

(1972) 04 SC CK 0022
In the Supreme Court Of India
Case No : Civil Appeal No. 34 of 1972

Ram Sarup

APPELLANT

Vs

The Land Acquisition Officer, Aligarh and Others

RESPONDENT

Date of Decision : 12-04-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 3, 4, 5

Citation : AIR 1972 SC 2290 : (1973) 2 SCC 56 : (1972) 4 UJ 909

Hon'ble Judges : G. K. Mitter, J; A. N. Grover, J

Bench : Division Bench

Advocate : M.N. Phadke, for the Appellant; M.V. Goswami and O.P. Rana, J.P. Goyal and R.A. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal by special leave from a judgment of the Allahabad High Court. The facts may be shortly stated.

2. By means of a notification dated April 19, 1949 issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter called the Act) it was notified for general information that the land mentioned in the schedule was needed for a public purpose. In the schedule the area was given as 117 Bighas and 9 Biswas. The schedule also contained the following : -

For what purpose required : For the construction of residential quarters for the members of Aligarh Co-operative Housing Society Limited, Vishnupuri, Aligarh.

3. In November 1951, an agreement was entered into between the Governor of U.P. and the Co-operative Housing Society Ltd, Vishnupuri, Ali Garh, in accordance with the provisions of Part VII of the Act. On November 30, 1951, a notification was issued u/s 6 of the Act in which it was stated that the Governor after considering the report made u/s 5A(2) of the Act was pleased to declare u/s 6 that he was satisfied that the land mentioned in the schedule was needed for a

public purpose. u/s 7 the Collector was directed to make order for the acquisition of the land. In the schedule the same words appeared as appeared in the notification u/s 4 viz.

For what purpose required : For the construction of residential quarters for the members of the Aligarh Co-operative Housing Society Ltd., Vishnupuri, Aligarh.

4. On 22nd January 1962, an award was given with regard to an area covering 27 bighas odd.

5. It appears that 9 petitions were filed under Article 226 of the Constitution in the Allahabad High Court challenging the acquisition made. Some of these petitions were heard by Mathur J. who allowed them. The petition out of which this appeal has arisen was disposed of by Broome J. and he dismissed it. An appeal was filed before the Division Bench but the same was dismissed.

6. The first argument that has been sought to be raised before us on behalf of the appellant is that the notifications under Sections 4 and 6 and, in particular, the notification u/s 6 says that the land which was being acquired was needed for a public purpose and not for a company although in the schedule it was mentioned that the purpose for which it was required was the construction of residential quarters for the purpose of members of the Aligarh Cooperative Housing Society Ltd., Vishnupuri, Aligarh. A good deal of reliance has been placed on the decision of this Court in Shyam Behari and Others Vs. State of Madhya Pradesh and Others, in which it was laid down that where the entire compensation is to be paid by a company (which is admittedly the case here) the notification u/s 6 must contain a declaration that the land is needed for a company. No notification u/s 6 can be made where the entire compensation is to be paid by a company declaring that the acquisition is for a public purpose. Such a declaration requires that either wholly or in part, compensation must come out of public revenues or some fund controlled or managed by a local authority. In that case, however, it is apparent that the public purpose which was mentioned in the notification issued u/s 4 was "for the construction of buildings for godowns and administrative office". In the notification issued u/s 6 all that was stated was that the land was needed for a public purpose, namely for the Premier Refractory Factory and work connected therewith. However, the company for which the land was required was the Premier Refractories of India Private Limited, Katni. It was under these circumstances that this Court pointed out that there was nothing in the notifications to show that the land was needed for the Premier Refractories of India Private Limited, Katni or any other company. All that the notification u/s 6 said was that the land was needed for a public purpose and the public purpose mentioned there was that the land was required for the Premier Refractory Factory and work connected there with. There was no mention of the company and it could not necessarily be concluded that the Premier Refractory Factory was a company or a factory; for a factory is something very different from a company and may belong to a company or to Government or to a local body or even to an individual.

7. In our judgment the above decision is clearly distinguishable from the facts of the present case. As already mentioned, in both the notifications issued u/s 4 and 6 of the Act it was clearly mentioned in the schedule that the purpose for which the acquisition was being made was the construction of residential quarters for the members of Cooperative Housing Society Ltd., Vishnupuri, Aligarh.

8. The present case has greater similarity with the facts in a subsequent decision of this Court in *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, There in the notification u/s 6 it was stated that the land was needed for a public purpose, namely for the construction of staff quarters etc. of Ramakrishna Mission and was needed for that public purpose. It was held that the acquisition was for a society which was a company within the meaning of Section 3(c) of the Land Acquisition Act and that the notification did indicate that the land was needed for a company though it did not say so in so many words. Reference was made there to the agreement which had been entered into between the company and the Government. In the present case also an agreement had been entered into and in view of the statements contained in the schedule in the notification we have no manner of doubt that the acquisition was clearly being made for a company. The view taken by Broome J. for these reasons must be upheld.

9. Another point sought to be raised on behalf of the appellant was that the notifications u/s 6 had been rescinded with regard to the areas and, therefore, there could be no acquisition of the area in question. Even in the writ petition no such contention or plea was raised nor was any proposition formulated in the terms in which it is sought to be urged before us. It raises not merely a pure question of law but also involves facts. It will have to be determined whether the details which are given in para 10 of the SLP are factually correct. It is argued that these facts are apparent from the award which is already on the record. We are unable to allow such a point to be raised in this Court because it was not even raised in the writ petition.

10. The appeal fails and is dismissed. There will be no order as to costs in this Court.