
(1957) 01 AHC CK 0017
In the Allahabad High Court
Case No : Civil Miscellaneous No. 2039 of 1956

Rajan Singh and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 01-01-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 10, 11, 12, 13, 14

Citation : AIR 1959 All 635 : (1957) 27 AWR 437

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

Advocate : J.N. Chatterji, for the Appellant; B.D. Gupta and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.L. Chaturvedi, J.—This is a petition under Article 226 of the Constitution. It arises in the following circumstances :--

2. The petitioners are owners of certain plots of land situate in villages Bisokhar and Begamabad, pargana Jalabad, district Meerut. The Modi Spinning and Weaving Mills Co, Limited is situated near the petitioner's plots. Under a scheme, which is subsidised by the Government of India, there was a proposal to construct certain buildings for the residence of the labourers employed in the mills and also for other amenities for the staff and workers.

The company proposed acquisition of five bighas and odd of land in village Begamabad and a little more than 12 bighas in village Bisokhar. The Government made some inquiries and it appears from paragraph 6 of the counter-affidavit that the company has actually deposited the estimated costs of those constructions with the Government in compliance with a letter sent by the Land Acquisition Officer to it on the 10th of February, 1955. The Land Acquisition Officer then recommended to the Government that a notification u/s 4 of the Land Acquisition Act may be issued and a notification was duly published in the

gazette dated 12th September, 1955.

The notification shows that the land was to be acquired for constructions in connection with the subsidised scheme. There was some mistake in the notification in describing the land to be acquired and the mistake was corrected by subsequent notifications dated 12th October and 24th November, 1955, which were also duly published in the gazette. The petitioners filed objections u/s 5A of the Land Acquisition Act and the Land Acquisition Officer, after hearing the parties, submitted his report on the 15th of May, 1956, recommending the acquisition of the land.

After the receipt of the report, the Government issued a notification under Sections 6 and 17 of the Land Acquisition Act which was published in the U. P gazettes dated 21st June and 29th June, 1956. The present petition was then filed on 22nd August 1956, praying for the quashing of the notification issued under Sections 6 and 17 of the Land Acquisition Act.

3. The learned counsel for the petitioners has urged only one point in support of the petition. His case is that the land in this case is being acquired for a company, namely, the Modi Spinning and Weaving Mills Company Limited and that being the position, the provisions of Part VII of the Land Acquisition Act are attracted to the case and, as no agreement had yet been entered into between the company and the Government as required by Sections 39 and 41 of the Land Acquisition Act, no notification u/s 6 or 17 of the Act could legally be issued,

I think that there is force in this contention. The provisions of Section 39 of the Land Acquisition Act are important and they may be quoted in full. They are--

""39. The provisions of Sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned."

Section 41 says that if the appropriate Government is satisfied that the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith and that the work is likely to prove useful to the public, it shall require the company to enter into an agreement with the appropriate Government providing for the matters enumerated in the section.

These matters include the payment to the Government of the costs of the acquisition, the transfer of the land to the company, the terms on which the land shall be held by the company and, where the acquisition is for the purpose of erecting dwelling houses or the provisions of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided.

Every such agreement is to be published in the official gazette u/s 42 of the Act, Section 43 then makes an exception in certain cases, namely, where the land is

being acquired for any railway or for a company for the purpose for which under any agreement with the company the Secretary of State for India in Council, the Secretary of State or the Central or the State Government was bound to provide land.

4. The provisions of Section 39 quoted above would show that there is a clear prohibition against the application of the provisions contained in Sections 6 to 37 in cases where the land is being acquired for any company till the company has executed an agreement mentioned in the following sections. It is a matter of admission in the case that no such agreement, as mentioned in Section 41, has yet been executed by the company in favour of the Government.

The notification under Sections 6 and 17, therefore, is in clear violation of the provisions of Section 39 of the Land Acquisition Act. The prohibition is against the application even if the prohibition is a general one extending over all Sections 6 to 37 of the Act. According to this section, no notification should be issued either u/s 6 or Section 17 till the company has entered into an agreement.

5. Mr. B. D. Gupta, who appears for the company, contended (hat Section 17 is an exception to the provisions of Section 39 because a reading of the provisions of Section 17 shows that if the State Government is satisfied that there is urgency in the matter, it may, under Sub-section (4) of that section, do away with the application of Section 5-A of the Land Acquisition Act and if it does so, a declaration u/s 6 of the Act may be made. Similar-ly, under Sub-section (1) of Section 17, the Government is authorised in caseis of urgency to expedite the taking of possession of the land by the Collector and the Collector need not wait till an award has been given but may take possession of the land on the expiration of 15 days from the publication of the notice mentioned in Section 9(1) of the Act.

Sub-section (1) applies to the case of a company also and the argument of the learned counsel is that, where the acquisition is made for a company, it is open to the Government in cases of urgency to apply the provisions of Sub-sections (1) and (4) of Section 17. I am unable to accept this contention because, if accepted, it would clearly lead to a con-tradiction between Sections 17 and 39. Section 39 is very clear and definite and it excludes the operation of the provisions of Section 17 of the Act where the acquisition is to be made for a company unlts the company has entered into the required agreement.

The only way to harmonise the two provisions and to make them consistent with each other is to hold that the provisions of Sub-sections (1) and (4) of Section 17 can be put into operation where the acquisition is for purposes of a company only after the company has entered into an agreement with the Government! as required by Section 39. The moment such an agreement has been entered into and this need not take much time, Section 39 would cease to apply and the Government! can issue a notification u/s 6 and also notifications under Sub-sections (1) and (4) of Section 17.

In the instant case, if the company had entered into an agreement with the Government immediately before or after the issue of the notification u/s 4, there would be no difficulty in the application of the provisions of Section 17 to the case, because the provisions of Part VII would then be satisfied and the prohibition contained in Section 39 would disappear. But that is admittedly not the position as no agreement has yet been entered into.

6. The learned counsel for the State argued that the provisions of Part VII have been framed in the interest of the Government and it is open to the Government to waive those provisions and to proceed to apply the provisions of Section 17 of the Act to any particular case to which it likes to do so. I am unable to accept this argument. The provisions are contained in an act of Legislature and the prohibition contained in Section 39 is clear and definite, having a mandatory operation. Part VII nowhere authorises the Government to waive the provisions of that Part. It may further be stated that the provisions have not been enacted for the particular benefit of any Government but they have been enacted for the benefit of the persons for whom the acquisition is actually made.

The Government, as a trustee of the interest of those persons, is expected to provide suitable conditions and terms in the agreement and these terms in the agreement are to be concerning the time within which the constructions are to be made, the conditions on which and the manner in which the houses are to be constructed or amenities are to be provided. The ultimate benefit to be conferred by these provisions is the benefit on the class of persons who is to occupy the dwelling houses constructed under the scheme. It is not a personal matter of the Government that it can be said that it is entitled to waive the provisions of Part VII.

7. The next argument of the learned Junior Standing Counsel is that the present acquisition is being made not only for the company but also for purposes of the Government as the scheme is a scheme prepared by the Government which has promised to subsidise it. The details of the scheme are given in paragraph 5 of the counter-affidavit sworn to by Shri Prem Narain Saxena, Assistant, Housing Department of the U. P. Civil Secretariat at Lucknow.

The scheme appears to be a Scheme prepared by the central Government and it lays down the minimum standards of accommodation, standard costs and also provisions for financial assistance. The management of the tenements constructed is to be entrusted to a committee consisting of representatives of the employer and the employee and a chairman nominated by the State Government and the allotment of tenements is to be governed by the rules framed under the scheme. But the scheme itself provides that the employer has to enter into an agreement with the Government of India.

The scheme will be binding on the employer because of the agreement that he has to enter into. It is not known whether he has entered into the agreement required by the scheme even and, in spite of the excellence of the scheme, if the

position is that it is not binding on the employer, the matter would not help the dwellers of the tenements in any manner. The Government has proceeded throughout in this case as if the acquisition is being made for purposes of the company and has actually taken a deposit from the company of the entire costs of the acquisition.

There is no suggestion anywhere in any of the notifications or in any of the affidavits filed in the petition that the acquisition is being made also for purposes of the State Government or the Union Government. After the acquisition of the land, it is the company which will be the owner of the land. If the contention of the learned Junior Standing Counsel were correct that the acquisition is being made for purposes of the State Government also, something would have been said to that effect in the counter-affidavits filed on behalf of the respondents but no such position was taken.

The contention of the learned counsel is not that the land is not being acquired for the company. His contention is that it is being acquired both for the company and the State Government. That to my mind, is an impossible position, and it must be one of the two for which the acquisition is being made and not for both. It has not been denied that it is being acquired for the company and I think that the provisions of Part VII of the Act are clearly attracted to the case.

8. It was then argued by the learned counsel for the company that Section 43 of the Act applies to the case but this is again an argument which cannot be seriously considered because no basis has been laid for it anywhere in the counter-affidavits filed on behalf of the respondents. There is no allegation that there was any agreement with the company and either the Secretary of State or the Central or the State Government, binding the Secretary of State or the Governments to provide land for the purpose for which the acquisition is being made. There is no suggestion that the State Government or the Central Government ever bound themselves to provide land to this company for this particular purpose. Section 43, therefore, can have no application.

9. Lastly, it was argued by learned counsel for the company that the petitioners have not, in any way, been prejudiced by the omission to carry out the provisions of Part VII because it is a matter between the Government and the company to enter into the agreement and if this petition is allowed, the only result would be that the agreement would be entered into and fresh notifications would issue. I have considered the argument but I do not think that I can give effect to it. The action of the Government in issuing the notification under Sections 6 and 17 is in clear violation of the provisions of Section 39 of the Land Acquisition Act which provisions are mandatory in their nature. It is true that the provisions of Section 41 are also in the interest of the workmen of the company and the petitioners are not workmen. But the petitioners who own the land are entitled to say that as a clear and mandatory provision of the statute has been violated, they are entitled to relief at the hands of this Court. The question is of disobedience of the mandatory provisions of law and the question of prejudice or want of it is only a

matter, of secondary importance. It is difficult to speculate if the agreement would be entered into or not and why it has been so much delayed.

10. For the above reasons, this petition is allowed and the notification issued by the Government under Sections 6 and 17 of the Land Acquisition Act and published in the Government Gazettes dated 21st June and 29th June, 1956, is quashed. The petitioners will be entitled to their costs from the