

(2006) 01 MP CK 0053
In the Madhya Pradesh High Court
Case No : Writ Petition No. 93 of 2000

Ram Prakash and Another	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17(1), 48, 48A, 5A

Citation : (2008) ILR (MP) 790 : (2006) 2 MPHT 323 : (2006) 2 MPLJ 383

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : H.D. Gupta and S.B. Gupta, for the Appellant; Ami Prabal, Government Advocate for Respondent Nos. 1 and 2 and Yogesh Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

Petitioners have filed this petition on 6-1-00 and were aggrieved by action being taken for acquiring their land by invoking the emergency clause as contained u/s 17(1) of the Land Acquisition Act, 1894.

Facts which are relevant for deciding the present petition are that petitioners are owners of agricultural land bearing survey Nos. 197 and 213 situated at Villages Vaishpura, Lahar, District Bhind. According to the Petitioners respondent No. 3 was member of Legislative Assembly from Lahar constituency and various land indicated in Para 5.3 of the petition situated at Villages Vaishpura, Chibeoli belonging to respondent No. 3 and his relatives and by misusing his office the said respondent has compelled the Govt. to take action for acquisition of the land in such a manner that his lands also get irrigated but at the same time his land is not acquired by the Govt. According to the petitioner a scheme was sanctioned in the year 1972 for building the Bhandar and Lahar Minor Canal. Even though the scheme was sanctioned in the year 1972 no work was undertaken for

construction of the canal but when respondent No. 3 was elected as a member of Legislative Assembly and subsequently when he became Minister in the Cabinet at Madhya Pradesh, he started initiating the action for construction of the canal. At his instance and to give him undue benefit action is taken now after more than 28 years for construction of the canal and after 28 years in the year 1999 it is argued that proceedings for execution taken by invoking the emergency clause u/s 17(1) of the Land Acquisition Act and preventing the submission of objection u/s 5(A) is arbitrary and illegal action.

Placing heavy reliance on a judgment of Supreme Court in the case of Om Prakash and Another Vs. State of U.P. and Others, , so also taking me through the documents available on record, Shri H.D. Gupta argued that invoking of emergency clause in the facts and circumstances of the case is not at all warranted. It is argued by him that to give undue benefit to respondent No. 3 the original plan for construction of the canal was changed and in a malafide manner action taken invoking the emergency clause for acquisition of the land and for prohibiting the petitioner from submitting the objection is challenged in this petition.

Refuting the aforesaid Smt. Ami Prabal, learned Govt. Advocate representing respondent Nos. 1 and 2 argued that petitioners are Bhumiswami of the land but all the land indicated in Para 5.3 do not belong to respondent No. 3. It is denied by the respondents that action taken in the matter is only to grant undue benefit to respondent No. 3. According to Smt. Ami Prabal, the Bhandar Canal System was initially implemented by the State of U.P. in the year 1965. However, as it was incomplete in the year 1972 it was handed over to the State of M.P. Accordingly, administrative sanction of Rs. 204 lacs for execution of the work was approved on 16-4-1972. However, in spite of approval in the year 1972 the work could not be implemented for lack of funds to continue the work. It remains incomplete. Thereafter, the matter was taken up by the Govt. of M.P. with the Japan Bank of International Cooperation by seeking assistance from the Japanese Govt. for construction of Rajghat Canal Project while the matter was under negotiation in 1995 with the authorities of the Japanese Govt. for construction of the Rajghat Project the position with regard to incomplete work of the Bhandar Canal Project and the Lahar Canal Project was also incorporated in the scheme for grant of loan from the Japanese authorities. Accordingly, a proposal for grant of loan to the tune of Rs. 4.21 crores was made and the loan agreement was sanctioned and executed sometimes in April, 1997. After the loan amount was sanctioned the matter was approved again the process of construction of the canal was initiated. The map was prepared and after approval of the Competent Authority a sum of Rs. 2809.82 lacs was sanctioned on 9-8-00. In the meanwhile, according to the agreement with the Japanese authorities the entire project was to be completed on or before March, 2003 which was subsequently extended during the pendency of this petition to March, 2004. As the Project was to be completed within the time Bound Scheme and as financial assistance was obtained from the Japanese Bank of International Cooperation the

acquisition of the land had to be done expeditiously and, therefore, it was under these circumstances that the emergency clause was invoked.

According to the return filed by the respondents taking into consideration all these aspects the matter, was referred to the Collector and after taking appropriate sanction and approval from the Competent Authority notification was issued vide Annexure R-8 on 2-8-99. Annexures R-7 and R-6, dated 25-6-99 and 21-7-99 are the communication in this regard. According to Smt. Ami Prabal there is no substance in the allegations made by the petitioners with regard to grant of undue benefit to respondent No. 3. Invoking the emergency clause is explained in the manner as indicated herein above and in support of her contentions Smt. Ami Prabal has produced original file pertaining to various communications made in the matter.

Shri Yogesh Chaturvedi, learned Counsel representing respondent No. 3 has categorically stated that the lands indicated in Para 5.3 belongs to some of the relatives of respondent No. 3 but he has categorically denied his personal involvement in the matter.

I have heard learned Counsel for the parties and perused the record. Except for contending that respondent No. 3 is a Minister in the Govt. and has used his power to invoke the emergency clause no material is available on record to indicate that by invoking the emergency clause undue benefit or advantage is extended to respondent No. 3. Only vague allegations have been made in the matter of granting undue advantage to respondent No. 3. While considering the question of invoking the emergency clause as contemplated u/s 17 Supreme Court in the case of Om Prakash (supra) has held that while considering the question of invoking emergency clause it is necessary to find out as to whether there was any relevant material available with the appropriate Govt. to enable them to arrive at a substantive satisfaction with regard to dispensing with the inquiry u/s 5A with regard to the acquisition in question. In the case before the Supreme Court letter for invoking the urgency clause was issued on 14-12-89 but for one year no action on the letter was taken and the urgency clause was invoked after a year and it was under these circumstances that there was no material available to show that subjective satisfaction with regard to dispensing with inquiry u/s 5A has been arrived at on reasonable consideration.

In the present case, facts are entirely different. Records indicate that negotiations with the authorities at Japan started in the year 1997 and it was in April, 1997 when the final sanction for the loan was obtained. Immediately after the loan was sanctioned by the said bank process was initiated and on 21-7-99 vide Annexure R-7 communication was made to the authorities concerned for invoking the emergency clause and taking action within a period of less than 15 days from the said date notification Annexure R-8 was issued on 2-8-99. The reason for invoking the emergency clause is explained by the respondents on the ground of time limit prescribed by the Japanese authorities for completing the project by March, 2003 and, therefore, in the facts and circumstances of the

present case it can not be said that the emergency clause was enforced with ulterior motive or malafide intention. Merely because some land belonging to respondent No. 3 and his relatives are situated in the area in question no inference with regard to malafides of the respondent No. 3 or his relatives can be inferred in the matter without there being any cogent material available on record. From the return filed by the respondents it is seen that after the notification was issued vide Annexure R-8 on 2-8-99 and when certain objections were received from some of the persons including the petitioners they were decided on 25-9-99 vide Annexure R-10. Thereafter, notification u/s 6 was published on 11-1-00 vide Annexure R-11 and award has been passed in the matter by the Land Acquisition Officer vide Annexure R-12 on 15-3-01. In all 56 persons were affected by the acquisition. According to the respondents more than 40 persons have received the compensation and it is only about 20 persons including the two petitioners herein above who have not received the compensation. Supreme Court in the case of Om prakash (supra) has considered somewhat similar situation in Para 30 and has refused to interfere in the matter at the instance of few of the occupants on the ground of invoking of emergency clause and dispensing with inquiry u/s 5A.

Keeping in view the observations made by the Supreme Court in Para 30 of the judgment in the case of Om prakash (supra), on the grounds raised in this petition I find no case made out for interference. Invoking of the emergency clause and dispensing with inquiry u/s 5A has been made on subjective satisfaction and on relevant consideration and merely on the basis of vague allegations by the petitioner, the entire acquisitions can not be quashed.

During the course of hearing Shri H.D. Gupta, learned Senior Counsel had indicated that the canal can be constructed even by diverting it in such a manner that the land of the petitioner is not required to be acquired. It is his contention that keeping in view the observations made by the Supreme Court in the case of Om prakash (supra) State Govt. be directed to consider his objection u/s 48 of the Land Acquisition Act. In case land of the petitioner has not been acquired and in case he has not received compensation it would be for the petitioner to submit representation as contemplated u/s 48A of the Land Acquisition Act and if such representation is submitted it would be exclusively for the State Govt. to consider the same in accordance with law and pass appropriate orders. Except for the aforesaid observations finding no case made out for interference petition is dismissed with liberty of representation to the petitioner as indicated hereinabove.