
(1999) 05 AHC CK 0064
In the Allahabad High Court
Case No : C.M.W.P. No. 2720 of 1988

Ram Pratap and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 4(1), 5, 5A

Citation : (1999) 3 AWC 2049 : (1999) 3 UPLBEC 102 : (1999) 2 UPLBEC 1452

Hon'ble Judges : V.P. Goel, J;Ravi S. Dhavan, J

Bench : Division Bench

Advocate : Shakti Swaroop Nigam, for the Appellant; Krishna Prasad, S.C., Shishir Kumar and Ashok Mohiley, for the Respondent

Judgement

Ravi S. Dhavan, J.—Ram Pratap, Mahesh Prasad. Cyan Chand, all sons of Ramanand, resident of village Umarpur Niwa, Pargana and Tehsil Chail. district Allahabad, and Smt. Lakshmi Devi, wife of Onkar Nath. resident of village Umarpur Niwa, Pargana and Tehsil Chall. district Allahabad, have filed the present writ petition challenging the land acquisition proceedings initiated by the Allahabad Development Authority, Allahabad, as a consequence of which the State of U. P. and the Collector. Allahabad, and the Special Land Acquisition Officer (Nagar Mahapalika), Allahabad, arranged to issue notifications under the Land Acquisition Act, 1894 for acquisition of the petitioners' land. The petitioner's land is only part of the land which had been acquired for a project described as in the notification for a park and a road. The petitioners have arrayed, the following as party respondents : (1) State of U. P. (2) Collector. Allahabad, (3) Special Land Acquisition Officer (Nagar Mahapalika). Allahabad. (4) Allahabad Development Authority, through its Chairman, (5) Ministry of Defence, through its Secretary, (6) Sub-Area Commander, Allahabad and (7) Cantonment Board. Allahabad. The petitioners contend, all of them. that they are Bhumidhars in possession. The petitioner Nos. 1. 2 and 3 contend that they are Bfiumidhars in possession of plot No. 520. measuring 72 Biswas 16 Biswansis. plot No. 526. measuring 1 Bigha 9 Biswa and plot No. 527, measuring 15 Biswas,

the total of which adds up to 2 Bigha 16 Biswa and 16 Biswansi, situate in village Umarpur Niwa, Pargana and Tehsil Chail, district Allahabad. The petitioner No. 4, says that she is Bhumidhar and in possession of plot No. 520. measuring 1 Biswa 5 Biswansi, in the same village. They contend it was only on 17 January, 1988, when a notice u/s 9 (3) of the Act had been left in the village but not served on them that they came to know that their plots are acquired under Sections 4 and 6 of the Act.

2. They contend that they tried their best to locate the notifications in the Gazette, but could not get it. They contend that when they Inquired, they were informed that these notifications had been published in the newspapers, Amrit Prabhat and Swatantra Bharat. The notification u/s 4(1) of the Act is dated 12 November. 1987. The notification u/s 6 of the Act is dated 28 November, 1987. These notifications were published in Swatantra Bharat, a newspaper, on 3 December, 1987. These notifications as published in Swatantra Bharat on 3 December, 1987 are appended as Annexures-1 and 2 to the writ petition. The petitioners have quoted the text of the notifications in the writ petition.

3. The petitioners contend that there was no urgency to eliminate and dispense the applicability of Section 5A of the Act and resort to the power u/s 17. It has been contended on behalf of the petitioners that, regard being had to the subject for which the land was to be acquired, a fair opportunity should have been given by taking recourse to and by making the provision u/s 5A available so that the persons, concerned, could file objections, to object to the acquisition of the land. It is contended that the purpose for acquisition was declared as a park and an approach road, the park in any case had been existing since the turn of the century and to deprive the persons whose land was acquired when the object of the acquisition was a park, the action resorted to is arbitrary. It is more arbitrary, when no ground, justification, exceptional circumstances existed to resort to special powers in cases of urgency, and to deprive a democratic method of permitting those whose properties were being acquired to file their objections. There was no unforeseen emergency to make use of powers u/s 17, and defeat the normalcy of the situation to hear objections u/s 5A of the Act.

4. The petitioners further contend that they are scheduled castes and by a Government Order of the State of Uttar Pradesh. their agricultural lands being their sole source of livelihood are not to be acquired. The petitioners refer to the Government Order Issued by the Secretary, Revenue, issued to all the Collectors of Uttar Pradesh. This Government Order is dated 24 September. 1985. The Government Order has also issued instructions that lands of persons who are scheduled caste and are in possession of less than 31 /8 acres of land, are to be provided alternate land. The petitioners contend that they have not been offered any alternative. They further submit that even though the acquisition was made in 1987. as it is claimed, 12 years have passed and they have not received compensation either nor the petitioners have any Information of the deposit of the compensation nor has it been stated by any of the respondents on record of

this petition that the purpose for which the land was acquired, that is, laying a park, compensation has been deposited by the authority concerned (Allahabad Development Authority), for whose benefit the land was acquired. The petitioners again contend that there is another order issued by the Revenue Secretary to all the Collectors prohibiting further acquisition of land till compensation in pursuance of acquisition is not paid. The petitioners, it is contended, have not been paid compensation. The petitioners contend that they have come to know that an area of four thousand acres of land had been acquired for the Allahabad Development Authority for planned development and these respondents have been required to pay compensation amounting to Rs. 22 crores which has not been deposited up to now and as such the plots in question, alleged to be acquired violate the sanction on which acquisition is made. The petitioners also submit that no public notice of substance has been issued in the locality either u/s 4 or Section 5 of the Act and the acquisition is vitiated by lack of notice.

5. Heard counsel for the petitioners, Mr. Shakti Swaroop Nigam, and counsel for the State respondents, Mr. Krishna Prasad, standing counsel, U. P., counsel for the Central Government respondents. Mr. Shishir Kumar, Additional Standing Counsel, Central Government, and counsel for the respondent Allahabad Development Authority. Mr. Ashok Mohlley.

6. It needs to be placed on record that the State of U. P., in reply, has filed five affidavits. One counter-affidavit was filed on 23rd March. 1988. a supplementary counter-affidavit was filed in May. 1988. an affidavit was filed on 7 August. 1988. the other counter-affidavit was filed on 16 July. 1997, along with a supplementary counter-affidavit. Again, the State of U. P. filed an affidavit on 20th August. 1998. The Allahabad Development Authority has filed a counter-affidavit on 15th April. 1988 and a supplementary counter-affidavit following it in April. 1998.

7. These have been replied to by the petitioners by, respective, rejoinder-affidavits. There was no lack of opportunity for the respondents in answering the petition. The fact that the respondents chose to file so many counter-affidavits and affidavits left the Court with no option but to direct the respondents to produce the record. After the Union of India had been added as a party respondent in 1998, on behalf of the Union of India, a short affidavit was filed by the Defence Estates Officer. Allahabad, along with an application. The application prays that the notifications acquiring defence land be quashed and this land be handed over peacefully to the respondents of the Government of India. The Court had required the Union of India, also, to produce the original record.

8. Between the State respondents, they were not exactly clear on the settlement of the land as in the revenue records. This question was relevant as the compensation would only be paid by that Government whose obligation it would be to seek deposit of the compensation and consequentially pay it. By the time, the original records had been placed before the Court, it had rendered the pleadings of the respondents at tangent and contradictory. An Issue was created

whether it was necessary to acquire the lands which were the subject matter of the notifications, the major part of which belong and were under the control of the Ministry of Defence, the Union of India. On behalf of the petitioners, it was strenuously urged that the reason why the land acquisition notification had been published from Lucknow, the intention was that the citizens of Allahabad should not know of the acquisition. The petitioners contend that the circumstance is full of contradictions and incongruous that the State of Uttar Pradesh was acquiring land which belonged to the Union of India to create a park inside a park. As the settlement records are possessed by the Collector, the Court required the Collector to answer where exactly the land is situated, whether outside the Cantonment or inside the Cantonment. The Collector in his affidavit made a categorical statement on oath that the land lies within the Cantonment area. Plainly, the issue was that at Allahabad there is a lake, which is so recorded in the settlements and in the Gazette. This lake is known as the Macpherson Lake. Lands contiguous to and around the Macpherson Lake became the subject matter of acquisition as also the approach road.

9. Before the Court, the original records of the State including those of the Government of India, with the maps in possession of the Defence Estates Officer were produced. The maps of the Union of India, the Ministry of Defence, show that at a stretch, north of the G. T. Road (south not excluded, but this is not the subject matter of the present petition), is Cantonment, i.e.. Defence Ministry land.

10. In the counter-affidavit of the State respondents. It is accepted that the provisions of Section 5A which prescribes for hearing of objections to permit any person Interested whose land has been notified for acquisition for a public purpose (or for a company) to object, had been dispensed with. But, the urgency to dispense with Section 5A and to resort to the special powers u/s 17 has not been explained and justified. It is contended "the land is being acquired for setting up a park and road which will provide recreation spot for the use of citizens of Allahabad City and adjoining area. The land in question is situated along the periphery of a natural lake called Macpherson, a lake, and the setting up of a park plantation and beautification of lake. will also help in minimising the atmospheric pollution." In the counter-affidavit of the State, it is also accepted that the respondents did not make any inquiry whether the petitioners are members of the scheduled caste and may be entitled to either exemption from acquisition or alternate land. It is also accepted that in "exceptional cases", the land of such persons may be acquired. But, no exceptional circumstance has been mentioned to acquire the land of scheduled caste persons. In the counter-affidavit, it is contended that the petitioners did not raise this objection in their contentions u/s 9(3) of the Act and that their objections are appended. The objections of the petitioners have not been appended to the counter-affidavit. This is also one of the reasons why the record had been sought by the Court.

11. In the counter-affidavit, it is denied that by this acquisition, the State

respondents were required to pay a sum of Rs. 22 crores. This aspect, the Court will deal with subsequently. On the adequacy of service of notice, it is contended in the counter-affidavit that the substance of notification was published at a convenient places) in the village on 2.11.1998 and the notification u/s 6 was published on 20.12.1987 in village Umarpur Niwa. Tehsil and Pargana Chail, district Allahabad, at a convenient place. Where it was published has not been indicated. In fact, it has been left out and the submission is incomplete. The exact sentence relating to making submissions on the service of notice in paragraph 16 reads "The substance of notification was published at convenient place in the village on 2.11.1988 and notification u/s 6 was published on 20.12.1987 at village Umarpur Niwa at a convenient place, i.e." This is also one of the reasons that with incomplete information, the Court had required the respondents to place the original record. The dates given in this paragraph of the counter-affidavit are either Incorrect or a misprint, but not explained even later. In yet another counter-affidavit of the State respondents filed nine years after the previous one to which the Court has referred to. the purpose and urgency of the situation is being explained as also the fact of dispensing with Section 5A (permitting hearing of objection) is accepted. In paragraph 8 of this affidavit, it is contended that "the land is being acquired for setting up a park and road which will provide recreation spot for the use of citizens of Allahabad City and adjoining area. The land in question is situated along the periphery of a natural lake called Macpherson a (sic) lake and the setting up of park plantation and beautification of lake, will also help in minimizing the atmospheric pollution." In this counter-affidavit, even after nine years, the State respondents are pointing that they have no knowledge that the petitioners are members of the scheduled caste, but it is admitted that the plots in dispute are agricultural plots. It is accepted in this counter-affidavit that by a Government Order, dated 24 September, 1985. land belonging to members of the scheduled caste and freedom fighters should not be acquired. It is being submitted that in exceptional cases, it could be acquired. The exceptional circumstance has not been indicated in the counter-affidavit. In this counter-affidavit, it is being denied that the State respondents were required to deposit a sum of Rs. 22 crores as compensation. In fact, this counter-affidavit Is virtually a repetition of the one which was filed nine years ago. In reference to service of notice, the same mistake or lack of information has been provided as the counter-affidavit which was filed nine years ago. Clearly, this counter-affidavit is a mechanical repetition of the previous one. A supplementary counter-affidavit was filed by the State respondents. This supplementary counter-affidavit has been affirmed by the Special Land Acquisition Officer, Allahabad. It appears that the State respondents, as an afterthought, realised that they had not explained certain issues raised in the petition. In this supplementary counter-affidavit. It is being explained that the notice of announcement of acquisition was affixed in the premises of Smt. Dullya Devi Junior High School, which is nearest to the land under acquisition, as such the Special Land Acquisition Officer thought it proper to affix a copy of the substance of notification. It is being explained that it had been incorrectly stated that all the schools are at a distance

of more than one km. of the acquired land as if to suggest that the previous notice for the tenure-holders, whose land has been acquired had been affixed in the premises of "Kanya Junior High School" which is "at a distance of hardly 150 metres from the land under acquisition". It has not been explained why the notice was not affixed in the area where the petitioners reside or at their houses and whether a notice affixed at a school where the petitioners may not be available may not be effective and good. Then. In the same supplementary counter-affidavit. It is again being explained that the Land Acquisition Officer announced the substance of the notification u/s 4 and u/s 6 and affixed a copy of the substance of the notification on one of the pillars of the entrance gates of the Kanya Junior High School. This makes it clear that the intention was never to affix the notice at the residence of the petitioner so that the petitioners could have knowledge. The service of notice was not at the residence of the petitioners, where the petitioners were available, but at the two schools. These submissions also have been made in yet another supplementary counter-affidavit. This is a supplementary counter-affidavit of a Chaprasi, that is. a peon in the office of the Special Land Acquisition Officer. It was in these circumstances, the Court had required that the respondents file a responsible affidavit and bring in the original record.

12. The other contesting respondent is respondent No. 4. that is. the Allahabad Development Authority. It had filed a counter-affidavit in 1988. The publication of notifications under Sections 4 and 6 arc accepted. It has not been mentioned in this counter-affidavit as to where these publications had been made. In total contradiction to the affidavit of the State respondents in paragraph 7 of this counter-affidavit, the purpose of acquisition Is being explained that the population of Allahabad City is growing at an alarming speed and there is a great demand for houses for the general public and for the houses of the State Government. It is contended that on the recommendation of the Collector. Allahabad, as it was a matter of urgency, the provision requiring hearing of objections, u/s 5A of the Act had to be dispensed with. In this counter-affidavit, it is explained that "the land was needed immediately for construction of the houses". It is accepted that lands of agriculturists belonging to scheduled caste persons having a holding below 3-1/8 acres may not be acquired as far as possible. But, It is contended that it became necessary to acquire the land as it was proposed for a Nehru Park and the area is to be connected with the Grand Trunk Road. It is contended in the counter-affidavit that the Allahabad Development Authority has deposited the entire compensation and that the Special Land Acquisition Officer had given notice to the petitioners to collect compensation, but the petitioners have not withdrawn compensation awarded to them. It is denied in this counter-affidavit that four thousand acres of land have been acquired by the Allahabad Development Authority. It is contended that only 650 acres of land had been acquired. In paragraph 14 of this counter-affidavit, it is again reiterated that the Allahabad Development Authority, after acquisition of land, makes improvement and, thereafter, the plots and houses are allotted on

no loss and no profit basis. No details are given in the matter relating to service of notice except that they were served in accordance with law. In this counter-affidavit, it appears that there is a contradiction whether the land was acquired for houses or for setting up a park. The Allahabad Development Authority later filed a supplementary counter-affidavit. In this supplementary counter-affidavit, the stand is now being changed and it is being indicated to the Court that the land had been acquired for the construction of a park and road under planned development scheme for the Allahabad Development Authority and it was proposed to set up a Nehru Park to be connected by an approach road with the Grand Trunk Road. It is also contended that certain plots came to be possessed by the Development Authority, in village Umarpur Niwa. as they had been declared surplus under the U. P. Urban Land Ceiling and Regulation Act. 1976 and the possession of the land had been handed over to the Allahabad Development Authority. It is in this regard, counsel for the petitioners raised an objection that the land lies in the Cantonment and it could not be declared surplus and handed over to a civil authority and if this contention was correct, at best the land could be possessed by the Ministry of Defence. As such as Issues were raised, whether the land was inside the Cantonment or outside, the Court thought it proper to see the original records as to where exactly these lands lie in the settlement records.

13. With several counter-affidavits having been filed by. both, State respondents and the Allahabad Development Authority, the original record of the land acquisition case was sought on a direction, though "directed by a Division Bench, more than 10 years ago. An order with this direction lies having been passed on 16.11.1988 (Hon"ble N. N. Mittal and Hon"ble Om Prakash. JJ.). Thereafter. several Division Benches repeatedly passed orders that, upon certiorari, the original records be produced. The records were produced after 10 years.

14. The Court passed an order on 20 January, 1998 requiring the standing counsel to Inform the Court by an affidavit of the Collector on where exactly the village Umarpur Niwa and Macpherson Lake referred to in the pleadings are located as from the official records of the Surveyor General of India and whether these are State, Defence and/or Cantonment lands. This order of the Court was evaded for quite some time. On 26 May. 1998, the State counsel was moving an application to seek two weeks" further time to produce the relevant records and papers. The adjournment was granted to the State respondents. In the meantime, the petitioners applied, by an application, seeking Impleadment of certain respondents under the Central Government. The contention of the petitioners, on the application, was that the State Government has been unable to produce the record as directed by the Court. The petitioners submitted that the land does not belong to the State of U. P. and it belongs to the Army. In paragraph 3 of the application, it was contended that impleadment be permitted of (a) Union of India, through Ministry of Defence, through its Secretary, (b) Sub Area Commander, Allahabad and (c) Cantonment Board. Allahabad, as respondent Nos. 5. 6 and 7. The Impleadment was permitted and the Additional

Standing Counsel, Central Government, took notice, of the impleadment application, as also, the aspects which are recorded in the orders dated 20th January, 1998 and 26 May, 1998. The order of 20th January, 1998 drew the attention of State respondents and the Central Government respondents to show by record the status and ownership of the acquired lands : Whether civilian or military? On 20th August 1998, an affidavit was filed on behalf of the District Magistrate, Allahabad. The relevant portion of the affidavit reads :

"4. That information as such required has been received which are as follows :

(a) Area of whole of Macpherson Lake lies within Cantonment area. Photocopy of the map is being filed and marked as Annexure-1 to this affidavit,

(b) Nehru Park which has been created by the Allahabad Development Authority. Allahabad is situated In plot Nos. 500, 501, 502, 506 to 521, 526, 527. 528. 532. 533. 535. 561 and 563 in which some of plots are fully covered by the Nehru Park and some of them covered in east of village Umarpur Niwa.

(c) Road approaching from G. T. Road to the Nehru Park. according to the map is situated on the defence land of plot No. 285 having 7.00 acres of land and after then it includes part of plot Nos. 526, 527, 528, 532, 533, 535, 561, 563, 564. 883, 981, 982, 983. 1009, 1010 and 1011. Some of these plots are of village Umarpur Niwa. Pargana Chail, Tehsil Sadar in park.

(d) However, it is regretted that record of Surveyor General of India could not be available, hence abovementioned information is based on report dated 14.7.1998 by Secretary. Allahabad Develop merit Authority. Allahabad. However, copy of the map is being filed and marked as Annexure-2 to this affidavit."

15. The District Magistrate has placed a large map which, apparently, has been certified on 14th July, 1998. but has been made by the Allahabad Development Authority. The map refers to the area of the park, the Cantonment area, the Cantonment boundary and in no uncertain terms clearly reflects that the Nehru Park Itself is within the Cantonment. This aspect is corroborated by the statement of the District Magistrate that the Macpherson Lake is within the Cantonment. The Nehru Park has been laid within the Cantonment by the State respondents. Therefore, the presumption is irresistible that within the areas of defence lands and around the Macpherson Lake and a park, all within the Cantonment, another park was being created by the civil authorities.

16. In the meantime, the Government of India has entered appearance and filed an affidavit of the Defence Estates Officer that the civil authorities have walked into the defence area. This could not be done, it is submitted. The Government of India has applied that the notifications be quashed. The Government of India has placed the records relating to the area to show that right from the beginning, they had indicated to the civil authorities, not to enter the area as this area belongs to the Government of India, Ministry of Defence, part of which is laid out as a park, where there is an old lake known as the Macpherson Lake. The

Government of India has also Indicated that some of these are security areas, and has applied to submit that a direction be issued, in effect, that these defence lands, illegally occupied, be handed over peacefully to the Defence Estates Officer. The original records of the Ministry of Defence, Government of India and Survey maps of the area were placed before the Court during hearing. It is contended on behalf of the Defence Estates Officer that the area acquired for establishing a park around Macpherson Lake, located inside the Cantonment, belongs to the Ministry of Defence. The Defence Estates Officer contends that as the State respondents have not made available an authentic plan showing the details of the acquired land, thus, the detailed comments, in effect, on further topography are not possible. It was explained in arguments that the map which shows the acquired land does not show the contours and physical reliefs. It is not precise, and scale map of the Surveyor General of India displays Cantonment land and the acquired land is within it. This fact is accepted by the District Magistrate, Allahabad, it is stated. It is contended that the Ministry of Defence has had the matter examined. In the affidavit, it is stated that the Allahabad Development Authority has occupied 81.73 acres of defence land at Nehru Park which includes the defence land forming part of approach road to Nehru Park. The Defence Estates Officer contends that the Allahabad Development Authority has neither paid any rent till date for occupying defence land nor paid the transfer value of such land amounting to Rs 20 crores, approximately, and in lieu of such land no land of equal value has been provided to the Ministry of Defence. In the affidavit of the Defence Estates Officer, it is contended that the Vice Chairman of the Allahabad Development Authority by a letter dated 10th May, 1991. clearly stated and made a request that approach to the park be permitted through defence land and that the Allahabad Development Authority will not claim any propriety rights over the same, a copy of this letter has been annexed with the counter-affidavit of the Defence Estates Officer. This letter is addressed to Brigadier O. P. Shandilya. Commander, Head Quarters, Allahabad Sub-Area. It is submitted that this alone demonstrates that this local authority has all along known that what it has occupied unauthorisedly is defence land over which it has no title. propriety right or otherwise. The Defence Estates Officer contends that acquisition proceedings for the approach road were completed without prior permission from Defence Estates Officer or the competent authority. In this affidavit, it is contended that such acquisition proceedings are without any authority and Jurisdiction and void, ab initio as no authority of the State can acquire defence land. It is submitted in this affidavit that "such action challenges the sovereign authority of the Union Government". The affidavit goes on to submit that it is not an issue that most of the area near and around the Macpherson Lake belongs to the Ministry of Defence and is identified by boundary pillars which mark defence land, and these are existing at site and are also marked on the map.

17. With the affidavit which has been filed by the Defence Estates Officer, it is clear that there is no issue that the State respondents have acquired land which

may not belong to, firstly. any Individual and, secondly, land which vests with the Government of India. This acquisition by the State of Uttar Pradesh for the benefit of a local body known as Allahabad Development Authority, it is contended is illegal. The Government of India, through the Defence Estates Officer, has also produced its records.

18. First, the court will deal with the records produced by the Government of India as now there is no issue on record that land of the Government of India has been acquired. The Court has been shown a map which has made as Heliozineographet at the Surveyor General of India, Dehradun. The map was published under the direction of Brigadier H. J Couchman, D.S.O., M.C., Surveyor General of India. 1935. The map is set at 16 Inch scale. The Court's attention has been drawn to the fact that the Cantonment boundary clearly takes within itself, the entire Macpherson Lake and the Macpherson Park. The Cantonment boundary on North of the Grand Trunk Road is marked by Cantonment pillar Nos. 8. 8A, 9, 9A. 10. 11. 12. 13, 14 and 15. The entire Macpherson Lake lies east to this boundary. Niwa village lies West of this boundary. Another map placed before the Court by the Defence Estates Officer was published by the Surveyor General of India in 1925. The map is entitled "Allahabad New Cantonment-- Seasons 1902-04 and 1910-11". The area of the claimed acquisition has been marked by the Defence Estates Officer on this map. As has been mentioned before, in this map also the entire area of the Macpherson Lake is within the Cantonment. Almost the entire area of acquisition and the park which was proposed as "Nehru Park" is within the Cantonment that is the land of the Ministry of Defence. Clearly, from the original, records produced by the Ministry of Defence, of maps published under the authority of Surveyor General of India, leave no doubt that the area of acquisition for the proposed purpose of setting up of Nehru Park in and around the Macpherson Lake (and the Macpherson Park) is defence land.

19. On the basis of the record, the Additional Standing Counsel, Central Government submits that in January, 1988 the only proposal which was being contemplated by the Defence Authorities was one made by the Allahabad Development Authority to develop the Macpherson Lake and the adjoining area as a recreational spot. It is on record that it was being indicated to the Ministry of Defence that this lake has the potential of being developed into a picnic/tourist spot and also to continue to provide facilities to Army as at present. The only proposal which was to be considered is whether part of this area could be given on "lease" to the Allahabad Development Authority, The original record, the Additional Standing Counsel pointed out, clearly records that this area was under consideration of being leased to the Allahabad Development Authority. This note is recorded by a Brigadier, Officiating Station Commander (Amarjeet Singh). dated 5th January. 1988. It is submitted that this could have required the sanction of the Government of India, Ministry of Defence.

20. When the Allahabad Development Authority had intended to execute works

around this area. the Defence Estates Officer by his letter No. A-3-I/Lease/7, dated 10th November, 1987, addressed to the Station Head Quarter, Allahabad, on the subject "Defence Land" recorded that "It is felt that execution of any work by Allahabad Development Authority on defence land without sanction of the Government of India, Ministry of Defence is not in order and may lead to future complications".

21. The Additional Standing Counsel refers to a note, dated 29th January, 1997, of the Defence Estates Officer, Allahabad, Circle, No. A-3-1/Lease/145. The note is addressed to the Station Head Quarters. This note shows an alarming situation relating to public safety. It would be best to reproduce this note :

No. A-31/I/Lease/145 O.O. The D.E.O., Allahabad Circle, Allahabad.

Dated : 29th January, 1997

To,

Stn. Hqrs.

Allahabad.

Sub : Provision of fencing on boundary between Nehru Park and Firing Ranges.

Reference your Hqrs. letter, P. 1444, No. 2001/37/Q3L, dated 24th January, 1997.

2. The Nehru Park falls within the Danger Zone of the Ammunition Dump and Ranges. The Safety Zone is required to be determined and marked on ground by an expert from the Ordnance Depot/Explosive Department.

3. There is no Government sanction for occupation of Defence land at Nehru Park by Allahabad Development Authority. Before the Safety Zone is fenced, the views of the Government of India. Ministry of Defence may be obtained.

4. Due to the presence of the Ammunition Dump and Ranges in the vicinity, the Allahabad Development Authority is sitting on a powder keg. They may, therefore, be advised to vacate the site immediately in public interest or else a major disaster may occur at any time. In this connection, please also refer to this letter No. G-135/Alld./VIII/166, dated 28.1.97.

Sd/ illegible Defence Estates Officer, Allahabad Circle, (Sanjay Das Gupta)

Copy to :

Allahabad Sub-Area W.R. to above for information and necessary action."

22. The contention of the Additional Standing Counsel has been that no civil authority will listen to the Defence personnel when they were advising that the Nehru Park, which they are proposing is within the danger region of the ammunition dump. It was contended that even before the Second World War, this area was the ammunition dump and part of ammunition firing range area. It is contended that even today, the firing ranges are north of the Macpherson Lake.

In the very area where Nehru Park is being pushed by the Allahabad Development Authority. the Allahabad Development Authority has laid out a park virtually on an uncleared ammunition dump area not different from a war zone mine area. Thus, the note records that the Illegally set up park of the Allahabad Development Authority is on a explosive powder-keg. The Defence Estates Officer advised that the Allahabad Development Authority must vacate the site immediately in public interest or safety, otherwise a major disaster could happen. This is the record of the Ministry of Defence, Government of India.

23. On the files of the Ministry of Defence, there is a communication of the Defence Estates Officer. Allahabad . Circle, Allahabad. addressed to the Director of Defence Estates, Cenlral Command. Lucknow Cantonment. The number of this letter is A-31/I/Lease/II5. The date of the letter is 10th January, 1994. The subject of the letter is "Land Policy Cantonment". In this letter, the Defence Estates Officer is pointing out to the Director, Defence Estates, in the context of certain mentioned cases, that certain irregularities have taken place. "In transferring/ occupation of the defence land by the State Government/Allahabad Development Authority. Allahabad". The details have been furnished. Against item 1A, there is a mention that originally the Allahabad Development Authority had asked for 123.0706 acres of defence land for development of Nehru Park. It is pointed out that this organisation occupied land measuring 123.0706 acres during 88-89 on an arrangement with the local army authority, but without obtaining Government approval/sanction and finalisation of terms and conditions. In this regard, the Defence Estates Officer, Allahabad Circle. Allahabad (Alok Gupta) has recorded a note at page 104 that "originally the Allahabad Development Authority asked for 123.0706 acres of defence land for Nehru Park. Nobody ever handed over any site out of Macpherson Lake. etc. to the Allahabad Development Authority, but they occupied area of 123.0706 acres during 88-89 on the consent of local army authority, without obtaining approval of the Government and finalisation of the terms and conditions.

24. With this controversy, the record also shows that the Army was hostile to the occupation of defence land for which they appear to be seeking barter arrangements, but on equal value basis. The Army contends that the cost of the land is Rs. 20,77.43.335.00. At the time when this calculation was made, the civil local body, the Allahabad Development Authority is intimating that the cost of the land was worked out at Rs. 1,39.46,578.72. But, this alone shows that the situation is confusing.

25. It is now clear that the land which was occupied was land of the Government of India, Ministry of Defence and within the Cantonment. On this, there is no issue. It is for this reason that the petitioners were raising submissions in arguments all the time that the very acquisition is bad and as agriculturists belonging to the scheduled caste they should not have been disturbed. Their tenure rights, it is contended, had never been interfered with by the military. Further, the issue of the compensation being deposited is irrelevant as between

the Allahabad Development Authority for whose benefit the acquisition is claimed, and the Ministry of Defence, the valuation of the whole of land ranges from Rs. 1,39,46,578.72 to Rs. 20.77.43.335.00.

26. Now the record of the State respondents : Initially when the file was processed at the level of local civil administration, it was being processed as if the land is proposed to be acquired for Awasiya/ Vyavsayik Yojna. Such is the processing of the record between pages 1 to 9. The reference is to the same village Umarpur Niwa, Pargana and Tehsil Chail. District Allahabad. There are cuttings on the files to convert it into park.

27. These acquisition proceedings of acquiring the land without confidence casts a reflection on misutilisation of powers: sovereign powers to dispossess holders of property without due process of the law. against the rule of the law and against the mandate of the law. A perusal of the record of the Ministry of Defence, Government of India itself shows that the body in favour of Whose the land was being acquired had already walked into the land and occupied this land. The acquisition proceedings were like ex-post-facto sanction. In irregular financial transactions. From the record, the Ministry of Defence. Government of India has demonstrated that the land which was acquired belongs to Ministry of Defence. Government of India and is the Cantonment. In so far as Government of India records are concerned, there is no issue on this. The map which is appended to the acquisition proceedings, it is the contention of the Ministry of Defence, Government of India, does not co- relate the area between civil land and military land. The exact position is clearly indicated in the maps executed by the Surveyor General of India. All most the entire area, in fact. It is contended on behalf of Ministry of Defence. Government of India that the entire area comprises of land which belongs to the Ministry of Defence, Government of India. In so far as the maps of Government of India are concerned, by law, the Indian Evidence Act. 1872, gives them sanctity as official documents under Sections 78, 81. 83 and 87. No person nor the Court can ignore these maps. The presumption is that they have been made by the authority of the Central Government and are accurate. Further, the Government of India records show that there has been unauthorised occupation of lands belonging to the Ministry of Defence, Government of India. Such an acquisition does not inspire confidence. It is not a question whether the lands of the petitioners have been acquired. What the State of U. P. has done is to acquire the land of the Ministry of Defence. Government of India. The Land Acquisition Act, 1894 does not permit this in the face of hostility by the Union of India.

28. Now the matter relating to irregularity of possession which has been demonstrated by the Ministry of Defence, Government of India. The record which has been produced by the State Government corroborates this situation. To this extent, the records of the Ministry of Defence. Government of India and the records of the local administration are compatible. There is no issue on record that the Section 4 notification under the Act is dated 12th November. 1987.

There is no issue on" record that the notification u/s 6 is dated 28th November. 1987. Before the process, as prescribed and sanctioned by law. under the Act. could be completed, as the law so enjoins, the Allahabad Development Authority. was apparently, in a rush to defeat the provisions of the law. The Allahabad Development Authority. Allahabad, did not have confidence under the law that the acquisition proceedings could be carried out under the procedure prescribed by law. In an unprecedented undemocratic and unauthorised manner, the land was occupied first and for pretence, the due process of law and procedures were being resorted to after possession had been assumed under the cover of a political function. The following communication from the Allahabad Development Authority to the Special Land Acquisition Officer. Allahabad, dated 16th November, 1987, does not reflect on the bona fides of the circumstances in which the acquisition proceedings were carried out :

bykgkckn fodkl izkf/kdj.k] bykgkckn

izs"kd]

lfpo

bykgkckn fodkl izkf/kdj.k]

bykgkckn

lsok esa

fo"ks"k Hkwfe v/;kfIr vf/kdkjh]

?u-e-ik-? bykgkckn A

i=kad % eseks@112th@8& Hkw-v-l-v-@87

fnukad 16 ucEcj] 1987

fo"k; % xzke mejiqj] uhok esa ikdZ ,oa lM+d ds fuekZ.k gsrq 56&15&5 ch?kk Hkwfe v/;kfIr djus ds fy, /kkjk 4 ?1? Hkw&vtZu vf/kfu;e ds varxZr izlkfjr vf/klwpuk dk nks nSfud lekpkj i=ksa esa izdk"ku ds lECU/k esa A

egksn;]

mi;qZ? fo"k; dh rjQ vkidk /;ku vkdf"kZr djrs gq, lwfpr djuk gS fd bl LFky dks v/;kfIr djus ds fy, "kklu us vf/klwpuk la[;k 6136@11&5&87&142 ,y-,-@87] fnukad 12 uoEcj] 1987 varxZr /kkjk 4 ?1? Hkw&vtZu vf/kfu;e ds varxZr izlkfjr dj fn;k gS A bldh rhu fp= izfr;ka Hkstrs gq, vkils vuqjks/k gS fd bldk nks nSfud lekpkj i=ksa esa rRdky izdk"ku djkdj mu i=ksa dh nks izfr;ka bl dk;kZy; dks] "kklu dks Hkstatus ds dy, vfoYec Hkstatus dh ?ik djsa A ;g LFky usg: ikdZ ds fy, v/;kfIr fd;k tk jgk gS vkSj bldk mn?kkVu eq[; ea=h }kkjk 14 ucEcj] 1987 dks fd;k tk pqdk gS A vr,o bl lECU/k esa "kh"kZ izkFkfedrk ds vk/kkj ij dk;Zokgh djus dk d"V djsa A

Hkonh;

g- vLi"V

lfpo

bykgkckn fodkl izkf/kdj.k

bykgkckn A

ofj"B fyfid

foKfIr;ksa dk izdk"ku fof/kor lqfuf"fpr djsa A bldk izdk"ku LFkkuh;Lrj ij ekSdk] dk;kZy; bykgkckn fodkl izkf/kdj.k dk;kZy; ftykf/kdkjh o fodkl [k.M dk;kZy; ij Hkh djkus dh O;oLFkk djsa A

g- vLi"V

8-11-1987

The original has been signed on behalf of the Secretary of the Allahabad Development Authority. After the notification u/s 4 had been issued, that is. on 12th November. 1987. and the notification u/s 6 had yet to be issued or advertised, public records record that the area was occupied by the Allahabad Development Authority by walking in to the lands of Ministry of Defence. Government of India. An inauguration of a park was arranged to be done by the Chief Minister on 14th November. 1987. The aforesaid communication of the Allahabad Development Authority to the Special Land Acquisition Officer records on 16th November. 1987 that the park had already been inaugurated by the Chief Minister on 14th November, 1987. But, the notification u/s 6 had yet to be issued. It was issued two weeks after the inauguration had been done by the Chief Minister. The inauguration had been done in the name of a great personality, Jawaharlal Nehru, the former Prime Minister of India. This case is an example in which the names of great people are misutilised for misplaced sycophancy even by violating the law. This is not the content of democracy. This is not an exercise of sovereign powers in accordance with law and within the meaning of due process of the law. This case is also a reflection of misutilisation of powers when democracy does not function within the total content of local self- government. At the relevant time, the local bodies in Uttar Pradesh had been superseded from town area committees to municipal corporations and were without elected representatives. The Administrators were manning local self-government institutions. The Administrators at the relevant period of time were exercising that much power that they could conduct acquisition proceedings, eliminate hearing of objections, and create a phobia of emergency to subvert democratic procedures and the process of law. Military land was acquired in military style.

29. The endorsement which has been made in this letter requires service by substituted service. It is recommended in the endorsement that at the area of acquisition and. in fact, on persons, concerned, notice be affixed. In the normal course relating to the city of Allahabad. which is the headquarters of the State

Government Printing Press, it would be in the normal course of State Administration to publish such a notification at Allahabad and not at Lucknow. But, it is abnormal that in a matter relating to Allahabad, a Gazette notification should be published at Lucknow. And that also in a case where it was decided to eliminate the fair procedure of hearing objections, in a matter which was not one of emergency.

30. It is In this regard that the petitioners have contended that whereas they reside within the area of acquisition, but the respondents have chosen to effect substituted service on the petitioners by affixing a gist of the notifications and acquisition proceedings u/s 9, not at the residence of the petitioners, but at the premises of two schools. Counsel for the petitioners contended that this is a clear exercise to avoid the petitioners for effecting service and. secondly it is only an exercise in formality, the meaning of which is to avoid service on the petitioners.

31. This is a clear case which shows that there was no urgency in acquiring land for setting up a public park and taking an approach road to it. The area of the so-called park was a dedicated area existing within the Cantonment, and the lands belong to the Ministry of Defence. Government of India. The Macpherson Lake and Macpherson Park had already been existing and it is on record with a clear mention in the maps of the Surveyor General of India and the United Provinces District Gazetteer. The Ministry of Defence, Government of India, records which have been produced, on the basis of which it is contended by its Additional Standing Counsel that there already exists a park around the Macpherson Lake which is known as Macpherson Park. The Gazette mentions that this area is within the Cantonment.

32. The reference to the Macpherson Park and the lake is in the District Gazetteer of the United Provinces of Agra and Oudh : Volume XXIII. The Gazetteer was published by the Government Press. United Provinces, 1911. It was authored by H.R. Nevill. I.C.S., F.R.G.S. M.R.A.S. This is an official publication. The reference to Macpherson park and the lake which has been dedicated as the Macpherson Lake, finds mention in the maps of the Surveyor General of India and has been made in this District Gazetteer. This reference is mentioned at page 213 under the subhead : New Cantonment. The reference reads :

"For a time there was another Cantonment to the south of Colonelganj occupying the area now taken up by the Alfred Park and Government house. The central block of the latter is said to have been the British Infantry mess-house, though the assertion is somewhat doubtful. The place was found to be very unhealthy and was abandoned after the Mutiny, when the new Cantonment was acquired. This lies to the west of the civil station and extends as far as Umarpur Niwan on the Ganges, the western boundary running due south from that village to the Grand Trunk Road. This Cantonment contains the brigade headquarters, the Native Infantry lines along the Ganges in the north, the British Infantry and Artillery barracks in the centre and the Supply and Transport lines in the south.

To the west of the infantry barracks are the rifle ranges and brigade parade ground, the Macpherson Park, the cemetery and a broad stretch of broken and wooded country. Close to Niwan is a large lake, artificially made damming the mouth of a long ravine at its out lets into the Ganges. In the south west of the Cantonment are the extensive lands of the military farm, stretching from a considerable distance along the north side of the Grand Trunk Road."

33. The Ministry of Defence. Government of India, claims that the Allahabad Development Authority walked into this area irregularly. The crude manner in which the inauguration of a park was made in the name of Jawaharlal Nehru, former Prime Minister and on his birthday far from giving respect to this great national leader. In fact, only shows the style of exploiting the name of a national leader and exerting misplaced power in bad politics. This shows clash of sovereign powers between the State and the Government of India, between the civil authorities and the military authorities to acquire military land in the Cantonment.

34. These land acquisition proceedings do not Inspire confidence and, in fact, are an abuse and travesty of the procedures prescribed by law and the due process of law. In the circumstances, this is the fittest case in which notifications under Sections 4 and 6, Annexures-1 and 2 of the writ petition, that is. the notifications, dated 12th November, 1987 and the notification, dated 28th November. 1987 are quashed.

35. The court is concerned that a public park where children may be playing has been put next to an armament and an ammunition dump on which the Defence Estates Officer had already expressed his concern. The fact that there may be park and to what exactness, it should be left to the military and the local body, the Cantonment, functioning under the Cantonment Act. 1924. Suffice it to say that the park may be expanded beyond the Macpherson Park and around the Macpherson Lake away from the unsafe ammunition and armament dump, by strictly adhering to the regulatory 700 metres periphery (as mentioned in the records) to cordon off this area under strict military monitoring. Therefore, as is suggested by the Defence Estates Officer, Allahabad Circle, Allahabad, to render it safe by the military after it has been certified as such by the establishment of Ordnance, Ministry of Defence, Government of India. The military can then deregulate this area and give access to the public to an old time recorded recreation area around the Macpherson Lake, notwithstanding that without doubt this area is recorded as Cantonment.

36. In the rejoinder-affidavit, the petitioners have submitted and counsel for the petitioners has pointed out that the area of the lake has been reduced. This is a matter of deep concern to the Court. The District Magistrate and the Collector, Allahabad. In his affidavit, dated 20th July, 1998, paragraph 4 (a) states : Area of whole of Macpherson Lake lies within Cantonment area. In the rejoinder-affidavit the petitioners, residents of the locality, have submitted that the famous landmark, the Macpherson Lake, as such has been destroyed and the area of the

water has diminished and reduced. This is explained by counsel for the petitioners by submitting that the zeal to create a park with man made artificial manicuring and, landscaping, the civilian administration destroyed the natural surroundings and the natural source of waters to the lake. The Macpherson Lake. It is contended, has almost disappeared and is in a state of drying up. All, counsel for the petitioners, counsel for the State of U. P. and counsel for the Union of India have expressed concern on this degradation of the environment of the lake and the loss of ecology. As a public concern, they are not at issues on this.

37. The lake is drying-up, the Additional Standing Counsel, Central Government, explains on Instructions : The natural backlash of the waters of the river Ganges, in flood during monsoons, has been obstructed and blocked by the civilian administration by concrete walls. The sluice gates which had controlled the waters of the lake were removed. It is these gates which when open brought the flood waters of the Ganges Into the Macpherson Lake, and, thereafter, for the rest of the year prevented the fresh water from going out when the gates were lowered.

38. The fresh water in the lake has its ecological balance. It sustained the ground water level. It gave aquatic life. It facilitated avian activity : bird life. This area is the habitat of avian species, not found in the city, but natural to natural surroundings of shore line and lakes. An ornithologist can list the disappearing species of bird life. But with the lake being destroyed in a fight between two giants the local administration and the State of U. P. on the one side and the local military organisation and the Union of India on the other side, both the sides are on misguided approaches. All this to claim power to create a park In an area which is a nature's park. The result : a disappearing lake a product of man-made indiscretion. This is an area which nature gave to Allahabad next to the river Ganges whose perennial waters fed the lake with so much life in it and around it. In fact. the Government of India, through the environment wing of the Ministry of Defence, should recreate the area around the Macpherson Lake and declare it as a bio-diversity nature centre,

39. These were unusual acquisition proceedings. It will be in the fitness of things that the Government of Uttar Pradesh should seriously enquire on why acquisition had been thought of an area which belongs to the Ministry of Defence. Government of India. Further, It shakes public confidence that while acquisition proceedings are not complete. In politics areas will be possessed in the name of a national leader against the rule of law. A thorough enquiry should be made on who exactly were the officers responsible in having public money spent and investing on an area to dedicate a park, which belongs to the Ministry of Defence, Government of India. These officers must be identified. At the hands of the Government of India, also, the Court finds from the records that the land of the Ministry of Defence, Government of India, was possessed by the local civil administration. The files and records of the Government of India in no uncertain

terms record that the Allahabad Development Authority had irregularly occupied more than 123 acres of Cantonment land under the direct ownership of the Ministry of Defence, Government of India. After this occupation had been done, now an exercise is being done whether Government of India should take from the local authorities equal value of Rs. 20 crores or in exchange lands of equal value. All this was the result of an acquisition proceeding which cannot be upheld. Thus, the Defence Estates Officer records that the Allahabad Development Authority had occupied the land irregularly. Within the Ministry of Defence, also, there must be a thorough enquiry why military lands and areas were permitted to be occupied without sanction and authority of law.

40. The record of the State also shows that Section 6 notification had not been issued, but the Inauguration of the park had been done by the Chief Minister in the name of first Prime Minister of the India. The acquisition proceedings, the Court has also certified, are without sanction and do not meet the requirements of the Land Acquisition Act, 1894.

41. The Ministry of Defence, Government of India, has applied to make two submissions that (a) the land acquisition proceedings be quashed as military lands had been acquired and (b) a direction be Issued that the lands illegally occupied by the State respondents be handed over peacefully to the Ministry of Defence, Government of India. In so far as the first direction is concerned, on the petition itself, the Court has, by a writ of certiorari, quashed the notifications under Sections 4 and 6 and on the second relief, sought by the Ministry of Defence, Government of India, regard being had to the nature of the circumstances, as the Court has quashed the notifications under Sections 4 and 6, on the writ petition, the position reverts, that the area had never been acquired. The Ministry of Defence, Government of India, is well within its rights to continue to retain the possession of these lands or repossess Its lands recorded originally as defence lands.

42. The petitioners also retain title on their lands as the acquisition proceedings have been quashed. Initially, on 18th February, 1988, the High Court had passed interim orders to the effect that if the petitioners have not been dispossessed, they may not be dispossessed from their plots until further orders. On 14th March, 1988, an interim order was granted and thereafter extended from date to date, as the case was getting adjourned because the State respondents were not producing the records despite various Division Benches passing orders for its reproduction. The case was adjourned on account of this and because counsel for one of the respondents who was recorded as ill. Thus, the interim order may not have been extended, but the Issues were subjudice. Thereafter, for three years the case went off the list, then on 25th July, 1991, on account of the record not being produced by the State respondents, a Division Bench directed that the case be listed peremptorily and the State counsel to produce the record. It was not produced until this hearing in 1999.

43. Finally, regard being had to over all circumstances, upon hearing parties and

having perused the original records, the Court has already held that the notifications. In context, under Sections 4 and 6 of the Land Acquisition Act, 1894. dated 12th November, 1987 and 28th November, 1987, Annexures-1 and 2 to the writ petition, respectively, are quashed.

44. The writ petition succeeds and is allowed with costs.

45. Let a copy of this judgment be sent, forthwith to (1) Secretary, Ministry of Defence, Government of India, New Delhi and (2) Chief Secretary, Uttar Pradesh, Lucknow.