
(1997) 09 AHC CK 0184
In the Allahabad High Court
Case No : C.M.W.P. No. 10969 of 1983

Parmod Goel and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 16-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition (Uttar Pradesh Amendment and Validation) Act, 1974 — Section 2

Land Acquisition Act, 1894 — Section 17, 17(4), 4, 4(1), 5A

Citation : (1998) 1 AWC 690

Hon'ble Judges : O.P. Jan, J; D.S. Sinha, J

Bench : Division Bench

Advocate : Rajeshwar Sahai, for the Appellant; S.C, for the Respondent

Final Decision : Dismissed

Judgement

O. P. Jain, J.—By this writ petition, filed under Article 226 of the Constitution of India, the petitioners seek the relief of certiorari quashing Notifications dated 15th July, 1978 and 17th July, 1978 issued u/s 4 and u/s 6 read with Section 17 of the Land Acquisition Act, 1894 (hereinafter called the Act), published in the Gazette on 4.11.1978. Copies of the notifications are Annexure-10 and Annexure-10A annexed to the petition. The petitioners further seek quashing of the award dated 18th March, 1980 given by the S.LAO.

2. The brief facts of the case are that the State Government issued the notifications for the acquisition of about one acre of land which was required for the construction of Gangoh bye-pass road in Saharanpur district. The Notifications dated 15th July, 1978 and 17th July, 1978 were published in the Gazette on 4th November, 1978 and the award was given by the S.L.A.O. on 18th March, 1980. The petitioners never raised any objection at any stage because, according to them, they had no notice of the proceedings. It is alleged by the petitioners that the acquisition proceedings are mala fide and no notice was published in the locality. It is further alleged that the proceedings were

conducted stealthily keeping the petitioners In the dark about the proceedings and the service of notice on the petitioners was deliberately avoided and suppressed.

3. We have heard Sri. K. M. Dayal, learned Senior Advocate appearing on behalf of the petitioners, Sri K. M. Garg, learned counsel appearing for respondent No. 5 and Sri Vinay Malviya, learned standing counsel representing respondent Nos. 1, 2, 3 and 4. However, no counter-affidavit has been filed on behalf of the respondent Nos. 1 to 4. Counter-affidavit has been filed on behalf of the respondent No. 5 and rejoinder-affidavit has been filed by the petitioners.

4. The first contention on behalf of the petitioners is that respondent Nos. 1 to 4 were actuated by malice and the proceedings have been deliberately suppressed. It is argued that the first attempt for acquisition was made in the year 1955 when proceedings were taken for acquisition of 8 acres of land. The respondents, it is alleged, wanted to construct the bye-pass road over an area which was not covered by the acquisition. Therefore a civil suit was filed which was decreed against the State. Thereafter 10.04 acres of land was sought to be acquired in the year 1959. That action was challenged by filing a writ petition which was allowed on 21st December, 1965 vide Annexure-3. When the attempts made by respondent Nos. 1 to 4 were frustrated, they became highly inimical and they made it a prestige Issue and started the proceedings which are now being challenged.

5. This contention has no force because the petitioners have not named any single officer of the Government who may have been displeased on account of filing of the suit or the filing of the writ petition. Incidentally it may also be mentioned that the suit and the writ petition was filed by respondent No. 5 Sri Inder Sen and not by the petitioners. During this period of more than 10 years which elapsed between the first land acquisition proceeding and the third land acquisition proceeding, a number of officers must have been transferred. It cannot be believed that every successor officer was prejudiced against the petitioners. This contention is, therefore, rejected.

6. The main contention on behalf of the petitioners Is that there was no publication of the notification u/s 4 of the Act at the convenient places in the locality. This averment has been made in paragraphs 16 and 24 of the petition wherein it is alleged that no notices u/s 4(1) of the Act were given bear the land or in the locality. No notices were served on the petitioners who were owners of the land. No attempt was made to serve petitioner Nos. 2 and 4 who were residing outside the village. It is argued by Sri K. M. Dayal, learned Senior Advocate appearing for the petitioners, that the contents of paragraph 24 of the petition have not been controverted by the respondent Nos. 1 to 4 who have not filed any counter-affidavit. It is argued that respondent No. 5 has supported the petitioners and has stated in paragraph 7 of his counter-affidavit that he himself was not given any notice of the proceedings of 1978 nor he had any knowledge of the same till the present petition was filed.

7. This argument appeared attractive at the first sight. However, It was rightly pointed out by Sri Vinay Malviya, learned standing counsel appearing on behalf of respondent Nos. 1 to 4 that the provisions of Section 4 of the Act were amended by Section 2 of Land Acquisition (U. P. Amendment and Validation) Act VIII of 1974 which provided that in Section 4 of the Act of 1894 in its application to Uttar Pradesh the following words shall be Inserted and be deemed always to have been inserted between the words "and" and "the Collector":

"except in the case of any land to which by virtue of a direction of the State Government under sub-section (4) of Section 17, the provisions of Section 5A shall not apply,"

8. In view of this amendment, it is clear that where a notification has been issued u/s 17(4) of the Act. the publication of notice u/s 4 of the Act at convenient places in the locality is not required in the State of Uttar Pradesh. The effect of this amendment was considered by this Court in Ajib Singh and others Vs. State of Uttar Pradesh and another, , wherein it was observed In paragraph 10 that on a reading of sub-section (1) of Section 4 along with the amendment made by the 1974 Act, it is clear that the public notice as contemplated by Section 4(1) of the Act is not applicable to a case where the notification has been issued u/s 4(1) read with Section 17(4) dispensing with the provisions of Section 5A of the Act. This authority was followed by another case Abdul Sattor and others v. State of U. P. and others 1994 ACC 370 (All) (Para 6). It is to be regretted that Sri K. M. Dayal, learned Senior Advocate was unaware of the amendment of 1974 and of the rulings cited above. Sri Vinay Malviya, learned standing counsel deserves a word of praise for bringing the amendment and the rulings to the notice of the Court. There is no dispute about the fact that by Notification dated 17th July. 1978 the enquiry u/s 5A was dispensed with. Therefore, the publication of notification at convenient places in the locality was not mandatory.

9. The next contention on behalf of the petitioners is that notification u/s 4 of the Act and the notification u/s 6 read with Section 17 sub-clause (4) of the Act though issued on two different dates, were published in the Gazette on the same day, i.e., on 4.11.1978. It is argued that this simultaneous publication of the two notifications is not in accordance with law. It is pointed out that u/s 17 sub-clause (4) of the Act. the notification dispensing with the enquiry u/s 5A can be issued only after the date of the publication of the notification u/s 4(1) of the Act. In support of this contention, learned counsel for the petitioners has cited State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others, , in which it has been held that the declaration u/s 6 has to be issued only after issue of notification u/s 4 even where urgency provisions of Section 17 are invoked in view of expression "after the date of the notification" in the amended Section 17(4) of the Act. It is clear from the authority cited by the learned counsel for the petitioners that the Apex Court was dealing with the provisions as they stood after the amendment of 1984 by Act No. 68 of 1984. We are dealing with

Notifications dated 15th July, 1978 and 17th July, 1978. By that time, the words "after the date of the notification" were not introduced in Section 17(4) of the Act. Therefore, the argument is of no avail to the petitioners.

10. Even if it is assumed for the sake of argument that the notification u/s 6 read with Section 17(4) of the Act has to be issued after the issue of notification u/s 4 of the Act and the two cannot be published simultaneously, in the facts and circumstances of the case, we do not find it a fit case in which the proceedings should be set aside on this ground.

11. It will be appropriate to mention some more facts at this stage. The first attempt for acquisition of 8 acres of land was made in the year 1955. After some litigation the second attempt was made acquisition of 10.04 acres of land to the year 1959. That notification was quashed by this Court by Judgment dated 21st December, 1965, a copy whereof is Annexure-3. It was under these circumstances that the third notification for acquisition of land was issued in the year 1978. Up to that time, respondent No. 5 Sri Inder Sen, who is a collateral of the petitioners, was the owner of the land. It was Sri Inder Sen who filed a civil suit and the writ petition. It is alleged by the petitioners in paragraphs 2, 11 and 12 of the petition that the land was earlier recorded in the name of Sri Inder Sen and others, collateral of the petitioners. Subsequently in consolidation operations the land came to the petitioners. The plots in dispute were allotted to the petitioners in consolidation proceedings and thereafter Sri Inder Sen had no concern with the same and new Nos. 1196 Kha and 1196 Ga were finally allotted to the petitioners. In paragraph 17 of the petition, it is alleged that Sri Inder Sen and his family members wanted to retain the land and became inimical to the petitioners. These averments have been controverted by respondent No. 5 Sri Inder Sen in paragraphs 3, 5, 6 and 8 of the counter-affidavit filed by him. This Court need not decide the inter se dispute between the petitioners on the one hand and respondent No. 5 Sri Inder Sen on the other hand. It is sufficient to say that according to the petitioners themselves, it was Inder Sen who obtained possession of a part of the land in the year, 1981 by Dakhalnama Annexure-6 dated 18th July, 1981. Therefore, it is abundantly clear from the record that at the time of acquisition, the petitioners had neither possession nor ownership in the land. It has been held in *State of Orissa v Dhobel Sethi* and another 1995 ACC 564 (SC), that any person claiming the land pursuant to a title derived after the notification cannot raise any dispute about the validity of notification issued u/s 17(4) of the Act. The same view has been reiterated in *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd.*, and others, . Therefore, this Court comes to the conclusion that the present petitioners had no locus stand to file the petition because on the date of the notification, they were not the persons affected.

12. The petitioners are also guilty of laches. The present petition has been filed in the year, 1983 and the notification sought to be challenged is of the year 1978. By the time the petition was filed, the award was also given by S.L.A.O. on

18th March. In order to explain the delay, the petitioners have claimed that they had no knowledge of the land acquisition proceedings prior to 1983. According to them, it was for the first time in 1983 that they came to know of the proceedings when they obtained a copy of the Khatauni in which there was a reference of an order passed by the S.L.A.O. This alleged absence of knowledge is not established from record. On the contrary, it is found that in a judgment given by Munsif, Hawaii, Saharanpur in respect of a part of the same land there is a clear reference of the Notifications dated 15th July, 1978 and 17th July, 1978. The judgment is Annexure-9. It is true that this judgment is between the State of U. P. and Sri Inder Sen (respondent No. 5) but the knowledge of Inder Sen will be attributed to the petitioners because Inder Sen was, according to petitioners themselves, their predecessor-in-title. Therefore, it must be held that the petitioners were aware of these proceedings in the year, 1981 if not earlier. Thus, the petitioners are guilty of laches and are not entitled to any relief from this Court

13. It has been held in *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Put. Ltd. and others* (supra) in paragraph 27 that mere retaining the possession or delay on the part of the authority to pass award are not grounds to challenge the notification u/s 4(1) and declaration u/s 6. and the laches was held to be ground to dismiss the writ petition.

14. The learned standing counsel Sri Vinay Malviya has cited *General Manager, Telecommunication and Another Vs. Dr Madan Mohan Pradhan and Others*, that once possession has been taken, validity of notification u/s 4(1) and declaration u/s 6 cannot be gone into. It is contended on behalf of the petitioners that they are still in possession. It is, however, not correct. It is apparent from the facts mentioned above that the road was constructed long before the notification of 1978. The first notification was issued in 1955 and the second notification was Issued In the year, 1959. It is mentioned in paragraph 12 of the petition that as the plots were under the road and In possession of the opposite parties, the petitioners could not take possession of the same. However, it is asserted on behalf of the petitioners that their predecessor-in-title, Inder Sen obtained possession of the land on 15th July, 1981 vide *Dakhalnama Annexure-6*. A perusal of the *Dakhalnama Annexure-6* shows that it relates to about 7 Bhs of land whereas the land which has been notified for acquisition is about one acre. Therefore, it cannot be said that the petitioners continued to remain in possession of the disputed land. The authority cited on behalf of the respondent Nos. 1 to 4 applies fully to the facts of the present case and the petitioners cannot be allowed to challenge the acquisition proceedings after they were ousted from possession and three years after the award.

15. There is yet another reason why this petition must fall. There is a well known maxim "*Saleus Populi Est Supremalex*" which means "Regard for public welfare is highest law. Individual welfare shall in case of necessity yield to that of community and that his property, liberty and life shall, in certain circumstances,

be placed In Jeopardy or even sacrificed for public good".

16. In the Instant case, land has been acquired for constructing a Bye-pass road and in fact road has already been constructed long back. If the notifications issued under Sections 4 and 6 of the Act are quashed, the public In general will suffer a lot of inconvenience. Therefore, this is not a fit case in which this Court should quash the notifications and the award in exercise of its powers under Article 226 of the Constitution of India.

17. In view of the above, the writ petition fails and is dismissed with costs which are assessed at Rs. 5,000.