

(1982) 04 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10165 of 1981

Prithvi Nath Kapoor

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 23-04-1982

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 59, 59(6)

Citation : AIR 1982 All 349

Hon'ble Judges : V.K. Khanna, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : Ratnakar Bharti, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—This bunch of writ petitions challenges the validity of the notification dated 28th April, 1979, issued u/s 4(1) of the Land Acquisition Act, published in the U. P. Gazette dated 9th June, 1979, and the notification dated 26th May, 1981, published in the official gazette dated June 19, 1981 issued u/s 6 of the Land Acquisition Act. By these notifications the lands of some villages situate within the jurisdiction of the Nagar Mahapalika Allahabad are being acquired for establishment of Avas Colony under a Planned Development Scheme.

2. Some of the petitioners challenging the aforesaid notification have been decided by a separate judgment. Some arguments which have not been dealt with in that judgment are being decided in this judgment.

3. The submission first made by the petitioners learned counsel was that as the acquisition of the land is for the Allahabad Development Authority, the mandatory provisions contained in U. P. Urban Planning and Development Act, 1973 (Act 2 of 1973) were required to be followed and as the Master and Zonal Plans have not been prepared in accordance with the provisions of this Act, the notifications issued for acquiring lands for Allahabad Development Authority,

which has been created under the said Act, were invalid. We find no merit in this submission. Before the enforcement of Act 2 of 1973 there was another Act in U. P. which provided for the regulation of building operations with a view to prevent haphazard development of urban and rural areas. This was U. P. Regulation of Building Operations Act, 1958 (Act 34 of 1958).

Under this Act, the State Government had issued directions laying down the wholesome scheme required to be followed for making a plan under Sub-clause (f) of Direction 1 of the aforesaid Directions the expression "Master Plan" has been defined as plan of the regulated area prepared under Directions 10A of these Directions. Direction 10A provides that if in the opinion of the State Government any regulated area is required to be developed according to the Master Plan it may cause such a plan to be prepared. Sub-clause (2) of Clause 1 lays down the details which are required to be provided for in the Master Plan. After the Master Plan has been prepared, the same is required to be submitted to the State Government for approval. Sub-clause (7) reads as under :

"The State Government may either approve the Master Plan without modification or with such modification as it may consider necessary or reject the plan....."

4. In the instant case the stand of the respondents was that the Master Plan had been prepared under the U. P. Regulation of Building Operations Act, 1958 which was also subsequently approved by the State Government. To prove the approval of the said plan the respondents produced before us a copy of the letter dated Oct. 9, 1973 sent by the State of U. P. to the Controlling Authority, Allahabad, intimating that the Plan submitted had been approved by the State of U. P.

5. On June 12, 1973, the Governor of U. P. Promulgated U. P. Urban Planning and Development Ordinance, 1973. This Ordinance subsequently became an Act. The reasons for this enactment are given below :

"In the developing areas of the State of U. P. the problems of town planning and urban development need to be tackled resolutely. The existing local bodies and another authorities in spite of their best efforts have not been able to cope with these problems to the desired extent. In order to bring about improvement in this situation the State Government considered it advisable that in such developing areas, Development Authorities patterned on the Delhi Development Authority be established. As the State Government was of the view that the urban development and planning work in the State had already been delayed it was felt necessary to provide for early establishment of such Authorities."

6. Chapter II of the Act deals with declaration of developing areas and thereafter Chap. III provides for Master Plan and Zonal Development Plan. Relying on the provisions contained in these two chapters, counsel for the petitioner contended that the Master Plan and Zonal Development Plan had to be prepared in accordance with the provisions made under this Act and as this had not been done, the acquisition of land for the Allahabad Development Authority created under the aforesaid Act was invalid. This submission of the petitioners" learned

counsel does not take into account Section 58 of the said Act which deals with repeal etc. and savings, Section 59 (1) (a) and Section 59 (6) are relevant in this regard. Read together these provisions would indicate that anything done or any scheme made under the U. P. Regulation of Building Operations Act, would be deemed to have been done under the provisions of U. P. Urban Planning and Development Act, 1973 unless and until it is superseded by anything done or by any action taken under the provisions of the later Act.

Sub-section (6) of Section 59, therefore, clearly saves the Master Plan which had been prepared in the instant case, by the Allahabad Survey Division, Town Country Planning Department, U. P. in accordance with the U. P. Regulation of Building Operations Act, 1958. Hence, the provisions requiring the preparation of Master Plan and Zonal Development plan, as laid down in Chap. II of the Urban Planning and Development Act, 1973 were not required to be complied with. The reason for making Section 59 (6) is not for to see (sic) inasmuch as if the Master Plan had been prepared under the U. P. Regulation of Building Operations Act, 1958, there was no point in preparing the same in accordance with the scheme of this Act. In the counter-affidavit filed on behalf of the respondents it has been sworn that the Master Plan had been duly published for general information. Before us the Master Plan was produced. We are satisfied that the submission of the petitioners learned counsel about the invalidity of acquisition on the basis stated above, is without any substance.

7. Sri A. Kumar, appearing in the connected writ petitions Nos. 10780 of 1981, 10878 of 1981, made another submission which is linked with the argument stated above. The said submission was that under the proviso to Section 6 of the Land Acquisition Act, since the acquisition of the land was for the Allahabad Development Authority which is a "Company" within the meaning of the word defined in Section 3 of the Land Acquisition Act, compliance of Chap. VII of the Land Acquisition Act was a condition precedent and as in the instant case the provisions of the said Chapter had not been complied with the acquisition was invalid. In that connection counsel also urged that there was nothing in the notification issued u/s 6 of the (sic) whole or part of the compensation was to come from the public revenues hence the acquisition in the instant case could not be considered to be for the State Govt.

8. The Proviso to Section 6 relied upon clearly precludes the Govt. from making a notification under Sub-section (1) of Section 6 unless (i) the compensation to be awarded for such property is to be paid by a Company or is to come, (ii) wholly or partly out of (a) public revenue or (b) some fund controlled or managed by a local body. It is clear from the above proviso that if the acquisition is for a local body for the State itself mention of the compensation coming from public revenue is not required to be made. But in case of acquisition for a company the provisions relating to payment of compensation has to be made in accordance with the proviso to Section 6.

9. The argument of the learned Chief Standing Counsel Sri V.N. Khare was that

the Allahabad Development Authority is not a "Company" but is "Local Body". If we accept this submission of the learned Chief Standing Counsel the ground of invalidity of the notification issued u/s 6 would fall to the ground. The expression "local authority" has been denned in Section 4 (25) of the U. P. General Clauses Act as under :

" "Local authority" shall mean a municipal board or nagarpalika, nagar mahapalika notified area committee, town area committee, zila parishad, cantonment board, kshetra Samiti, Gaon Sabha or any other authority constituted for the purpose of local self-Government or village administration or legally entitled or entrusted by the State Government with the control or management of municipal or local fund."

10. We are now to consider whether the Allahabad Development Authority is a local authority and if that is so, the argument of the learned counsel for the petitioner would not be acceptable. For this purpose we have already quoted the definition of the expression "local authority."

11. After examining the provisions of the Act, we find that the Act had been enacted for making the provision for development of certain areas of the State of Uttar Pradesh according to the Master Plan and Zonal Development Plan. The Act extends to the whole of U. P. excluding cantonment areas and lands owned, requisitioned or taken on lease by the Central Government for the purpose of defence.

12. Chapter II deals with "Development Authority and its object," For the constitution of the Development Authority, the provision is to be found in Section 4. Sub-section (2) of Section 4 lays down that the Authority shall be a body corporate, whereas Sub-section (3) gives the details of the persons who would be entitled to become members of the same. The State Government has been authorised by Section 5 to appoint two suitable persons as the Secretary and Chief Accounts Officer, Further Sub-section (2) of Section 5 although confers power of appointment of employee on the Authority but that too is subject to the control of the State Government, u/s 6, the State Government has the discretion to constitute an Advisory Committee for the purpose of advising the Authority on the preparation of the Master Plan, and other matters relating to the planning of development. Section 7 lays down that the objects of the Authority shall be to promote and secure the development of the area according to plan and for that purpose it shall have power to acquire hold, manage and dispose of land and other properties to carry on the building, engineering, mining and other operations.

13. The next Chapter is regarding the Master Plan and Zonal Development Plan. Sections 8 and 9 deal with the manner in which the plans would be prepared whereas Section 10 requires that every plan, including master plan and zonal development plan for a zone shall be submitted to the State Government for its approval. It is only an approved plan by the State Government that can come

into force u/s 12 of the Act. There are other provisions which would show that the State Government has been conferred power by the Act for controlling the administration of the Development Authority to be created under this Act.

14. The functions assigned to the Development Authority are those which are essentially those of the State Government. These used to be the functions of the municipal boards and other corporate bodies, but with growing specialization the legislature felt the need of creating a separate Development Authority so that it could devote single mindedly to the objects of development on the lines of Master and Zonal Plans. An important feature which must be emphasised here is the power conferred by Sub-section (2) of Section 56 of the aforesaid Act on the Authority to make regulations. Sub- Section (3) further provides that until the Authority is established for an area under this Act any regulation which may be made under Sub-section (1) may be made by the State Government.

15. After considering the aforesaid provisions of the Act, we are of opinion that the Development Authority created under the aforesaid Act is constituted for the purpose of local self-government and as such it is a local authority within the meaning of that expression used in the U. P. General Clauses Act.

16. In Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, the Supreme Court held that Development Authority is a local authority and, therefore, the provisions of the Payment of Bonus Act were not attracted. We have already noticed above that the U. P. Act 2 of 1973 has been patterned on the lines of the Delhi Development Act. Most of the provisions of the Two Acts are similar. From the decision of this case it is clear that the Allahabad Development Authority is a local authority and for that purpose compensation was not required to be mentioned in the notification u/s 6 of the Land Acquisition Act.

17. Another aspect of the matter which may be dealt with here is that the Allahabad Development Authority has been entrusted by the State Government with the control and management over the local fund. The expression "local fund" has been defined by the U. P. General Clauses (Amendment) Act, 1975 as be-low :

" "Local fund" shall mean revenues administered by a body which by law or rule having the force of law is controlled by the State Government where in regard to the proceedings generally or to specific matters such as the sanctioning of its budget sanction to the creation or filling up of particular posts the making of leave pension or other rules, regulations or bye-laws and shall include the revenues of any other body which may be specifically notified by the State Government as such."

18. Chapter VII of the Act deals with finance, accounts and audit. Section 20 requires every Authority to have and maintain its own fund. Sub-section (3) confers power on the Authority to keep current account in any Scheduled Bank but such a power is subject to the direction of the State Government. By Sub-section (4) the State Government has been authorised to make such grants,

advances and loans to the Authority as the State Government may deem necessary for the purpose of the functions of the Authority under this Act. Under Sub-section (5) the Authority is further entitled to borrow money by way of loans from such sources as may be approved by the State Government. u/s 21, the Authority is required to prepare the budget in such form and at such time every year as the State Government may specify. u/s 22, the Statement of Accounts and other relevant records and annual statements of accounts are required to be prepared in such form as may be specified by the State Government, u/s 23 the annual report of every year is to be submitted to the State Government. By Section 24, the officers, members and employees of the Authority are entitled to get pension and provident fund as may be specified, by the State Government. Sub-section (2) of Section 24 deals with pension and provident fund and the same is also required to be regulated in the manner as the State Government may lay down.

19. From the review of the aforesaid provisions it would be seen that the Development Authority controls its fund. As such, the Development Authority is a local authority for this reason also. This aspect of the matter was also considered by the Supreme Court in *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, . The Supreme Court laid down the law in the following words :

"The Delhi Development Authority is endowed with all scheduled attributes and characteristics of a local authority and there is no reason to hold that it is not a local authority. The very nature of the work entrusted by the legislature to "the Development Authority is such that its life can be but transient. This by itself is no ground to hold that the Delhi Development Authority is not a local authority."

20. To us it appears that the controversy in hand is directly covered by the aforesaid decision. The two decisions cited by the learned counsel for the petitioner reported in *State of Punjab and Others Vs. Raja Ram and Others*, and *Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others*, do not apply to the facts of the present case. In the first case, the land had been acquired for the Food Corporation of India which was held to be a Company. One of the questions involved in the second case was whether the State Trading Corporation was a local authority, as defined by Section 3 (31) of the General Clauses Act, 1897. It was held that it was not because it was not any authority legally entitled to or entrusted by the Government with control or management of a local fund. Such is not the position in the present case, We have demonstrated above that the Development Authorities intended to be created have been conferred full power of controlling and managing the local fund. Simply because the State Government has supervision that does not mean that the Development Authorities to be created under this Act do not have the control and management of the local fund.

21. The next submission made by the learned counsel for the petitioner was about indiscriminate exemption of some of the portions of land built upon whereas constructions of some other persons including that of the petitioners

had been acquired. So far as the petitioner Prithivi Nath Kapoor in Writ No. 10165 of 1981 is concerned it may be stated that a portion of the land, which belonged to the petitioner and which had been notified earlier u/s 4 of the Land Acquisition Act, has been released. It has been said so clearly in the counter-affidavit. In this respect we may refer to para 5 of the counter-affidavit of Sobh Nath Gupta which says that "the State Government by notification u/s 6 of the Act has excluded the old built up portions of the area which were existing prior to the notification u/s 4 of the Act. The detail in this regard is also mentioned in Schedule I annexed to this counter-affidavit."

22. Similar appears to be the position of Writ No. 10078 of 1981.

23. Apart from the above in these petitions as well as in several others, allegations have been made for discriminate exemption with a view to demonstrate hostile discrimination in the matter of acquisition. The most important illustration relied upon practically by everybody was that of Sri Dharam Vir son of Ram Bharosey who is presently the Dy. Minister in the Central Government. The fact appears to be that the total area of plot No. 1282 belonging to him was 2 bighas 12 biswas which had been notified u/s 4 of the Land Acquisition Act. Subsequently on survey it was found that the built up portion on 19 biswas of the aforesaid land was not in any manner interfering with the implementation of the Scheme by the Allahabad Development Authority and as such the same was excluded from the notification u/s 6 of the Act.

However, the rest of the area, namely, 1 bigha 13 biswas of the aforesaid plot has been acquired, and possession has also been taken. Another instance strongly relied upon was that of Smt. Prabha Bhargava wife of Naresh Bhargava who is said to be a businessman of importance of the city of Allahabad. She is the owner of three plots, viz. 1302, 1298 and 1299. The total area 11 bighas 18 biswas was notified u/s 14 of the Act. Subsequently on re-survey 16 biswas of the land of Plot No. 1302 was found built upon which also had a swimming pool. As such, the same was excluded from acquisition. Rest of the area, namely, 11 bighas 3 biswas has been acquired. The third illustration was that of Shyam Engineering Works which was recorded over a number of plots measuring 6 bighas 2 biswas, 8 biswas 2 dhoors was found to be built upon and therefore, that was left out on the remaining land belonging to the same had been acquired.

24. From the above illustration strongly relied upon we find that the plea of hostile discrimination made by this petitioner and the petitioners of the other writ petitions has no substance. In the counter-affidavit filed on behalf of the respondents it has been averred that only those constructions which existed prior to the notification issued u/s 4, which did not, in any way, hamper or damage the execution of the scheme had been left out. We have no reason to doubt the correctness of this submission made in the counter-affidavit of Sobh Nath Gupta who is a responsible Officer. No material was also brought to our notice which could controvert the aforesaid assertion. We have already said in the connected writ petition that there was no impediment in the power of the State Government

in acquiring the constructed portions, as the word "land" includes superstructures. We need not elaborate this point.

25. In Writ Petition No. 10165 of 1981, the (case) further made was that no hearing had been given u/s 5A. For this purpose, the petitioner's learned counsel relied on the statement made by the petitioner in his affidavit and also on the affidavit of the learned counsel who appeared for the petitioner. We examined a number of files of Section 5A proceedings for satisfying ourselves as to whether a hearing had been given. In this case, so also in many others We found that arguments were heard by the Special Land Acquisition Officer. The order sheet noting that the arguments had been heard in all the cases had been signed either by the counsel appearing for the objectors or by the objectors themselves. In this view of the matter, we are not prepared to accept the petitioner's case that his counsel was not heard. The explanation offered only was what the signatures of these petitioners had been obtained on the order sheet when they were blank. We are unable to place any reliance on this theory.

Shobh Nath Gupta was present in the Court. We put a question to him about the aforesaid fact of having obtained the signatures on the order sheets when they were blank. He denied the same. We are, therefore, unable" to hold that the hearing u/s 5A was not given. In fact, hearing was given to the petitioner of this petition and all others. One must notice that nothing was required to be said in support of the objections filed by the petitioners. We also had seen the report submitted by the Special Land Acquisition Officer to the State Government u/s 5A. Hence, the argument that there was no report also has no substance. After seeing the order sheets some of the learned counsel themselves found it difficult to pursue the matter relating to the hearing having not been granted to the objectors.

26. Writs Nos. 10147, 10148, 10155 and 10161 were argued by Sri H. P. Dubey, His emphasis was that the constructions involved in Writ No. 10147 was very old. We need not go into this question any further, as we have already dealt with this aspect of the matter above. His arguments also on the points which have already been decided by us.

27. In Writ No. 11211 of 1981 Sri S. S. Bhatnagar urged that since the land had been purchased by the petitioner from the Co-operative Society for construction of the house hence the acquisition of the land of the petitioner was not for a public purpose covered by the Land Acquisition Act. The counsel urged that the purpose for which the land is intended to be acquired has already been achieved by the construction of the house by the petitioner. The submission is not tenable. Apart from the fact that there is a dispute between the parties about the fact as to whether the petitioner has constructed upon the land or not, another thing to be noted is that establishment of an Avas Colony for the general public is one thing and construction of a house by an individual is another thing. The two things cannot be kept at par.

28. For the reasons given above and in Writ No. 1(1603 of 1981 we dismiss all the writ petitions summarily. The stay orders passed in all these petitions are hereby discharged.