
(1998) 02 J&K CK 0022
In the Jammu And Kashmir High Court
Case No : O.W.P. No's. 208 and 612 of 1996

Ram and Another	Vs	APPELLANT
State of Jammu and Kashmir and Others		RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Jammu and Kashmir Land Acquisition Act, 1990 — Section 4

Citation : AIR 1999 J&K 130

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : J.S. Kotwal and C.S. Gupta, for the Appellant; Adresh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.—Acquisition proceedings initiated by issuing a Notification u/s 4 of the J. & K. Land Acquisition Act of Samvat 1990, are

being impugned in these writ petitions. Before noticing the Specific legal challenge which has been made, (the facts in brief be noticed :

2. The petitioners are said to be owners of the land which is subject-matter of the Notification issued u/s 4 of the Act referred to above. The

petitioners state that the land has great agricultural and commercial potential and the only source of income and means of sustenance to the

petitioner. Initially, an area measuring 38 kanals 15 marlas was subject-matter of the acquisition. Later on, a corrigendum was issued. Land located

in Khasra No. 32 was also indicated for the acquisition purposes. These acquisition proceedings so initiated are being challenged in these petitions.

It is stated that there exists a scheme with the Jammu Development Authority and therefore, the steps taken by the respondents by issuing

notifications under Sections 4 and 6 cannot be sustained. It is further stated that the initial notification issued u/s 4 was not published in accordance

with the procedure indicated in Section 4 of the Act referred to above. Another factual averment made is to the effect that the purposes for which

the land is being acquired is not a public purpose.

3. Respondents have put in appearance.

4. It is submitted that the land in question is required for the construction of a residential colony. It has further been stated that a development

scheme has already been finalised and the layout plan already exists. It is further stated that an amount of Rs. 310.00 lacs has already been

released for constitution of the said, residential accommodation. The further plea taken is that notification issued under Sections 4 and 6 have been

published in the official Gazette, A further plea has also been taken that these notifications were published in the locality. The concerned Patwari is

said to have taken appropriate steps in this regard. It is further submitted that out of 72 kanals and 19 marlas which were initially notified for

acquisition, 55 Kanals have now been de-notified. The land which is actually now required measures 17 Kanals 7 Marlas only. It is submitted that

earlier also, the land was acquired. This happened in the year 1972 and 1984. It is in these premises, it is submitted that no rectual foundation has

been made for making any valid challenge to the acquisition proceedings. It is the case of the respondents that the petitioner have received com-

pensation also. Requisite plea has been taken in Para 2 of the objections.

5. As indicated above, the challenge to acquisition has been made on the following grounds:-

i) That there was no publication of the Notifi-cation in the locality;

ii) That no public purpose has been disclosed;

iii) That no scheme was formulated by the respondent-authorities and therefore, the acquisition proceedings are liable to be struck down on this

short ground only;

6. The basic reliance has been placed by the petitioners on a decision given by the Supreme Court of India in the case reported as State of Tamil

Nadu and another Vs. A. Mohammed Yousef and others, .

7. To sum up, the acquisition proceedings have been challenged on the grounds

enumerated below:-

i) That the notification was not published in locality as required by Section 4 of the Act.

ii) that the mere mention of the fact that the land is required for a public purpose namely to give effect to housing policy is not sufficient description

of public purpose;

iii) that the respondents have not framed any scheme when acquisition proceedings were initiated and the scheme was not in existence, therefore, the acquisition is bad.

Position of law regarding publication is as under:-

Reading of Section 4 of the Act makes it clear that in order to fulfil the statutory requirements set out therein, a notification stating therein that the

land which is needed is likely to be needed for a 'public purpose' has to be published in the official gazette. The latter is to inform the people Of the

locality that their land is going to be acquired. The second part of Section 4 provides that the Collector has to cause public notice of the substance

of such notification to be given at convenient places in the locality in which the land proposed to be acquired is situated. In a catena of decisions

both the requirements have been held to be mandatory. Whether the second condition is mandatory or directory is no more res integra. In *Khub*

Chand and Others Vs. State of Rajasthan and Others, at p. 1077, *Suhba Rao*, C.J. speaking for the Court observed that ""the notification issued

u/s 4 without complying with the said mandatory direction would be void and the land acquisition proceedings taken pursuant thereto would be

equally void."" The same view was expressed in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, . Again the Supreme Court in

State of Mysore Vs. Abdul Razak Sahib, , observed that in the case of a notification u/s 4 of the Act, the law has prescribed that in addition to the

publication of the notification in the official gazette, the Collector must also give publicity of the substance of the notification in the concerned

locality. Unless both these conditions are satisfied, Section 4 of the Act cannot be said to have been complied with. In *Narendra Bahadur Singh*

and *Another Vs. State of Uttar Pradesh and Others*, , the Supreme Court reiterated that a publication of the notice in the locality as required by the

second part of Section 4(1) is mandatory and unless that notice is given in

accordance with the provisions contained therein, the entire acquisition proceedings are vitiated. Repelling the contention, that the only purpose behind publication of a notice in the locality is to give opportunity to the person interested in the land to prefer objections u/s 5-A which confers a valuable right, it was held that even though in the facts of that case, the enquiry u/s 5-A was dispensed with by a direction u/s 17(4) of the Act, the failure to comply with the second condition in Section 4(1) is fatal. It was pertinently observed that provisions of Section 4(1) cannot be held to be mandatory in one situation and directory in other and, therefore, it cannot be said that the only purpose behind making the publication of notice in the locality mandatory is to give an opportunity to the persons interested in the land to file objections u/s 5-A.

8. In *Tharoo Mal Vs. Puran Chand Pandey and Others*, while dealing with these requirements the Supreme Court observed that the defect of non-mention of the locality where the proposed kind was situate in the notification was a very serious defect vitiating the notification. The Supreme Court opined that though Section 4(1) does not require the identity of the land which may ultimately be acquired to be specified with too many details, but it undoubtedly casts upon the Government a duty to "specify the locality in which the Kind is needed." In *Narendrajit Singh's case* (supra) at p. 129, the Supreme Court repelled the argument that since detailed particulars of the land had been given in the notification issued u/s 6(1) of the Act, the absence of those particulars in Section 4(1) notification was of no consequence. It was observed that the defect in a notification cannot be cured by giving full particulars in the notification u/s 6(1).

9. It may now be seen (that the aforementioned decisions could not be attracted to the facts of the case. It is the positive stand of the respondents that notification was published in the official gazette. It is also the positive stand of the respondents that the notification was published in the locality. Everybody in the locality became aware of the notification and the petitioners have received compensation also.

10. Accordingly, I am of the opinion that so far as the requirement of due publication is concerned, the same has been fully complied with. The notice was published in the locality by beat of drum. It was again displayed at prominent places in the locality.

11. Argument regarding non-existence of public purpose and failure to mention it in the notification be now adverted to.

12. In the case of *Hambai Framjee v. Secretary of State for India* AIR 1914 PC 20 it was observed :

Certain land in Malabar Hill in Bombay was being acquired by the Government of Bombay for constructing residences for Government officers

and the acquisition was objected to by the lessee of the land on the ground that the land was not being taken or made available to the public at

large and, therefore, the acquisition was not for public purpose. When the matter went up before the High Court, Bachelor J. observed :

General deflations are, I think rather to be avoided where the avoidance is possible and I make no attempt to define precisely the extent of the

phrase 'public purpose' in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general

interest of the community, as proposed to the particular interest of individuals, is directly and vitally concerned.

13. In that case what was being considered was re-entry clause in a lease deed and not provisions of the Land Acquisition Act. That clause left it

absolutely to the lessor, the East India Company to say whether the possession should be resumed by it if the land was required for a public

purpose. It was in this context that the question whether the land was needed for a public purpose was considered upon the view that there cannot

be a "public purpose" in taking land if that land, when taken, is not in some way or other made available to the public at large. Rejecting it they held

that the true view is that expressed by Bachelor J., and observed :--

That being so, all that remains is to determine whether the purpose here is a purpose in which the general interest of the community is concerned.

Prima facie the Government are good judges of that. They are not absolute Judges. They cannot say "sic volo sic jubeo, but at least a Court would

not easily hold them to be wrong. But here, so far from holding them to be wrong, the whole of (the learned Judges, who are thoroughly conversant

with the conditions of Indian life, say that they are satisfied, that the scheme is one which will redound to public benefit by helping the Government

to maintain the efficiency of its servants. From such a conclusion their Lordships would be slow to differ, and upon its own statement it commends

itself to their judgment.

14. In the *The State of Bombay Vs. Bhanji Munji and Another*, the purpose of providing housing accommodation to the houseless was recognised

by the Constitution Bench as a public purpose. Failure to state in Section 4 notification that land is required for public purpose was held to be not

fatal. The Supreme Court held that it is desirable to set out the public purpose but it is not absolute necessary. This is what was said (at page 45):--

In our opinion, it is not necessary to set out the purpose of the requisition in the order. The desirability of such a course is obvious because when it

is not done, proof of the purpose must be given in other ways and that exposes the authorities to the kind of charges we find here and to the

danger that the Courts will consider them well founded.

But in itself an omission to set out the purpose in the order is not fatal so long as the facts are established to the satisfaction of the Court in some

other way.

It was further observed :-

In the present set of cases there is proof of a public purpose. It is given in the affidavits made on behalf of the State and in the subsequent orders

just quoted, namely to house the homeless,

It was necessary therefore for Government to take more drastic steps and in doing so they acted for the public weal. There was consequently a

clear public purpose and an undoubted public benefit."".

15. The same or similar view was expressed in *Babu Barkya Thakur Vs. The State of Bombay and Others*, Private benefit of a large number of

Industrial workers was held to be for the benefit of public and was held to fall within the domain of the Act in the case of *Pandit Jhandu Lal and*

Others Vs. The State of Punjab and Others, . Public purpose would include a purpose in which the general interest of the community as opposed

to the particular interest of individuals is the vital distinguishing factor. Such was the view expressed in *Smt. Somavanti and Others Vs. The State of*

Punjab and Others, . The Supreme Court declined to give any comprehensive definition as the Court expressed practical difficulty in this regard

and was of the view that public purpose is bound to vary with the times and prevailing conditions in a given locality. The Court also pointed out an

exception in this regard. This exception was where there is colourable exercise of power. This is what was said :-

As already stated no attempt has been made in the Act to define public purpose in a compendious way. Public purpose is bound to vary with the

times and the prevailing conditions in a given locality and, therefore, it would not be a practical proposition even to attempt a comprehensive

definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a

given land for a public purpose.

16. In *Bharat Singh and Others Vs. State of Haryana and Others*, , acquisition was for a public purpose of 'development and utilisation of land for

individual purpose.'" The acquisition was upheld. The same reasoning is discernible from the decision given in *Babu Barkya Thakur's case* (supra).

17. The same concern was shown by the Supreme Court in *Arnold Rodricks v. State of Maharashtra* AIR 1966 SC 1786 when para 20 of the

judgment is read. This reads as under (at page 1798-1799} :-

It was urged before us that that State Government was not entitled to acquire property from A and give it to B. Reliance was placed on the

decision of the Supreme Judicial Court of Massachusetts (204 Mass. 607). But as pointed out by this Court, public purpose varies with the times

and the prevailing conditions in localities, and in some towns like Bombay the conditions are such that it is imperative that the State should do all it

can to increase the availability of residential and industrial sites. It is true that these residential and industrial sites will be ultimately allotted to

members of the public and they would get individual benefit, but it is in the interest of the general community that these members of the public

should be able to have sites to put up residential houses and sites to put up factories. The main idea in issuing the impugned notification was not to

think of the private comfort or advantage of the members of the public but the general public good. At any rate, as pointed out in : *Babu Barkya*

Thakur Vs. The State of Bombay and Others, a very large section of the community is concerned and its welfare is a matter of public concern. In

our view the welfare of a large proportion of persons living in Bombay is a matter of public concern and the notification served to enhance the

welfare of this section of the community and this is public purpose. In conclusion

we hold that the notifications are valid and cannot be impugned on the ground that they were not issued for any public purpose.

18. In view of the above discussion, the argument of the learned counsel for the petitioner that the public purpose has not been specified cannot be accepted. This is because firstly the purpose is for implementing a housing policy. This purpose cannot be said to be vague and even if this purpose as mentioned in the notification is found to be vague, the later explanation given that the land is required for housing accommodation can be looked into. This is a valid public purpose. The contention of the petitioner is, therefore, without any merit on this score.

19. The argument advanced that before embarking upon, the task of acquisition of the land, the respondents should have framed a scheme and in case this is not done, then acquisition would be *bade* (sic) be examined. Reliance has been placed on a decision given by Supreme Court of India in the case reported as *State of Tamil Nadu and another Vs. A. Mohammed Yousef and others*, .

20. It be seen that the aforementioned decision was considered by three members Bench of the Supreme Court of India in the case reported as *State of Tamil Nadu v. L. Krishnar*, (1996) 1 SCC 250 .

21.. In the above case, not only the question regarding non-availability of scheme but also the requirements as to stating public purposes were taken note of.

22. Paras 28, 29, 30, 31, 32 and 33 are relevant. These are noticed below :

Another contention urged for the petitioners was that the Government had not prepared any scheme before issuing the notification u/s 4. This

argument was also negated in the following words :

'This is true that the Government has not upto now prepared any scheme for the utilisation of the developed sites. But the notification itself shows

that the sites would be used as residential and industrial sites. There is no law that requires a scheme to be prepared before issuing a notification u/s

4 or Section 6 of the Act. We have, however, no doubt that the Government will before disposing of the sites, have a scheme for their disposal.

23. We have held hereinbefore that merely because the Housing Board Act contemplates acquisition of land as part of a housing or improvement

scheme, it does not follow that no land needed for the purpose of the Housing Board Act can be acquired until and unless a scheme is prepared

and finalised by the Board and becomes effective under the provisions contained in Chapter VII.

24. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, Constitution Bench dealt with a similar contention, viz. that before publishing the

notification u/s 4, the Government had not declared any area in Delhi as a development area u/s 12(1) of the Delhi Development Act nor was there

a master plan drawn up in accordance with Section 7 of that Act. The notification u/s 4 was attacked on that basis. It was argued that u/s 12(3)

of the Delhi Development Act no development of land can be undertaken or carried out except as provided in that sub-section. This argument was

negated by the Constitution Bench holding that:

The planned development of Delhi had been decided upon by the Government before 1959 viz, even before the Delhi Development Act came

into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of Delhi Development Act after

that Act came into force, but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master plan was

ready (See the decision in *Patna Improvement Trust v. Lakshmi Devi*). In other words, the fact that actual development is permissible in an area

other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land

for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of

property; acquisition generally precedes development. For planned development in an area other than a development area, it is only necessary to

obtain the sanction on approval of the local authority as provided in Section 12(3). The Central Government could acquire any property under the

Act and develop it after obtaining the approval of the local authority.

25. It is significant to notice that Section 12 of the Delhi Development Act 1959 provided for declaration of any area as development area by the

Central Government and it further provided that except as otherwise provided by the said Act, the Delhi Development Authority shall not

undertake or carry out any development of land in any area which is not a

development area. Subsection (3) of Section 12, however, provided that after the commencement of the said Act, no development of land; shall be undertaken or carried out in any area by anyone unless (i) where that area is a development area, permission for such development has been obtained in writing from the Authority in accordance with the provisions of Act and (ii) where the area is an area other than a development area, approval of the local authority or other authority concerned is obtained according to law. Section 15 of the said Act provided for acquisition of any land required for the purpose of development under the Act.

26. In our opinion, the observations quoted and emphasised hereinabove and the broad similarity between the provisions of the Delhi Act and the Tamil Nadu Housing Board Act, establish that the acquisition of the land is not dependent upon the preparation and approval of a scheme under Sections 37 to 56 and that the Government's power of acquisition extends to other purposes of the Board and the Housing Board Act referred to in Sections 35 and 36. Moreover, under Tamil Nadu Housing Board too, there is no inhibition against acquisition of land for the purpose of the Board except in accordance with and as a part of the scheme.

27. For all the above reasons, we find it difficult to read the holding in Mohammed Yousef as saying that in no event can the (sic) be acquired for the purpose of the Act/Board unless a final and effective scheme is framed by the Housing Board under the provisions of Sections 37 and 56.

28. In view of the above pronouncement of the Supreme Court of India, the argument raised by the petitioner that non-mention of public purpose and non-availability of a scheme before initiating the acquisition proceedings would render the acquisition bad ceases to have any legal efficacy. As a matter of fact in the case reported as Jaipur Development Authority Vs. Sita Ram and others, the Supreme Court of India has expressly stated that the view expressed by it in Mohammed Yousef is not correct. Therefore, argument based on the decision in Mohammed Yousef deserves to be rejected.

29. I am accordingly of the view that (i) there was proper publication. Petitioner became aware of it and have accepted compensation also, (ii) Valid public purpose does exist in this case. This is need to establish a Housing Colony, (iii) Requirement to have scheme before initiating pro-

ceedings for acquisition is not essential.

30. These petitions as such are found to be without merit and are dismissed. There would be no order as to the costs.