

(1989) 10 AHC CK 0027

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1590 of 1989

Ram Gopal and others

APPELLANT

Vs

The State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 23-10-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 5

Citation : AIR 1990 All 44 : (1990) 1 UPLBEC 258

Hon'ble Judges : G.D. Dubey, J;B.N. Misra, J

Bench : Division Bench

Advocate : S. Ravi Kant, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Dubey, J.—This writ petition under Art. 226 of the Constitution of India, has been preferred challenging the acquisition proceedings of the plot belonging to the petitioner situated in village Rampur district Saharanpur, Uttar Pradesh.

2. The petitioners have alleged that they are owner of plot No. 107 situated mentioned above. They had constructed a big hall. In this hall they had installed an oil expeller after spending huge money. The Mandi Samiti of the locality had made proposal for acquisition of the land in dispute along with the other plots in 1981. The matter, however, proceeded at a snails speed. Later on a notification under S. 4 of the Land Acquisition Act (hereinafter referred to as Act) was issued on 25th Jan., 1988. A notification under S. 6 of the Act was published in official gazetteer on 10th of June, 1988. It is an admitted fact that the proclamation of the substance of the notification by the collector Saharanpur in the locality was made on 4th July, 1988. The notification under S. 6 was published in two local newspapers" Badri Vishal" and Vishwa Manav on 3rd Dec., 1988. The possession of plots was taken on 16th Dec., 1988. It is an admitted fact that the possession was taken over only on a portion of the plot bearing No. 107, 108 and 110. The portion shown by red colour in the map appended to the affidavit as Annexure 8

was left and the possession of the same was not taken.

3. The petitioner has contended that the acquisition proceeding suffers from three infirmities. Firstly, the publication was not done in proper sequence. According to the petitioner the publication in the local Newspaper ought to have -- preceded the proclamation by the collector of the substance of the notification in the locality. The second point was that the notification under S. 6 does not explain that the Government had applied its mind in dispensing with the inquiry under S. 5A of the Act. It was further pointed out that the whole matter by the Government was dealt with in a mechanical and arbitrary manner. There was legal mala fide on the part of the Government. Lastly, it was contended that a portion of the land of the petitioners which was covered by the building containing expeller ought to have been excluded as had been done in other cases of plot Nos. 108, 109 and 110 of the village. It was urged that there had been discrimination in the dealing of the matter relating to the petitioner's case.

4. The first contention of the learned counsel for the petitioners has no force at all. In this respect we may look into the very wordings of S. 6(2) of the Act. It reads as under:

(2) Every declaration shall be published in the official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area and where a plan shall have been made of the land, the place where such plan may be inspected.

5. It was rightly argued by the learned standing counsel that the words "the last of the dates of such publication and the giving of such public notice" occurring in sub-sec. (2) of S. 6 quoted above is self speaking that there is no particular prescribed order of these publications. The three modes of publications and public notice could be in any order.

The only requirement of this sub-section is that the last date of such publication and giving of the notice whichever is later will be the date of publication of the declaration. In this way the petitioners cannot be said to have been prejudiced by the proclamation of the substance of the declaration by the collector in the locality preceding the publication in the local newspaper. In this way the first point fails.

6. As regards the second point, our attention was drawn to paragraph I of the Notification under S. 6 of the Act. It should be read with paragraph 2 of the Notification. The relevant portion reads as under:

"Chunki Rajyapal ki rai hai ki ukt Adhiniyam ki Dhara 17 ki updhara (1) ke upbandh ukt bhumi per lagu hole hain kyonki ukt bhumi ki suniyojit vikas yojana ke adhin zilla Saharanpur mein krishi Utpadan Mandi Simiti, Rookee ke naveen mandi sthai ke nirman ke liye atyadhik avashyakta hai. Aur is atyadhikte ki drishthi se yeh bhi avashyak hai ki ukt adhiniyam ki Dhara 5-Ka ke adhin Janch karne mein sambhavit vilamb ke viberjit kiya jaye, atayav Rajyapal ukt Adhiniyam ki Dhara 17 ki Apdhara (4) ke adhin yeh bhi nirdesh dete hain ki ukt adhiniyam ki dhara 5-Ka ke uplabandh lagu nahi honge."

7. It was urged that this docs not show that there was any urgent necessity. Even one Ajit Kumar Srivastava, Accounts Clerk of Special Land Acquisition Office had filed an affidavit on behalf of the state. This official could not have any knowledge about the matter before the Government of U.P. regarding consideration of urgency in this matter. It was also argued that about a year had lapsed between the Notification under S. 4 of the Act and the last date of publication i.e. 3-12-1988. In these circumstances, there was no justification for dispensing the inquiry.

8. Learned counsel for the State pointed out that the official of Land Acquisition office has to deal with the matter. He is in know of the whole of matters relating to the acquisition of the land. He was, therefore, competent to swear on behalf of the State. Our attention was drawn to paragraphs 17 and 18 of the counter-affidavit of Ajit Kumar. In this affidavit it was stated that the old market yard had become very much congested on account of growth of population around it. Hence there was necessity of construction of another market yard for the Krishi Utpadan Mandi Samiti.

9. The learned counsel for the petitioners has cited several case laws; namely; Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, ; Madhusudan Chhotalal Patel and anr Vs. Special Land Acquisition Officer and ors, ; Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, ; Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, and State of U.P. Vs. Smt. Pista Devi and Others, .

10. In Pista Devi's case the Hon''ble Supreme Court and considered the changed circumstances in India on account of population growth. It had also considered that merely because official entrusted with the task of taking further action in the matter are negligent or tardy in discharging of their duties invocation of emergency provisions for providing of house sites for Harizans would not be bad unless of course, it can be established that the acquisition itself is made with an oblique motive. The Hon''ble Supreme Court has also observed that the urgent pressures of history are not to be undone by the in action of the bureaucracy. In this case the Supreme Court had considered the necessity of providing house sites to Harijans.

11. It is noteworthy that the new Mandi Samiti Market Yard is being established under the U.P. Krishi Utpadan Mandi Samiti Adhiniyam, 1964. The preamble of

this Act states that it is an act to provide for regulation of sale and purchase of agricultural produces and for the establishment, Superintendence and control of market through it in U.P. The object of this Krishi Utpadan Mandi Samiti is of course to help the agriculturist. It provides an avenue to the agriculturist to market their produces. The affidavit of Ajit Kumar is self speaking that the old sites had become very congested and it was necessary to provide another space. The notification under Ss. 4 and 6 quoted above also says that the establishment of the new market yard is of utmost urgency.

12. It has been pointed out by the learned counsel for the petitioners that from papers on record it transpires that up to the date of possession i.e. 16-12-88 the authorities had not get a plan prepared. This could obviously be done after acquisition proceeding and after knowing the dimension of the acquired land and the space available in it. Such preparation of plan generally follows after the availability of the land.

13. For the reasons mentioned above we find that there is no evidence on record to show that there was any mala fide on the part of the Government in acquiring the land of the petitioners. It is also clear from the materials on record that there was urgency about the establishment of market yard for Mandi Simiti of Riprkee, The burden lay upon the petitioners to prove that the Government had not taken into consideration the relevant facts relating to the urgency. We find that the petitioners have failed to discharge the burden which lay upon them.

14. The last contention of the petitioners regarding discrimination is based on annexure "7" to the writ petition wherein the Mandi Samiti is said to have made a proposal of leaving a portion of plot Nos. 108 and 110 and whole of plot No. 109 on the ground that these land contained buildings in which several people are carrying on their business. It is an admitted fact that possession has not been taken over whole of plot No. 109 and a portion of plot Nos. 108 and 110 shown by red colour in the map Annexure "8" to the writ petition. When learned counsel for the State was asked to explain this part of the conduct of the state, then he had to frankly admit that Mandi Samiti had no authority to make any resolution of releasing the portion shown by red colour in Annexure "8" to the writ petition. He had also admitted that for this purpose a fresh Notification was needed. However, he stated that fresh steps of possession may be taken in respect of land over which possession had not been, taken on 16th Dec., 1988.

15. Learned counsel for the petitioners has argued that the portions of the land, over which constructions housing all expeller machines stand, ought to have been left from acquisition. This argument of the learned counsel for the petitioners is not tenable. The petitioners had themselves filed Annexure "4" to the writ petition. This is a copy of reply of the comments submitted by Mandi Samiti in an appeal filed by M/s. Himgiri oil and Expeller Mill Ltd. instituted on 24-3-1986 before the competent appellate authority, which indicates that the petitioners had moved a petition for licence to install an expeller on the land on 30-1-1986 before the Mandi Samiti. In paragraph 3 it was stated that Mandi

samiti had refused to grant permission. It was also stated in this Annexure that even in 1986 the oil expeller buildings have not been raised. The papers filed by the petitioners themselves transpire that up to 1986 oil expeller buildings had not been raised. The Mandi Samiti was resisting the installation of oil expeller machines in the plot in dispute. If the petitioners raised the construction? at their own risk, when the Mandi Samiti was resisting raising of constructions in the plots in dispute, then it is not open to the petitioners at this stage to turn round and say that have been discriminated by not releasing the area of plots in dispute over which the buildings of oil expellers stand. The resolution of Mandi Samiti, as contained in Annexure "7" to the affidavit, indicates that these buildings were quite old one. This is not the case of the petitioners. Their construction appear to be of post 1986 period. These constructions have been raised even though Mandi Samiti has repeatedly refused to grant licence to the petitioners. We find that this stop (sic) of the petitioners was not Bona fide. It was only aimed to defeat the acquisition proceedings. Hence such persons, who do not come to the Court with clean hands, cannot complain of discrimination. In this way, this last point too fails

16. There is no force in this writ petition. The writ petition is dismissed with costs.

17. Petition dismissed.