

(1998) 05 AHC CK 0060

In the Allahabad High Court

Case No : C.M.W.P. No. 32187 of 1990; Connected with C.M.W.P. No's. 33688 of 1990 and 1308 of 1991

Raghubans Mishra

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 06-05-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(4), 3, 4, 4(1)
Constitution of India, 1950 — Article 14, 19, 226, 25, 26

Citation : (1998) 3 AWC 1830

Hon'ble Judges : R.K. Mahajan, J; D.S. Sinha, J

Bench : Division Bench

Advocate : A.K. Misra, D.S. Tiwar and A.N. Tripathi, for the Appellant; S.C., Ramsh Chandra, Ashok Bhushan, H.C. Kharbanda and S.D. Pathak, for the Respondent

Judgement

R.K. Mahajan, J.—This order will dispose of all the three writ petitions mentioned above as they involve common questions of fact and law.

2. The emergency provision and other relevant provisions of Land Acquisition Act, 1894 (for short the Act) have been invoked for construction of 500 bedded hospital at Basti. The requisite Notification under Sections 4(1) and 17 of the Act was issued on 27.9.1990 and was published in Gazette on 13.10.1990 and the Notification u/s 6 of the Act was issued on 8.11.1990 and was published in the Gazette on 24.11.1990. The Notifications under Sections 4 and 6 of the Act were also published in two daily newspapers in accordance with the Rules as mentioned in the counter-affidavit.

3. In these cases interesting questions has been raised from the point of view of the petitioners. The petitioners have challenged the impugned Notifications on the ground of Articles 25 and 26 of the Constitution of India alleging that major portion of plot No. 121 has also been acquired whereas on that plot there was a temple of Lord Shiva along with six rooms of the size of 14" 9 and 1/2" for

religious guests, worshippers, saints and mahatmas. The impugned Notifications have also been challenged on the ground that the objections u/s 5(2) of the Act were not heard. The challenge has also been made on the ground that the adjacent plot Nos. 122, 123 and 124 which are open vacant land and whereon no temple is situated, have been left from acquisition on account of illegal gratifications whereas except only 3 biswas of land of plot No. 121, total remaining portion of plot No. 121 has been acquired. It is also one of the grounds of challenge that the land under deity cannot be acquired. Therefore, the petitioners have prayed for quashing of impugned Notifications and for issuance of mandamus commanding the respondents not to interfere in possession of petitioners over the land in dispute and not to demolish the temple and shops etc. The details of the plots need not be given as they are subject matter of Notifications.

4. The plea of respondents is that 3 biswas of land in plot No. 121 has been left for the religious purpose. According to the respondents, the rooms have been constructed in the corner of the land with a view to get the land exempted from the acquisition and the constructions were recently made, i.e., three months old on 10th July, 1991. It is also averred that there is no violation of Sections 4 and 6 of the Act. The Notifications were published in the Gazette and the declaration u/s 17 of the Act was also made. The respondents have also taken the plea that the impugned Notifications are not violative of Articles 25 and 26 of the Constitution of India.

5. First of all, we would deal the question as to whether the impugned acquisition proceedings are violative of the constitutional provisions of Articles 25 and 26 of the Constitution of India or not. Sri A. N. Tripathi learned counsel for the petitioner contended that Article 26 of the Constitution guarantees freedom to manage religious affairs and Article 25 of the Constitution guarantees free profession, practice and propagation of religion. Sri Tripathi further contended that the three biswas of land which has been exempted from the acquisition is not sufficient for holding rituals, religious melas and other functions connected with Shiv pooja. The provision of Article 25 of the Constitution reads as under :

"25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice ;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.--The wearing and carrying of Kirpans shall be deemed to be

included in the profession of the Sikh religion.

Explanation II,--In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

The provisions of Article 26 of the Constitution are also quoted here :

"26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes ;

(b) to manage its own affairs in matters of religion ;

(c) to own and acquire movable and immovable property : and

(d) to administer such property in accordance with law."

6. A bare perusal of these constitutional provisions makes it crystal clear that these rights are not of an absolute character and are subject to reasonable restrictions. No doubt every religious denomination has the right to own and acquire property belonging to a religious body but it does not prevent such property from being acquired by authority of law. See *Raja Suriya Pal Singh Vs. The State of U.P. and Another*, and *Mahant v. State of Punjab*. AIR 1981 SC 1376. We are unable to be swayed by the submissions of learned counsel for petitioners as the State in its sovereign function under the theory of Eminent Domain has acquired the property for the well-being of public at large by establishing hospital with foreign aid. The establishment of hospital is public purpose of welfare in nature and, therefore, the same can never be presumed to have been prohibited by Lord Shiva and it apparently involves welfare of public at large. We are of the view that the rooms appear to have been constructed after commencement of the acquisition proceedings. Three biswas of land has already been exempted for the purpose of temple. In our opinion, the acquisition proceedings are not liable to be interfered with by this Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

7. Sri Ashok Bhushan learned counsel for the State has cited two authorities of Apex Court which squarely negates the submissions of learned counsel for the petitioners. First is *Akhara Shri Brahm Buta, Amritsar Vs. State of Punjab and Others*, of the Bench presided over by his lordship Hon'ble Mr. Justice M. M. Punchhi (as he then was and now Hon'ble the Chief Justice of India) wherein considering scope of Articles 14 19 25 and 26 of the Constitution of India, it has been ruled that the acquisition of Mandir of Shivji and building of Akhara is not violative of Articles 14 19 25 and 26 of the Constitution of India. The other authority is *Mohammad Ali Khan v. Special Land Acquisition Officer. Lucknow Nagar Mahapalika. Lucknow and others*, AIR 1978 All 280, where it has been held that the Land Acquisition Act cannot be interpreted in such manner as to

exclude land covered by mosque or grave from acquisition. It has been further held that there is no violation of Articles 25 and 26 of the Constitution. The Supreme Court has approved similar view in *Dr M. Ismail Frauqui and Others Vs. Union of India (UOI) and Others*,

8. Further, if we look to the definition of expression "land" within the meaning of the Land Acquisition Act, its clause (a) of Section 3 provides that the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. Thus, it does not exclude the constructions raised by the petitioners in the shape of shops, etc. just to avoid the acquisition. We are of the view that there is no violation of Articles 25 and 26 of the Constitution in the instant case. We are also of the opinion that there is also no violation of Section 4 of the Act at all, as after perusal of the defence of State it is clear that there is sufficient compliance of Sections 4 and 17 of the Act.

9. Sri Ashok Bhushan learned counsel for the State has also brought to our notice another decision of Apex Court, *Ghaziabad Development Authority Vs. Jan Kaluan Samiti, Sheopuri, Ghaziabad* and another, , where it has been held that in view of proviso to Section 4(1) (as inserted by U. P. Amendment by Act No. 8 of 1974 of Land Acquisition Act, 1894), the mandatory requirement of the publication of the notification in the locality was dispensed with in case where the Government had opined that the land was urgently needed, u/s 17(4). When the authorities have dispensed with the enquiry u/s 5A, the requirement of local publication shall not apply.

10. Sri. A. N. Tripathi learned counsel for the petitioner submitted that there is Notification signed by the Secretary of the Government and not issued by the Collector and the substance of the Notification has not been published by the Collector in the local newspaper or locality and as such whole acquisition proceeding becomes void but, in our opinion, this submission too is of no avail and is wholly irrelevant in view of the U. P. Amendment of 1974 which has been approved by the Supreme Court authority referred to above. If the submission of learned counsel for petitioner is accepted, the entire purpose of Section 17 of the Act would be defeated. In this case the Government published Notifications u/s 4 read with Section 17 of the Act and thereby enquiry u/s 5A was dispensed with.

11. Sri A. N. Tripathi learned counsel for petitioners has also submitted that the land acquisition proceedings have been conducted on mala fide and extraneous considerations inasmuch as only 3 biswas of land of plot No, 121 has been exempted for Shivalaya and entire plot No. 121 has not been exempted whereas adjacent plot Nos. 122 and 123 have been exempted. We do not find any unreasonableness or arbitrariness in not exempting entire plot No. 121 and in exempting plot Nos. 122 and 123 because in each and every acquisition, this position is bound to occur as at the outer end of every acquired area the adjacent plots will have to be left, therefore, if such type of arguments will be allowed, then no piece of land would be acquired.

12. Sri. G. N. Verma learned counsel for petitioners also advanced arguments on the same line of Sri Tripathi. He submitted that Section 4 Notification is essential even where Section 17 is invoked. In our opinion, in view of U. P. Amendment by Act No. VIII of 1974 and also in view of the fact that in the instant case Notifications u/s 4 read with Section 17 have been made in September, 1990, this submission has no legs to stand.

13. Learned counsel for the petitioners cited numerous decisions but in view of the local amendment, those decisions are of no avail for the present petitioners and, therefore, they need not be referred.

14. For the reasons recorded above, in our considered opinion, there is no sufficient reason or justification for exercise of the discretionary jurisdiction of this Court under Article 226 of the Constitution and, therefore, no interference by this Court is called for quashing the Notifications which are subject-matter of all the three writ petitions. Thus, the writ petitions fail and are dismissed.