipur being a destination for the tourist, both from abroad and within the country, the development of tourist complex or development for hotel industry is in public interest. For, such a project would generate employment for the local people. Therefore, the "public purpose" is writ large in the "Jal Mahal Yojana" itself.

16. Heard the learned Counsel for the parties and perused the Notification u/s 4 of the Act and the Declaration u/s 6 of the Act.

17. The purpose of the notification u/s 4 of the Act is to bring to the notice of public at large, in general, and to bring to the notice of those persons whose land is about to be acquired, in particular, the intention of the Government to acquire their land. Therefore, even if the said notification shows the name of a person who has already expired, but in case his legal representatives filed their objections u/s 5A of the Act, then they cannot possibly claim that they had no notice of the fact that the Government was about to acquire their land. Therefore, even if the Notification dt. 08.01.1991 did not show the petitioners' name, but considering the fact that the petitioners did file their objections and their supplementary objections, they cannot claim that their valuable right of hearing has been denied to them. Thus, once their right has been protected, once an opportunity of hearing has been given to them, they cannot be permitted to challenge the validity of a notification ostensibly on the ground that the Notification shows the name of person who has already expired. The case of I.I.S. Employees' House Building Coop. Society Ltd. (supra) does not come to the rescue of the petitioner. For, according to the facts of that case, since the name of father was shown, the petitioners were deprived of their right to file their objections u/s 5A of the Act. However, that is not the position in the present case. After all, according to the petitioners themselves, they had filed their objections on 23.05.1992 and 21.09.1992. Thus, they had been provided ample opportunities to defend their interest. Since they had an opportunity to submit their objections, the petitioners cannot claim that their right u/s 5A of the Act has been denied to them.

18. The definition of the expression "public purpose" given u/s 3(f) is as under:

3(f). The expression "public purpose" includes:

- (i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;
- (ii) the provision of land for town or rural planning;
- (iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;
- (iv) the provision of land for a corporation owned or controlled by the State;
- (v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;
- (vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior

approval of the appropriate Government, by the a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for Companies ;

A bare perusal of the definition clearly reveals that it is a wide definition in its amplitude. Section 3(f)(III) clearly empowers the Government to acquire land for "planned development and permit the Government to subsequently lease, assignment or outright sale with the object of securing further development as planned." Moreover, Section 3(f) permits the Government to acquire a land for a scheme of development either submitted by the Government itself, or by a local authority. There is not a whisper of a bar contained in the said definition, which prohibits the Government from acquiring the land for commercial purpose. This is of course in the logic of thing; today, the Government is equally engaged in commercial activities, and can equally encourage the development of commercial activities, although in private hands. Therefore, the restriction pleaded by the learned Counsel is untenable.

19. Jaipur, the "Pink City" is a favorite public destination for tourist, both from within and without India. Being part of the golden triangle with Delhi and Agra, Jaipur happens to be hot destination for tourist. Tourism is no longer seen as a luxury, but is now considered as an industry. Tourism not only creates jobs for the local people, but also brings in foreign exchange into the country. Therefore, it develops and promotes the economic interest of the State. Hence, tourism can no longer be considered as being as "anti-people". The development of tourist facilities would certainly help the public as tourism industry forms backward-forward linkage in generating employment for the people. Thus, the very public purpose is writ large, in case the Government decides to acquire land for the development of tourist complex. According to the "Jal Mahal Yojana", the land was being acquired so as to permit the construction of hotels, for the construction of rope way from Nahargarh peak to Jal Mahal area, and for the construction of catchment area etc. Since it is the people of Jaipur, who would be benefited from such a construction, the public purpose in the scheme cannot be denied.

20. A bare perusal of the writ petition clearly reveals that the petitioners have not contended that Notification u/s 4 of the Act was not published in two daily newspapers. In para 13 of the writ petition, they have merely pleaded that the Declaration u/s 6 of the Act was not published in two daily newspapers. However,

their plea has been demolished by the fact that the respondents have produced the copies of Dainik Navjyoti and Mahanagar clearly showing that the said Declaration was indeed published in two daily newspapers of the locality. Therefore, the contention that the mandatory requirements of Section 6 of the Act have not been followed, is unacceptable.

21. According to Section 4 of the Act, "last date of such publication shall be referred as the date of the publication of Notification." Although it is true that the Notification was published on 08.01.1991, although it is true that the Notification was published in the Gazette on 17.10.1991, but the fact remains that the last date of publication of the said Notification was 25.04.1992. Since the Notification was lastly published on 25.04.1992, the period of one year would naturally commence from the said date. It is an admitted fact that the Declaration u/s 6 of the Act was published on 17.04.1993. Obviously, the Declaration u/s 6 of the Act was published within a period of one year from the date of publication of the Notification u/s 4 of the Act. Thus, the contention raised by the learned Counsel for the petitioners that mandatory requirements of Section 6 of the Act have not been followed is baseless.

22. Lastly, since the award has been passed on 04.11.1995 and since the reference has already been filed by the petitioners u/s 18 of the Act, this case is only for academic interest.

23. For the reasons stated above, this writ petition is devoid of any merit. It is, hereby, dismissed. There shall be no order as to costs.