
(2011) 02 AHC CK 0102
In the Allahabad High Court
Case No : Writ C No. 6916 of 1995

Prem Singh and Others

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 6, 6(1)

Citation : (2011) 02 AHC CK 0102

Hon'ble Judges : S.C. Agarwal, J;Prakash Chandra Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By means of this writ petition the Petitioner has challenged the notification issued u/s 4(1) of the Land Acquisition Act dated 30.1.1989 published in the official gazette for acquisition of the land of two villages namely Nagrauli and Basai Mustkil bearing Notification No. 59/II-5-89-193-AL/88. In this notification plot No. 1978 area 1 bigha 1 biswa 19 biswansi of the Petitioners situated in village Basai Mustkil was also included in the above noted notification. The notification u/s 4 of the Act was published in the daily newspaper Aaj and thereafter in newspaper Sainik. Declaration u/s 6(1) of the Act was published in the Gazette bearing Notification No. 283/II-5-90-193-AL/88 on 8.2.1990 and it was published in the newspaper Amar Ujala on 20.2.1990.

2. Thereafter, the Petitioners filed a writ petition challenging the aforesaid two notifications before this Court. This Court allowed the writ petition of the Petitioners along with the other writ petitions on 20.8.1993 and quashed the declaration issued u/s 6(1) of the Act and held that there was no urgency so as to dispense with the inquiry u/s 5A of the Act and directed that Special Land Acquisition Officer may invite objections and may pass appropriate orders. Notice was published in local newspaper on 20.11.1994 inviting objections u/s 5A of the Act within 21 days from the date of publication of the said notice. The Petitioners filed objections alleging that they are five brother and the land is covered by

boundary having some old constructions and nohra etc. and thus the land in dispute be excluded from acquisition proceedings. Declaration u/s 6(1) of the Act was published in the Gazette bearing No. 4347/1A-3-95-33-LA/88 dated 16.1.1995.

3. It is, submitted by learned Counsel for the Petitioners that the declaration u/s 6(1) of the Act could have been made on or before 20.8.1994 i.e. within one year from the date of judgment of this Court. The Collector invited objections on 20.11.1994 i.e. after expiry of the period of one year and thereafter declaration u/s 6(1) of the Act was made and published in the "Gazette on 16.1.1995. According to the Clause (ii) of first proviso to Sub-section (1) of Section 6 of the Act no declaration in respect to the land covered by notification u/s 4(1) of the Act be made after expiry of one year from the date of publication of the notification. Since the declaration u/s 6(1) of the Act has been made after expiry of one year hence, the declaration is illegal.

4. From the above facts and date of events it is evident and established that Notification has been issued not within the limitation period prescribed under Clause (ii) of first proviso to Sub-section(1) of Section 6 of the Land Acquisition Act, even calculating the same from the date of the judgment of this Court and excluding the period during which the proceedings were pending and stay order was operative.

5. The Constitution Bench in the case of Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, has held that where the declaration u/s 6 is quashed by the Court, fresh declaration must be issued within the same limitation period prescribed under the first proviso. Thus the Notification u/s 6 is hereby quashed.

6. Since now the limitation has expired, therefore the Notification issued u/s 4 of the Act cannot be used for further declaration u/s 6 of the Land Acquisition Act. Therefore, the Notification u/s 4 of the Land Acquisition Act is also quashed. The writ petition is allowed. No orders as to cost.