

(2002) 02 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 4126 of 2000 and 163 of 2002

Rajesh Chand and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17, 21, 4, 5A, 6

Citation : (2002) 4 WLN 215

Hon'ble Judges : Rajesh Balia, J;O.P. Bishnoi, J

Bench : Division Bench

Judgement

Rajesh Balia, J.—In Writ Petitions No. 163/2002 and 4126/2000, Notification of acquisition under the Land Acquisition Act, 1984 dated 18.8.2000 published in Rajasthan Gazette (Extraordinary) dated 18th August, 2000 has been challenged.

2. This Notification has come as a result of orders passed by this Court in Special Appeal No. 637/97 and D.B. Civil Special Appeal No. 639/97 which arose out of Writ Petition No. 2959/96 a public interest litigation filed by Union of India.

3. Union of India raised grievance against the State of Rajasthan and others as a public interest litigation, because it found that subjecting the area around the railway track from Makrana-Parbatsar to mining operations by the operators to whom mining lease has been granted by State of Rajasthan was endangering the safety of railway operations on that track. Due to mining operations in the surrounding areas, the railway track was in danger of being exposed to hanging in the air. Apart from the State authorities, a large number of mining operators joined as parties. The principal relief claimed by the Union of India was that mining operations within the distance of 45 metres surrounding railway track be closed and all mining leases granted within 45 metres be declared illegal and void and other ancillary reliefs.

4. An ad-interim ex-parte order was passed by learned Single Judge on 13.9.1996. On application being made by several lease- holders to be impleaded

as party in the said writ petition and applications under Article 226(3) for vacating/modifying/clarifying interim order passed on 13.9.1996, the learned Single Judge made a detailed order on 11.10.1996 allowing all the applications for becoming parties and clarifying the interim order dated 13.3.1996. The operative part of the order dated 11.10.1996 reads as under:

With the aforesaid circumstances, I hereby make the ad interim mandamus dated 13.9.1996 absolute with a clarification that the newly added respondents shall be allowed to operate their mines subject to the terms and conditions stipulated under their lease deed without contravening any provisions of Act No. 67 of 1957 as well as without contravening any provisions of Rules of 1986 mentioned in the preceding paragraphs of this order and if any one is found to have committed any contravention of any of the provisions mentioned above then the appropriate authorities are hereby directed to initiate criminal proceedings against such lease holders as envisaged u/s 21 of Act No. 67 of 1957 read with Sub-rule (3) of Rule 48 of the Rules of 1986.

After going through the averments made in the writ petition and also after hearing news broadcast from Radio as well as after looking in to television broadcast from Jaipur indicating the seriousness of the controversy involved and also to avoid any catastrophic disaster to the public at large travelling by trains on these railway lines, I hereby direct the Director of Mines (Safety), Ajmer Region, Ajmer respondent No. 4 to probe into the matter after giving reasonable opportunity of hearing to the newly added respondents or any other respondent (s) who consider himself to be affected by the ad-interim mandamus, which is being made absolute today, to apprise the court about cause or causes affecting the safety of the railway lines and inform about remedial measures to be adopted to avoid catastrophic disasters leading to loss of human life.

With these observations, the applications moved under Article 226(3) of the Constitution of India are hereby disposed of finally.

It is further made clear that the respondent No. 4 will submit his report on or before 12.12.1996 relating safety of railway lines running in the State of Rajasthan affected by mining operations brought to his notice by the petitioners.

The newly added respondents are represented by their counsel. Some of the respondents are present, some of them are not present for whom their counsel gave undertaking that they will inform their clients by registered post within three days from today informing them to attend the camp office at Makrana of respondent No. 4 on 23.10.1996. Respondent No. 4 is directed to hold camp office at Makrana for purposes of probe.

In abundant caution, it is made clear that if the respondent No. 4 comes to this conclusion that some of the newly added respondents are not present, a notice may be published in news paper which will be taken to be due service upon all of them. It is also made clear that the respondent No. 1 will manage a general notice to be published in two newspaper, namely, Rajasthan Patrika and Dainik

Navjyoti in Hindi, having sufficient circulations in the area informing the public in general about the probe scheduled to be commenced on 23.10.1996 at his Makrana Camp office about the safety of railway lines affected by mining operations.

Any public spirited person would be entitled to participate in the said probe. Put up this case on 16.12.1996.

This led to filing of two special appeals No. 639/97 by Nathmal and 639/97 by Khalil Ahmed and Ors.

5. Meanwhile two more public interest litigations came to be filed. One was Writ Petition No. 530/97: Sangmermer Khan Vikas Samiti v. U.O.I., seeking a direction that Union of India may be restrained from taking any steps from operating the Railway Line (Makrana-Parbatsar) presently standing and to divert the Railway Line in a way that it does not result in stopping the marble quarries at Makrana, its main economic activity. Another was by one Shri Sunderlal Dave as Writ Petition No. 930/97 : Sunderlal Dave v. Union of India, as a counter to Writ Petition No. 530/97 seeking a mandamus to Union of India to commence operating of Makrana Parbatsar Railway Route which has been laid as Broad Gauge.

This led to hearing of all the 5 cases viz. the Special Appeals No. 537/97, and 639/97 alongwith S.B. Writ Petition No. 2959/96 and D.B. Writ Petition Nos. 530/97, 930/97 and 2959 of 1996 together.

6. In an effort to resolve the aforesaid complex issue affecting the economic activities of Makrana township and discomfiture of travelling people due to uncertain state of operating of Makrana-Parbatsar railway line due to safety risk in operating the railway line at existing site, a consensus was reached that the existing land covered by the Railway Track in question be surrendered by Union of India provided diversion of Railway Track between Makrana and Bidiyod be agreed to and implemented for which land was to be provided by State of Rajasthan and cost of laying new track was to be borne by Sangmermer Khan Vikas Samiti and its members mine operators. Ultimately, in furtherance of this consensus reached on 26.11.1997 following order was made by the Court on 5.3.1999:

The learned Counsel for Sangmermer Khan Vikas Samiti has filed an affidavit alongwith minutes of meeting held in between the Chairman, Railway Board and Chief Secretary, Rajasthan pursuant to the direction of this Court. Mr. Jangid, the learned Additional Advocate General appearing for the State and Mr. M.S. Singhvi, the learned Counsel for the railway admit the minutes of the meeting to be correct. As they have also received instructions on similar lines, Shri D.K. Parihar, who appears in the connected matters objects to the cases being disposed of on the basis of agreement between the State Govt. and the Railways. He is concerned with the mines alongwith Jodhpur-Phulera main railway line. The agreement essentially and substantially is for other railway lines Makrana-

Parbatsar, which is to be shifted. The Sangmermer Khan Vikas Samiti is concerned with Makrana-Parbatsar railway line and, therefore, the Sangmermer Khan Vikas Samiti, Railways and the State Govt. are agreed on an order being passed by this Court on the basis of agreement arrived at between the Chairman, Railway Board and the Chief Secretary of Rajasthan held on 27.2.1999. A perusal of agreement would show that the mine owners through Rajasthan Govt. have to meet the full costs as per actuals of which Rs. 1 Crore has to be deposited by 31.3.1999 with the Northern Railway after which the operation of mining rights can be commenced outside the railway land after this payment is made. We direct the Sangmermer Khan Vikas Samiti to deposit Rs. 1 Crores through a bankers cheque in the name of Divisional Railway Manager, Northern Railway, Jodhpur by 31.3.1999. If the deposit is not accepted, same may be made in this Court through its Registrar-General.

The Sangmermer Khan Vikas Samiti also undertakes to make the balance payment as per the agreement. However, Rajasthan State through which payment has to be made to the Railway shall see to it that amount is recovered from the Sangmermer Khan Vikas Samiti or mine owners who are benefited out of this agreement, if necessary by resorting coercive process.

The Office-bearers of Sangmermer Khan Vikas Samiti shall submit an undertaking to this Court within a period of one month for the due compliance and performance of their part of the agreement. This undertaking shall be binding on other members of the Samiti also. The interim order passed earlier shall remain operative in the modified form as aforesaid but the operation of mines alongwith Jodhpur-Phulera main line shall remain suspended as already ordered.

List the case for further hearing on 7.4.1999.

Since then, we are told, substantial sum against estimated cost to be defrayed in laying the proposed alternate track has been deposited by mine operators. However, State Govt. has still not been able to make available requisite land for implementing the directions of the Court in that regard.

7. Ultimately, this led to issue of Notification dated 18.8.2000 for the purpose of acquiring land described thereunder. The relevant part of Notification reads as under:

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pwafd mDr Hkwfe dks vkokIr fd;k tkuk vfr vkok";d gS A vr,o dsfUnz; Hkwfe vokfIr vf/kfu;e] 1984 rFkk la"kkSF/kr dh /kkjk 17 dh mi&/kkjk ?4? }kjk iznRr "kfDr;sk dk iz;skx djrs gq, jkT; ljdkj ,rn~}kjk funsZ"k nsrh gS fd mDr vf/kfu;e dh /kkjk 4 ,oa 5, ds izko/kku mDr Hkwfe ds fy, ykxw ugh gksxs AvkSj mDr Hkwfe of.kZr dk;Z gsrq vko";d gS vkSj vf/kfu;e dh /kkjk 6 ds vUrxZr ,rn~}kjk funsZ"k

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The aforesaid notice has been challenged in the two Writ Petition Nos. 163/2002 and 4126 of 2000. The two contentions have been raised in support of the writ petitions : firstly, it was contended that the impugned Notification is direction by the State Govt. invoking powers u/s 17(4) of the Land Acquisition Act, 1894 to dispense with provisions of Section 4 requiring publication of Notification about the proposed acquisition for any public purposes and Section 5-A of the Act of 1894 dispensing with necessity of holding an enquiry before declaration u/s 6, could be made. Simultaneously it also made a declaration u/s 6 about satisfaction of State Govt. that land described in declaration is needed for public purpose for shifting of Makrana-Parbatsar Railway Track and direction to take possession u/s 9 of the Act. However, declaration under the Acquisition Act cannot be made without issuing a Notification u/s 4 of the Land Acquisition Act which is the foundation for initiating land acquisition proceedings. Since no Notification u/s 4 was issued and published before declaration u/s 6 was made, the land acquisition proceedings are not at all validly initiated and therefore, cannot be proceeded with. Secondly, in acquiring the land for the proposed shifting of the Makrana-Parbatsar Railway Line, the State has not taken into consideration the minutes dated 6.9.1997. If the land is acquired according to the said minutes, which has been agreed to by all concerned, the petitioner's land will not be required to be acquired at all. The land in question as part of the residential colony and the acquisition of the habitated colony can be avoided by acquiring the agricultural land which, is falling between point "A" to point "B" in the proposed diversion of the route submitted in the two PIL petitions referred to above. It was also stated by the learned Counsel for the petitioner in both the cases, that according to their information, the Railway Authorities who will be responsible for implementing the laying down of the alternative route have expressed opinion during negotiation that new railway line could be laid by avoiding disturbance to the existing residential colony.

8. So far as the first contention is concerned, we find that there is apparent mistake in Notification dated 18.8.2000 which dispenses with the provisions of Section 4 as well as 5-A of the Land Acquisition Act.

9. There is no dispute that impugned Notification dated 18.8.2000 is the only Notification issued by the State Govt. and it is not proceeded by any Notification

u/s 4 of the Act. Nor the impugned Notification Is a Notification u/s 4. In fact requirement of issuing a Notification u/s 4 has been expressly dispensed with by the impugned Notification.

10. Law is well settled that proceedings under Land Acquisition Act are initiated by issuance of Notification u/s 4 of the Land Acquisition Act and Section 17 can be invoked only after Notification u/s 4. So also a declaration u/s 6 can only follow a Notification u/s 4. There is no provision by which operation of Section 4(1) could be dispensed with inasmuch as such Notification only can provide foundation not only for making of an enquiry u/s 5-A before it is acquired, but it also provide for relevant date for determining compensation to be paid to the persons interested in land sought to be acquired and time schedule for subsequent stages of acquisition proceedings. Section 17(4) only enables, in case of urgency, to dispense with enquiry to be held u/s 5A of the Act, but makes it abundantly clear that "a declaration may be made u/s ,6 in respect of the land at any time after the date of publication of notification u/s 4 Sub-section (1).

11. The express provision leaves no room for doubt that publication of Notification u/s 4(1) is condition precedent-sine qua non-before proceeding further. Necessity of holding enquiry u/s 5-A, or issuing direction u/s 17 and declaration u/s 6 are all dependent on and related to initiation of acquisition proceedings by publication of Notification u/s 4.

12. With the amendment in Sub-section (4) of Section 17 by substituting the words "after the publication of Notification u/s 4 Sub-section (I)" for the worrds "after the publication of notification" and amendment in the scheme of mode of publication of notification u/s 4 with providing a time schedule within which declaration u/s 6 is to be made after publication of Notification u/s 4(1) and also clarifying as to what is meant by "date of publication of Notification" in Section 4(1) it is no more envisaged that declaration u/s 6 can be published simultaneously with Notification u/s 4. Else word "after" in Section 17(4) becomes meaningless and otiose. In Sub-section (1) of Section 4, it is clearly specified after laying down the three modes of publication of Notifications that "the last of the dates of such publication and giving of such public notice, being, hereinafter referred to as the date of publication of the Notification." The term "after" in Section 17(4) has direct nexus with the hiatus between declaration u/s 6 and publication of Notification u/s 4(1).

13. Doubt if any stands cleared by pronouncement of Supreme Court in State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others,

Prior to amendment of the Act by the Amending Act No. 68 of 184, it was permissible for the Government to issue Notification u/s 4 and to make declaration as contemplated u/s 6 simultaneously and it was further permissible to publish both the notifications simultaneously. But after the amendment a declaration can only be made "after the date of publication of Notification" u/s 4. There must be difference of dates between the date of the publication of the

Notification under Sections 4 and 6. After the amendment, both the Notifications cannot be published on the same date. This would be in clear violation of amended Section 17(4) of the Act. It is true that the expression "after the date of the publication of the Notification" introduced in Section 4 can be explained away as making no change from the provisions of law by reading it alongwith the amendment made in Section 4 whereby in different situation in Section 4, the last date of publication of the notice has been determined as the date of the publication of the Notification and similarly in Section 6, a date of the publication of the notice has been provided for. But the words "after the date of the publication of the Notification" in Sub-section (4) of Section 17 read simpliciter clearly indicate that declaration u/s 6 had to be made after the publication of the Notification meaning thereby subsequent to the date of the publication of the Notification. There is nothing in the Scheme of the Act which militates against such a construction. The fact that at times where emergency provisions are invoked, emergent action may be taken but in such a situation in view of the state of law that was before it, the legislature has made a conscious change which cannot be explained away merely because this is as a consequence of the changes in Sees. 4 and 6 of the Act.

The view expressed in Radhey Shyam's case (supra) was reiterated by the Supreme Court in Mohansingh v. International Airport Authority of India (1997) 2 SCC 132. The Court said:

Though the compliance of these three steps required u/s 4(1) is mandatory for the purpose of exercise of power u/s 17(4), it is not necessary that all the three steps should be completed before making the declaration u/s 6(1) and having it published for directing the Collector to take possession under Sections 17(1) and 17(2). What is needed is that there should be a gap of time of at least a day between the publication of Notification u/s 4(1) and of the declaration u/s 6(1).

This was a case arising from Union Territory of Delhi.

In this connection, another decision of Supreme Court in Mohd. Ali and Others Vs. State of U.P. and Others, may be noticed seemingly striking a different note. But a perusal of it shows that it is not so. It was a case which arose in respect of Notification u/s 4(1) dated 12.10.1974 and Declaration u/s 6 dated 28.9.1974. It was urged that declaration u/s 6 could not be made unless Notification u/s 4 is published in all its mode in accordance with law as provided u/s 4(1). The declaration u/s 6 had been published in pursuance of directions u/s 17(4). It may be seen that the case related to pre 1984 land acquisition proceedings and was not governed by post 1984 amended provision. About pre 1984 State of affairs, the settled position of law was noticed by Supreme Court in Radhey Shyam's case. After decision in Radhey Shyam's case in 1989, the Land Acquisition Act, 1894 was amended in its application to Uttar Pradesh vide the Land Acquisition (Amendment) Act 5 of 1991 by substituting Sub-section (4) of Section 17; to bring back the position to pre 1984 stage, so far as emergent acquisitions were concerned. Referring to above position, the Apex Court said:

It is settled law that simultaneous publication of the Notification u/s 4(1) and declaration u/s 6 was valid in law prior to coming into force of the Amendment Act 6 of 1994. It is also seen that in relation to the State of Uttar Pradesh, the Land Acquisition (Amendment) Act 1991 has been brought into effect with effect from 17.2.1991; and therefore, in relation to the State of U.P. it is now settled law that when the State exercises the power of eminent domain and in exercise of power u/s 17(4) dispensing with the enquiry u/s 5-A to acquire the land u/s 4(1), the State is entitled to have the notification u/s 4(1) and the declaration u/s 6 simultaneously published so as to take further steps as required u/s 9 of the Act, i.e. issuance of the notice and taking possession thereof u/s 17(2) of the Act. Thereafter, the land stands vested in the State free from all encumbrances. There is no illegality in the action taken by the respondents in having the notification u/s 4(1) and the declaration u/s 6 simultaneously published.

14. The law is now settled that since amendment in Land Acquisition Act vide Amendment Act, 1984, simultaneous Notification u/s 4(1) and declaration u/s 6 is impermissible except in those States where amendment in Section 17(4) has been brought about thereafter as in Uttar Pradesh. In Rajasthan there is no amendment in that regard in the Act of 1894.

15. Thus, the impugned Notification apparently does not fulfil the basic requirement of land acquisition and is in-valid. There being no foundation for invoking power u/s 17(4) or for making declaration u/s 6, the impugned Notification u/s 17(4) and declaration u/s 6 cannot be sustained.

16. We may notice that the contention of petitioners that only waste land and arable land can be subjected to direction u/s 17 is not well founded since amendment of Land Acquisition Act vide Amending Act No. 68 of 1984. The expression "waste and arable" now does not find place in Section 17, as was the case before the amendment. It is now possible for appropriate Govt. to invoke its powers u/s 17(4) in appropriate cases in relation to all kinds of land.

17. In our view, in the prevailing circumstances atleast consideration is needed to be given by the State Government whether the land which is to be made available to the railways for laying railway line between Makrana-Parbatsar, least inconvenience is caused to the habitated areas. At the same, we are conscience of the fact that because of the precarious conditions existing on the Makrana-Parbatsar railway track and in the absence its earlier execution is causing serious public inconvenience, it is required to be implemented with immediate effect and cannot be subjected to pedantic approach.

18. In this connection our attention was also invited to Annexure/13 a sketch map placed on record in Writ Petition No. 530 of 1997, suggesting that it is part of agreed diversion plan as per minutes of meeting dated 6.9.1997. On this premise, it was urged that it provides a shorter diversion and avoids acquisition of habituated residential colony. The basic premise does not appear to be correct. As per averment made in rejoinder affidavit alongwith which sketch plan

Annexure/13 is produced in Writ Petition No. 530 of 1997, is not the plan of diversion approved in said meeting but it was not prepared by the petitioner (the Samiti) itself.

19. Be that as it may, the State Govt. may consider before issuing fresh notification in accordance with law the most suitability and desirability of land required for the purpose, in consultation with Railway Administration in the light of suggestions made before it, so as to adopt acquisition proceedings in a manner which result in least displacement.

20. As a result, the writ petition No. 4126 of 2000 Rqjesh Chand and Ors. v. State of Rajasthan and Writ Petition No. 163 of 2002 Prem Prakash & Ors v. State of Rajasthan succeed and are allowed. The Notification dated 18.8.2000 is quashed. The respondent State of Rajasthan in the peculiar facts and circumstances mentioned above, which brooks prompt action in the light of orders made in other connected matters in which agreement dt. 27.2.1999 was arrived at between Chairman, Railway Board and Chief Secretary, State of Rajasthan and found its culmination in order dated 5.3.1999 was passed necessitating acquisition of land for the purpose of laying railway line on alternate Makrana-Parbatsar route, we further direct State Govt. to take steps for acquisition of land for the said purpose within four weeks from the service of this order in accordance with law and in the light of observations made above and place on record the compliance report on or before 8.4.2002.

21. We further direct that a copy of this order may be made available forthwith to the learned Additional Advocate General Shir R.L. Jangid to apprise the concerned authorities for prompt action. Copies may also be despatched to Chief Secretary, Govt. of Rajasthan, Jaipur as well as Chairman, Railway Board, New Delhi and General Manager Northern Railway. Copy of this order may also be placed on record of other connected matters referred to above.

22. There will be no order as to costs.