

(1998) 02 J&K CK 0028

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 208 of 1996, Others Writ Petition (OWP) No. 612 of 1996

Ram, Ravaif Chand, Major

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 13-02-1998

Acts Referred:

Land Acquisition Act, 1990 — Section 4

Citation : AIR 1999 J&K 30 : (1998) KashLJ 447

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

Bench : Single Bench

Advocate : J.S.Kotwal, C.S.Gupta, Adarsh Sharma, Advocates appearing for the Parties

Judgement

1. Acquisition proceedings initiated by issuing a Notification under Section 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 under Section 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 marias was subject matter of the acquisition. Lateron, a corrigendum was issued. Land located

in Khasra No. 82 was also indicated for the acquisition purposes. These acquisition proceedings so initiated are being challenged in these petitions.

It is stated that there exists no scheme with the Jammu Development Authority and therefore, the steps taken by the respondents by issuing

notifications under section 4 and 6 cannot be sustained. It is further stated that the initial notification issued under section 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 purpose

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 finalized and the layout plan already exists. It is further stated that an amount of Rest. 310.00 laces have already been

released for construction of the said residential accommodation. The further plea taken is that notification issued under section 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 Pataki is

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

acquisition, 55 kanals have now been denotified. The land which is actually not required measures 17 kanals 7 Maries only. It is submitted that

earlier also, the land was acquired. This happened in the year 1971 and 1984. It is in these premise, it is submitted that no factual 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

compensation also. Requisite plea has been taken in Para2 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 notification 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 Vs. Mohd. Yusuf, AIR 1992 SC 1827.

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

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 acquisition proceedings were initiated and as the scheme was not in existence, therefore, the acquisition is bad.

8. Position of law regarding publication is as under Reading of Section 4 of the Act makes it clear that order to fulfill the statutory requirement 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 Vs. State of Rajasthan*, AIR, 1967 SC 1074 at P. 1077, Subba Rao, C.J.

speaking for the court observed that "the notification issued under Section 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 Vs. State of*

Punjab, AIR 1963 SC 151. Again the Supreme Court in *State of Mysore Vs. Abdul Razak Sahib*, AIR 1978 SC 2361, observed that in the case

of a notification under Section 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 Vs. State of U.P.*, AIR 1977 SC 660, 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 proceeding are vitiated." Repeating 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 under Section 5A which

confers a valuable right, it was held that even though in the facts of that case, the enquiry under Section 5A was dispensed with by a direction

under Section 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 person interested in the land to file objections under

Section 5A.

9. In *Narendrajit Singh Vs. State of UP*. (1970) 1 SCC, while dealing with these requirements the Supreme Court observed that the defect of

nonmention of the locality where the proposed land was situated 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 land 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 under

Section 6(1) of the Act, the absence of these 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 under Section 6(1).

10. It may now be seen that the aforementioned decisions would 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.

11. ' Accordingly, I am of the opinion that stffarasthe 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.

12. Argument regarding nonexistence of public purpose and failure to mention it in the notification be now adverted to.

13. In the case of *Hambai Bramjee Vs. 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 definitions 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.

14. In that case what was being considered was reentry 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 there, 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.

15. In the State of Bombay Vs. Bhanji Muniji, AIR 1955 SC 41, the purpose of providing housing accommodation to the houseless was

recognized 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 absolutely necessary. This is what was

said: "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.

16. The same or similar view was expressed in Baber Borkya Thukar Vs. State of Bombay, AIR 1960, SC 1203. 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 Jhandu Lai Vs. State

of Punjab, AIR 1961 SC 343. 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 Somawanti Vs. State of Punjab, AIR 1963 SC 151. 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.

17. In *Bharat Singh Vs. State of Haryana*, 1988 (2) RRR 530 (SC): AIR 1988 SC 2181, acquisition and utilization 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).

18. The same concern was shown by the Supreme Court in *Arnold Rodricks Vs. State of Maharashtra*, AIR 1966 SC 1788 when para 20 of the

judgment is read. This reads as under

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 purposes 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 benefits, 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 19611 SCR 128:

AIR 1960 SC 1203, a very large section of the community is concerned and its welfare is a matter of public concern. In our view that 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 notification are valid and cannot be impugned on the ground that they were

not issued for any public purpose.

19. 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 latter explanation given that the land is required for housing accommodation can be looked into. This is a valid public purpose. The contention of the petitioners is, therefore, without any merit on this score.

20. The argument advanced that before embarking upon, the task of acquisition of the land, the respondent should have framed a scheme and in case this is not done, then acquisition would be examined. Reliance has been placed on a decision given by Supreme Court of India in the case reported as State of Tamil Nadu versus Mohd. Yusuf AIR 1992 SC 1827.

21. 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 Vs. N. Krishan 1996(1) SCC 250.

22. In the above case, not only the question regarding nonavailability of scheme but also the requirement as to stating public purpose were taken note of.

23. Paras 28, 20, 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 under Section

4. This argument was also negative in the following words:

This is true that the Government has not until now prepared any scheme for the utilization 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

under Section 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."" 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 finalized by the Board and becomes effective under the provisions contained in Chapter VII.

24. In *Aflatoon V Lt. Governor of Delhi* another Constitution Bench dealt with a similar contention, viz. that before publishing the notification under Section 4, the Government had not declared any area in Delhi as a development area under Section 12(1) of the Delhi Development Act not was there a master plan drawn up in accordance with Section 7 of that Act. The notification under Section 4 was attacked on that basis. It was argued that under Section 12(3) of the Delhi Development Act no development of land can be undertaken or carried out except as provided in that subsection. This argument was negotiated 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 Vs. 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 or 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 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 emphasized 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

Section 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 Hoard top, there is no indention 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 Yourself as saying that in no event can the 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 Section 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 nonavailability of a scheme before initiating the acquisition proceedings would render the acquisition bad cease to have any legal efficacy. As a

matter of fact in the case reported as Jaipur Development Authority versus Sita Ram JT1997 SC 501, the Supreme Court of India has expressly

stated that the view expressed by it in Mohammad Yourself is not correct. Therefore, argument based on the decision Mohammed Yourself

deserved to be rejected.

29. I am accordingly of the view that (!) there was proper publication. Petitioner became aware of it and has 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 proceedings

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.