

(1975) 05 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 25 of 1975

Puran	Vs	APPELLANT
The State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 11-05-1975

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 4

Citation : (1975) 4 ILR HP 389

Hon'ble Judges : Chet Ram Thakur, J

Bench : Single Bench

Advocate : B.B. Vaid, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

Chet Ram Thakur, J.—The petitioner has challenged the validity of the notification No. 47-4/47-HORT. SECTT, dated the 7th April, 1972, whereby the Government expressed its intention for acquisition of land for public purpose, namely for the construction of building at Naubahar, Simla-2. This notification was issued under the provisions of Section 4 of the Land Acquisition Act (hereinafter called the Act). The owners of the property are Sarvshri Gopal and Surinder sons of Shri Sehaj Ram, Radio Mechanic, Middle Bazar Simla. The petitioner claims himself to be a tenant of portion of the building. According to him he is running a canteen in a portion of the premises of the building for the last more than 9 years on payment of rent to its owners. The property has since been acquired and the owners have received compensation. The petitioner, it appears, has not been paid any compensation for his interest as an occupier of the premises. According to him, he raised objections to the said acquisition u/s 5-A of the Act. He had also pointed out therein that no public purpose for acquisition was made out in the notification u/s 4. The copy of the objections is Annexure B. The petitioner had also contended that before any award was made it was obligatory on the part of the Collector to have issued notice to the petitioner, who was an occupier

of a portion of the premises and for failure of the Collector to issue a notice the acquisition proceedings were invalid. However, this objection has not been pressed by the learned counsel for the petitioners during the course of arguments. Therefore, the only attack that survives for consideration is the validity of the notification Annexure A, issued u/s 4 of the Act.

2. According to the petitioner the notice did not specify the purpose for which the property was acquired and as such the notification was illegal and was liable to be quashed, and support is sought to be derived from *Munshi Singh and Others Vs. Union of India (UOI)*, .

3. The learned Advocate-General has contended that in the first place the petitioner is not a person interested, inasmuch as he is only a licensee and not a tenant, and that being so, he has got no locus standi to challenge the validity of the notification. However, it is apparent from the record that the petitioner is in occupation of the premises and the only thing that the respondents contend is that he is a licensee and not a tenant. But the fact remains that the petitioner is still in occupation of the building whether in the capacity of a tenant or a licensee, therefore, he is a person interested within the meaning of Section 3 (b) of the Act. According to this definition any person claiming an interest, no matter whether the claim is valid or otherwise, is a person interested and it is not for the Collector to determine the question of the right of any person. He is only concerned with the determination of the compensation and authorised to apportion the same between the persons claiming the compensation irrespective of the fact whether they have got a right or not. The only thing is that they must appear before the Collector and demand the same on one ground or the other and if there is any objection from any quarter that he is not a person interested then that matter must be referred to the civil court by the Collector for the determination of their right to apportionment of share in the compensation. Therefore, in these circumstances the petitioner who has alleged himself to be a person in occupation of building is, in my opinion, a person interested and it was for the Collector to have determined the compensation and if there was any objection he should have forwarded the same to the Civil Court. However, we are not concerned any further with this point. What we are concerned with is, whether the petitioner has a locus standi, and, it is quite apparent that he alleges himself to be a person interested because of the fact that he is in occupation of a portion of the premises and, therefore, he can question the validity of the notification.

4. The expression "public purposes" has been defined under Clause (f) of Section 3 of the Act and includes the provision of village-sites in districts in which the appropriate Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision. "Public purpose" therefore, means a work from which the public can in any way derive benefit or any object or aim which may promote the public interest or which would result in an advantage to the public. The object of the notification u/s 4 is to make a

public announcement of the fact that the land, is needed or likely to be needed for a public purpose in any locality and to enable the authorities to carry on preliminary investigation with a view to find out after necessary survey and taking of levels and if necessary digging or boring into the sub-soil whether the land is adapted for the purposes for which it is sought to be acquired. The notification mentions the purpose as "for the constructing of building at Naubahar, Simla-2". Therefore, it cannot be said that this is not a public purpose or it is vague. Construction of a building by the Government pre-supposes that it is likely to be utilised by the Government for office or residential accommodation for its officers. It cannot be taken to mean that the building which is to be constructed after the acquisition of the land will be utilised for some private purposes. Therefore, in my opinion, there does not appear to be any ambiguity in this notification so as to say that it does not disclose or satisfy the "public purposes". The object, as already stated, of a notification u/s 4 of the Act is to enable the persons authorised to carry out a preliminary investigation to find out whether the land is adapted for the purposes for which it is sought to be acquired. The land in question in the instant case is sought to be acquired for constructing building and therefore, it has to be ascertained after survey by the person clothed with the authority to enter upon the land after the issuance of the notification that the land is fit and suitable for construction purposes. Therefore, in my opinion, there does not appear to be anything wrong if it has not specifically been mentioned therein that it is being acquired for residential purposes. The very purpose of constructing building is for residential or for office purposes by the Government or for any other purposes connected with the governmental functions to be performed by its officers and servants.

The authority cited does not assist the learned counsel for the petitioner because in that case a notification was issued by the U. P. Government under the U. P. (Regulation of Building Operations) Act. 1958, declaring Ghaziabad a regulated area u/s 3 of that Act. The Controlling Authority u/s 4 of the Regulation Act was constituted. At a later date a notification was issued u/s 4 of the Land Acquisition Act by the State Government declaring its intention to acquire land measuring about 34.000 acres in 50 villages of Ghaziabad for Planned development of the area. Two successive notifications u/s 4 were issued at later dates whereby the area intended to be acquired was reduced. Subsequently the appellants in that case made an application to the Special Land Acquisition Officer for supplying a copy of the scheme of the planned development for which notification u/s 4 had been issued to enable them to make representations at the hearing of the objections filed u/s 5-A of the Land Acquisition Act. It was mentioned inter alia, in that application that the Government had not published the scheme of the planned development and without a copy of the scheme for which the notification had been published "no forceful arguments could be submitted." This application it appears was not accepted by the Land Acquisition Officer and subsequently when the order was challenged in the High Court, it was agitated that the notification u/s 4 was too vague and afforded no adequate basis for the lodging

of objections u/s 5-A of the Land Acquisition Act. But this objection was also repelled and the appellants' writ petition was dismissed. Their Lordships of the Supreme Court, however, held that the words "planned development of the area" as given in the notification were wholly insufficient and conveyed no idea as to the specific purposes for which the land was to be used. Their Lordships further held that after the Amending Act 38 of 1923 which came into force on January 1, 1924 that Section 5-A was inserted in the Acquisition Act. Up to that time the view was that the wishes of the owners of the land were wholly irrelevant but after the insertion of Section 5-A the position has completely changed and it cannot be said that the owner's wishes are not relevant and that he does not need an opportunity to file his objections. To take such a view would render Section 5-A otiose. If it has any purpose and if it has to be given its full effect the person interested in the land proposed to be acquired must have an opportunity to submit his objections and that he can only if the notification u/s 4 (1) while mentioning the public purpose gives some definite indication or particulars of the said purpose which would enable the persons concerned to object effectively if so desired. In the absence of such specific or particular purpose being stated the objector cannot file any proper or cogent objections u/s 5-A which he has a right to do under that provision, and it was on account of the vagueness and indefiniteness of the public purpose stated in the notification u/s 4 (1) and in the absence of any proof that the appellants were either aware of or were shown the scheme or the Master Plan in respect of the planned development of the area in question the appellants were wholly unable to object effectively and exercise their right u/s 5-A of the Land Acquisition Act.

In the instant case the petitioner filed his objections as contemplated u/s 5-A of the Act in June 1973. In these objections he pointed out that there is no public purpose as required under the law for which land can be acquired and it was incumbent upon the authorities to specify the object and the public purpose, and that the objector was running a good business in the premises in question and the acquisition of his premises would amount to disrupting his business. From the record of the Collector at page 135, it appears that the objectors were given a personal hearing consequent to the filing of their objections. While dealing with these objections it has been observed that he was running canteen business in the land of the second objectors, i.e. Sahai Ram and others, who are receiving rent from him. It appears that before the Collector the petitioner did not fully press his objections and that is why they were reflected. But the fact remains that there is no such thing whereby it can be said that the petitioner had in any way been hampered or prejudiced by not specifically mentioning the words "for residential purpose or for official use" after the words "constructing of building" in the notification, so as to file his objections. In the objections the only idea was that the purpose was not stated and that he was running a canteen. So, in my opinion, there is no vagueness or indefiniteness in the notification so as to debar him from filing his objections under Section 5-A of the Act. The petitioner was represented by a lawyer as the record reveals. The notification, as would be

apparent was issued on 29th April, 1972 whereas the objections it appears, were filed by the petitioner in the year 1973, although there is no date given on the objections filed but from the Vakalatnama, filed with it. It appears that the date was 16th June 1973, Section 5-A (1) says that if any person interested in any land which has been notified u/s 4 Sub-section (1) as being needed or likely to be needed for a public purpose or for a company may within thirty days after the issue of the notification object to the acquisition of the land or of any land in the locality as the case may be. That way the objections were also time barred and should not have been looked into. However, the objections which were filed although belated were considered by the appropriate authority and they were rejected. Therefore, the petitioner cannot now contend that he was prejudiced because of the fact that the public purpose had not been stated in the notification u/s 4 of the Act.

5. The result, therefore, is that the petition fails and is hereby dismissed however, no orders as to costs.