

(1982) 09 AHC CK 0014

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 15633 of 1981 and 405 of 1982

Rajbali and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17, 4, 5, 5A, 6

Citation : (1982) 09 AHC CK 0014

Hon'ble Judges : Satish Chandra, C.J;K.C. Agarwal, J

Bench : Division Bench

Advocate : R.K. Jain, for the Appellant; Standing Counsel and V.N. Khare, for the Respondent

Judgement

K.C. Agarwal, J.—These two petitions filed under Article 226 of the Constitution challenge the validity of the notifications under Sections 4 and 6 of the Land Acquisition Act dated 26th Sept, 1981, and 5th Oct. 1981, respectively. These notifications had been issued acquiring 219.49 acres land of village Khalilabad, District Basil, for the purpose of planned Industrial Development of district Basti through U.P. State Industrial Corporation Limited Kanpur.

2. Challenging the validity of the aforesaid notifications learned Counsel for the Petitioner first urged that as the purpose for which the acquisition was attended had not been clearly specified, the notifications were invalid. We do not agree with this submission. The notifications have clearly stated the purpose of acquisition, that is, the planned Industrial Development of district Basti. It was not necessary to mention in these certifications the various industries which were intended to be set up. It could not be possible at the time of issuing of the notifications under Sections 4 and 6 to specify area which would be assigned to each individual industrialist for setting up a particular industry in which he may be interested. The word "planned" has been defined in the Oxford Dictionary as a scheme for accomplishing a purpose. Any thing which is antithesis of haphazard

development amounts to planned development. Hence, the notifications gave indication of the purpose in sufficient detail, and. it is, therefore, not possible to hold that either the notifications u/s 4 or the notifications u/s 6 suffer from the defect of vagueness.

3. The second argument of the learned Counsel for the Petitioner was about the dispensation of Section 5A of the Land Acquisition Act. Counsel urged that the power of dispensation has been capriciously used for the purpose of depriving the tenure-holders of the right to file objections and as there was no such urgency which could justify the waiving of Section 5A. The notification issued u/s 6 was invalid. Relying on the judgment of the Supreme Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , learned Counsel for the Petitioners urged that for dispensing with Section 5-A the authority was required to apply his mind to the question as to whether there was urgency of such a nature that even summary proceedings were to be eliminated. He urged that it is not just existence of urgency, but need to dispense with enquiry u/s 5 was required to be considered and as it was not done, dispensation of Section 5A was unjustified.

4. It cannot be doubted that enquiry u/s 5 affords an opportunity to the tenure-holders or others whose lands are going to be acquired for showing that the need of the government could be satisfied by acquiring some other land, but the question as to whether the enquiry should be dispensed with is primarily and fundamentally a matter of subjective satisfaction of the State Government. The decision of the State Government whether urgency exists cannot be questioned in any Court, provided the government applies its mind and acts in good faith, prima facie, the government is the best judge for determining which is the more suitable site for achieving the purpose for which acquisition has been started. It is only in a case of mala fide exercise of power that the Court can interfere, See *Smt. Kailashwati Vs. State of U.P. and Another*, .

5. In the instant case, a counter- affidavit has been filed on behalf of the State Government stating that as the proceedings u/s 5A would have taken a long time to terminate, the State Government decided in public interest to dispense with Section 5A. It has been alleged in the counter-affidavit that the proceedings u/s 5A were likely to take years with the result that the purpose of planned industrial development would have frustrated, hence the State Government decided to eliminate the enquiry u/s 5A. There is evidence before us to show that the State Government had not only applied its mind to the urgency of the matter for which the land was intended to be acquired, but also to the question that the urgency was of such nature that even summary proceedings contemplated by Section 5A were required to be dispensed with. In support of the averment that Section 5A was required to be dispensed with, the counter-affidavit has further mentioned that entrepreneurs who were agreeable to start industries over the situ in question were keen for obtaining possession of the lands immediately so that their finances were not held up. This was a relevant fact which could be bona fide

taken into account by the State Government for coming to the conclusion about the dispensation of Section 5A.

6. It cannot be disputed that the eastern region of the State of U.P. is backward and the general interest of public requires industrial development to be made so that not only some of the people living there were given employment, but also their living standard was upgraded.

7. Sri R.K. Jain, learned Counsel for the Petitioner, emphasised that as nothing was done by the State Government for industrial development for such a long period of thirty years, it did not sound well that the State Government needed possession of the land immediately for starting the industrial development. It may be true that the development was not done in the last thirty years, but that could not mean that purpose of acquisition was not urgent. Merely because that some thing had not been done in the past did not mean that it was not required to be done urgently at present. If the purpose is urgent, the acquisition would be valid irrespective of the fact that the same could be or ought to have been done earlier.

8. In *Jage Ram and Others Vs. State of Haryana and Others*, the Supreme Court rejected a similar argument where acquisition of the land was made by the State Government by applying Section 17 of the said Act. The Supreme Court observed (Para 10):

The fact that the State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not. The conclusion of the government in a given case that there was urgency is entitled to weight, if not conclusive.

9. Relying upon *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, counsel for the Petitioner urged that only some of the purposes just as flood, change of river course, attack by the foreign country, could only be considered as urgent and for these purposes alone the Supreme Court had ruled that Section 5A could be dispensed with. We do not agree with this submission. The Supreme Court has simply given some of the instances when Section 5A could be dispensed with. It did not lay down an exhaustive list of cases where alone Section 5A could be eliminated.

10. A similar argument was raised in *Smt. Kailashwati Vs. State of U.P. and Another*, . The Division Bench considered the Supreme Court's case in *Narayan Govind Gavate v. State of Maharashtra* (supra) and held that elimination of Section 5A could not be confined to the instances given by the Supreme Court, Each case has to be examined on its own merit and if from the materials produced elimination appears to be justified and not mala fide, the court cannot interfere. In *Adarsh Nagar Co-operative Housing Society Vs. The State of U.P. and Others*, , the view taken in *Kailashwati's* case (supra) was followed.

11. Ajadul Bux and Others Vs. State of U.P. and Others, relied upon by the Petitioner's learned Counsel is distinguishable on facts as in that case there was no material as to why was Section 5A liable to be dispensed with, and the court had found that dispensation was purely arbitrary. This case does not help the Petitioner's learned Counsel.

12. Counsel for the Petitioner's also relied upon the fact that as possession of the land had not been taken till Dec. 1981, the purpose could not be considered as urgent. Assuming that the said fact is correct, that alone would not be sufficient to hold that the purpose was not urgent. There could be several reasons for not taking the possession immediately. Moreover, the gap between the date on which the notification u/s 6 had been issued and Dec. 1981 was not so much that the acquisition Could be considered to be invalid.

13. For the reasons given above. Writ petition No. 405 of 1982 is dismissed with costs. The stay order dated 7-1-1982 is hereby discharged. Writ Petition No. 15633 of 1981 is dismissed summarily.