

(1995) 03 MP CK 0003

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1192 of 1988 (G)

Omprakash Agrawal and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-03-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (1995) 2 MPJR 293

Hon'ble Judges : T.S. Daobia, J

Bench : Single Bench

Advocate : P.L. Dubey, for the Appellant; K.B. Chaturvedi, G.A., for the Respondent

Final Decision : Allowed

Judgement

T.S. Daobia, J.

In this petition under Articles 226 and 227 of the Constitution of India, petitioners are challenging the acquisition proceedings taken under the Land Acquisition Act, 1894 (hereinafter, referred to as the "Act"). Some land was required for providing residential accommodation to the members of Police Griha Narman Shakari Samiti, Gwalior. This Samiti figures as respondent No. 3 in the present petition.

Brief facts which have led to the filing of this writ petition are as follows:-

The land is situated in the city of Gwalior. Acquisition proceedings were initiated by issuing notification u/s 4 of the Act. The notification is Annexure P/12. In this notification, it is mentioned that the land is situated in Tonsil Gwalior in village Awadhpur. Area of the land which is the subject-matter of an acquisition is 12.136 hectares. It is further mentioned that the Police Grill Nirman Sahakari Samiti, Gwalior is going to be the beneficiary and the public purpose which has been specified in the notification is to provide accommodation to police employees. This notification was published in two daily newspapers and also in the official

gazette. Annexure P/12 i.e. copy of the notification was published in a daily local newspaper namely Aacharan of 27.8.1988 Notifications which were published in the official gazette have not been placed on record by the writ petitioners. These have been placed on record by the respondents alongwith their return as Annexure R-3-E. These were so published in M. P. Rajpatra of 2nd of Sept. 1988. Thereafter notification u/s 6 of the Act was also published. Copy of this is Annexure P/3-H. This was published in M. P. Rajpatra dated 14th October, 1988.

The acquisition proceedings have been challenged on the following grounds :-

(i) As to non-observance of Sections 4 and 6 of the Act. the arguments are -

(a) That the respondent No. 3 has not formulated any scheme and in the absence of scheme even if it be presumed that there was some valid publication, the land owner would not be in a position to object. According to them, the requirement to have a scheme is a necessary prerequisite before issuing notification u/s 4 of the Act.

(b) That this notification was not published in the locality as per the mandatory requirements of section 4 of the Act.

(c)" That even it be presumed that there is some publication, the same does not satisfy the test laid down by the Supreme Court in various cases. It is stated that this notification is vague.

(ii) With regard to non-observance of Part VI of the Act. the arguments are -

(a) That as the notification was for the benefit of the Co-operative Society which falls within the definition of the term company as occurring in Section 3 (e) of the Act, the procedure indicated in Part VII of the Act was necessarily required to be followed.

(b) That detailed rules have been framed with regard to acquisition when acquisition is for the purpose of a company, but these rules have not been complied with at all.

(c) That even if it be presumed that there was some agreement between the State & respondent No. 2, the same was not published in the official gazette.

(iii) The last argument is that acquisition cannot be resorted to in manner which would result in depriving other cooperative societies. It is stated that there are other cooperative societies and organisations which are taking similar activity in the area. The notification issued with a view to deprive them the benefits of housing accommodation and making provisions for another set would be violative of Art. 14 of the Constitution.

The respondents have not filed any detailed written-statement. Brief replies were filed to the application seeking interim relief. This petition is pending since October. 1987. However, learned counsel appearing for the State has produced relevant records. These have been perused.

Various arguments addressed by the learned counsel for the parties be now examined.

The argument that before embarking upon the task of the acquisition of the land, the State should have satisfied that there does exist some scheme which was duly framed by respondent No. 3 be examined. The Supreme Court in the case of State of Tamil Nadu and another Vs. A. Mohammed Yousef and others, has made some observations in this regard in para 6. This para be noticed. It reads as under: -

The question for decision is whether the acquisition proceeding can be initiated only after the framing of the proposed scheme and not earlier. The learned Attorney General contended that having regard to the provisions of the Act and the other relevant considerations it must be held that the procedure in regard to the preparation of the scheme has to await the conclusion of the land acquisition proceeding. It is only after the possession of the land is delivered to the Board that its engineers and other experts can go over the land, make necessary inspection and collect vital data, on the basis of which the scheme can be drawn up. It is essential to have a clear idea of the area of the land, its boundaries, and the nature of the soil for deciding about the details of the proposed scheme, and this is not possible so long the owner of the land continues in possession. Any attempt to draw up a scheme earlier has been described by the learned counsel as an exercise in futility. Alternatively it has been contended that even if it be held to be permissible to frame the scheme without waiting for the acquisition and possession of the land, it cannot be further assumed that the land acquisition proceeding has to await the finalisation of the scheme. In other words, both the proceedings may continue simultaneously, or any of the proceeding including one for land acquisition can be commenced without waiting for the other. In any event, the land acquisition proceeding should not be condemned as premature on the ground that the scheme has not been framed. We have closely examined the entire Act with the assistance of the learned counsel for the parties and in our view the contention on behalf of the respondents that the proceeding for acquiring land can be commenced only after the scheme is framed is well founded.

The Punjab and Haryana High Court in the judgment reported as *Sirichand v. State of Punjab* (1993) 13 Legal Reports & Statutes 77 followed the ratio of the judgment given in the above case and quashed the acquisition proceedings initiated under the Punjab Town Improvement Act, 1922 adopting the reasoning given by the Supreme Court in the above case.

No doubt, the aforementioned decision of the Supreme Court which was followed by the Punjab & Haryana High Court supports the argument of the learned counsel for the petitioner, but a Constitution Bench of the Supreme Court of India in the case of *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, has expressed a view to the contrary. The Constitution Bench found nothing wrong with the non-existence of the scheme at the time acquisition and upheld

the notification. It was observed as under :-

Lastly, he contended that the Government had not before issuing the notification prepared any scheme. This is true that the Government has not up-till now prepared any scheme for the utilisation of the developed sites. But the notification itself shows that the sites would be used as residential and industrial sites. There is no law that requires a scheme to be prepared before issuing a notification under S.4 or S.6 of the Act. We have however, no doubt that the Government will, before disposing of the sues, have a scheme for their disposal" The acquisition is not bad on this score.

Now the argument with regard to the vagueness of the scheme and non-compliance of section 4 of the Act be examined.

The Notification Annexure P/12 describes that the land is situate in village Awadhpur. In para 14 of the writ petition it is stated that this village has ceased to exist as a village as it has lost its identity and its existence stands obliterated by merger with the greater mass of the city of Gwalior. It is stated that after its merger with the city of Gwalior the traditional village choupal ceased to exist. This notification is thus hit by the same malady which was found to exist by the Supreme Court in Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, . Their Lordships of the Supreme Court have observed in categorical terms that merely mentioning the name of the village would not be sufficient compliance of section. As a matter of fact, the Supreme Court took note of the Notification which was being impugned. Taking note of the same, the Supreme Court observed as under :-

The description of the land in the notification issued under Sections 4(1) and 17(1) in our opinion, is very cryptic. Not only no khasra numbers have been given, even the precise "locality" has not been indicated. Mere mention of Mandsaur, which is spread over an area of 25 sq. Kms. and is divided into various municipal wards against the "locality" is wholly insufficient description and the respondent or anyone else could not have come to know from that description whether 2.298 hectares of land which was required for acquisition included the land belonging to him or not. The non-disclosure of the "locality" with precision invalidates the notification and renders the publication of notice a meaningless formality.

That observations made by the Supreme Court that everybody in the village is not supposed to visit the office of the Collector to find out as to whether his land is the subject matter of acquisition applies to this case also. The village has merged with the city of Gwalior. The notification should have been more specific. In this view of the matter, the notification suffers from the vice of vagueness and following decision given by the Supreme Court in the aforementioned case, it would be liable to be set aside.

Before dealing with the question of compliance of Part VII of the Act, the last argument with regard to acquiring land for the benefit of one and depriving the

other be examined.

The argument advanced by the learned counsel for the petitioner is that the State Government cannot deprive some of the societies who themselves want to raise housing colonies. It be seen that this argument would not come to the rescue of the petitioner. The opinion formed by the State Government that the land is required by Respondent No. 3 would definitely have precedence over the need of other societies. Such objection was raised way back in the year 1966 in the case of Arnold Rodricks (*supra*). Para 20 of the judgment is relevant. This reads as under:-

It was urged before us that the State Government was not entitled to acquire property from A and give it to B. Reliance was placed on the decision of the Supreme Judicial Court of Massachusetts (2(34 Mass. 607). But as pointed out by this Court, public purpose varies with the times and the prevailing conditions in the localities, and in some towns like Bombay the conditions are such that it is imperative that the State should do all it can to increase the availability of residential and industrial sites. It is true that these residential and industrial sites will be ultimately allotted to members of the public and they would get individual benefit, but it is in the interest of the general community that these members of the public should be able to have sites to put up factories. The main idea in issuing the impugned notifications was not to think of the private comfort or advantage of the members of the public but the general public good. At any rate as pointed out in *Babu Barkya Thakur Vs. The State of Bombay and Others*, a very large section of the community is concerned and its welfare is a matter of public concern. In our view the welfare of a large proportion of public-concern and the notifications served to enhance the welfare of this section of the community and this is public purpose. In conclusion, we hold that the notifications are valid and cannot be impugned on the ground that they were not issued for any public purpose. "The acquisition is thus not bad on this score.

Before noticing the argument with regard to the observance of the provisions contained in Part VII of the Act the facts be noticed again.

A request was made by the respondent/Co-operative Society in the month of Feb. 1988 for providing land for setting up a colony for police employees. On behalf of the Secretary in the Revenue Department a communication was sent to the Collector concerned. There also exists an agreement on the file. This is dated 11th of August, 1988. This is executed between the Governor of M. P. and the respondent No. 3. It was stipulated in the agreement that the respondent shall pay to the Governor or to such person as may be appointed by the Governor all the sums as the Government of Madhya Pradesh may have to spend in acquiring the land. Terms and conditions on which the land was to be acquired were stipulated. These conditions are as under :-

(a) The company shall use the said land for the construction thereon of house for its members and none else and purposes ancillary thereto part thereof for any

other purpose whatsoever without the previous sanction in writing of the Governor;

(b) The Company, shall, from the date of the transfer of the said land, pay and discharge all rates, taxes assessment and other charges of every description whatsoever which are now or may hereafter be charged or imposed upon the said land or any building constructed thereon;

(c) The Company shall abide by all the rules and regulations which the Governor has made and may from time to time make in regard to the purposes for which the said land has been acquired;

(d) The company shall not assign or otherwise transfer the said land or any building constructed thereon or any part thereof without the previous sanction in writing of the Governor; and

(e) Should the said land be no longer required by the Company for the purposes, specified in condition (a) above, the Company shall forthwith relinquish and restore the said land to the Governor, who shall pay to the Company the amount of compensation for resumption of land and the cost for taking over the structures constructed thereon in the manner provided in clauses 4 and 5 of this agreement.

After this agreement was executed in the month of August. 1988, steps were taken and notification u/s 4 of the Act was published. This publication in the daily newspaper Aacharan is of 27th of August. 1988. This notification was published in Daily newspaper Swadesh also. This is dated 27th August. 1988. As noticed above, the notification in the official gazette was published on 2.9.1988. Thereafter further steps were taken and notification u/s 6 was published. These are the facts which are apparent from the official file which was summoned and perused by me. The file does not indicate that the agreement in question was ever published in the official gazette. The State counsel has also not been able to point out about this public action. In the light of the above facts the various arguments raised with regard to the observance and non-observance and the provisions of Part VII be noticed.

The argument raised is that there has to be proper application of mind and each of the sections has to be meticulously complied with. As to what matters are to be considered while holding this inquiry are sought to be highlighted by referring to the statutory rules known as Land Acquisition Companies Rules. 1969. Rule 4 prescribes the conditions which are to be taken note of while holding an inquiry.

These are :-

(i) There should be endeavour by the company for acquiring the land by entering into negotiations with owners.

(ii) That the land proposed should be suitable for the purpose.

(iii) That the area which is proposed to be acquired is not excessive and that the

company is in a position to utilise the land expeditiously.

(iv) Nature of the land is to be taken note of.

The argument raised by the learned counsel for the petitioner that under the Company Rules of 1969 it is mandatory to first make efforts to acquire the land after entering into negotiation with the land owners, be examined. I am of the view that this requirement cannot be said to be mandatory. Such position was considered by the Supreme Court in the case of *Kanaiyalal Maneklal Chinai and Another Vs. State of Gujarat and Others*, and it was observed in categorical terms that merely because negotiation was not held with persons whose land was to be acquired is not a ground to render the acquisition bad. This decision was followed by the Punjab & Haryana High Court in the case of *Daljit Kaur & another v. Municipal Corporation & others*. (1988) 4 LRS Pb 129, M. M. Punchhi J. (now Judge of the Supreme Court) observed as under: -

The foremost attack against the notification is that the Corporation did not take resort to section 170 of the Punjab Municipal Corporation Act, 1970 (for short, the Corporation Act) where under the Corporation on decision to acquire any immovable property for the purposes of the Act, enjoins its Commissioner to acquire properly on its behalf by agreement on such terms and at such price as may be approved by the Corporation. The following provision, i.e. Section 171 provides that whenever the Commissioner is unable to acquire any immovable property u/s 170 by agreement the Government may, the request of the Commissioner acquire the same under the provisions of the Land Acquisition Act, 1894. Safeguard has been made therein regarding payment and charges to be borne by the Corporation in that event. It is submitted that in the notification itself the Government had avowedly exercised power u/s 171 of the Corporation Act presumably on the Commissioner's inability to acquire the properties involved by agreement u/s 170. A dispute of fact has been raised that there was no resort to acquisition on by agreement u/s 170 of the Corporation Act and, therefore, the foundation for the employment of Section 171 stands knocked off. The Advocate General Punjab is here as a caveator and he has stated before us at the Bar that such efforts were made. Be that apart, whether the effort was made or not, identical provisions came to be interpreted by the Supreme Court in *Kanaiyalal Maneklal Chinai and Another Vs. State of Gujarat and Others*, where their Lordships, repelling an identical contention observed as follows:-

9. Exercise of power to move the State u/s 78 of the Provincial Municipal Corporations Act, to acquire land is not conditioned by any such limitation as suggested by counsel for the appellant. The opening clause of Section 78 (1) merely indicates an alternative and not a condition. Even if no attempt is made u/s 77 to acquire the land by agreement, it is open to the Commissioner of the Municipal Corporation, with the approval of the standing Committee and subject to the other Provisions of the Act. to move the Provincial Government to take steps for acquisition of the land.

Even if the question of fact remains asserted by the petitioners and not controverted on affidavit by the respondents (though the Advocate General Punjab was willing to do so) the fact remains that even if no attempt was made u/s 170 of the Corporation Act. to acquire the land by agreement it was open to the Commissioner and then the State of Punjab to act u/s 171 of the Corporation Act to take steps under the Act to acquire the land.

Thus, this argument that there was non-compliance of the provisions of the Company Rules is of no consequence. The other factors mentioned at Sr. no (ii), (iii) and (iv) were given due consideration and acquisition is not bad on that score.

It may however be seen that the agreement is required to be published. This has not been published. Non-publication of the agreement cannot be ignored. It has to be taken seriously. Failure of publication has been taken as a serious defect. Thus, non-publication of the agreement in the official gazette would be a material omission and would render the acquisition proceedings bad.

Thus I am of the view that the acquisition proceedings taken in this case cannot be sustained because notification published u/s 4 of the Act is bad on account of vagueness, as also because the agreement in question was not published in the gazette. On other grounds I have come to the conclusion that non-availability of the scheme before taking steps for acquiring the land and non-negotiation on the part of the respondent/Co-operative society with the owners of the land would not be material defect. However, the net result is that this petition is allowed with no order as to costs. The State would be at liberty to take fresh steps with a view to acquire the land.