
(2010) 03 MP CK 0048
In the Madhya Pradesh High Court

Ramdin and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

COMPANIES ACT, 1956 — Section 617

Land Acquisition Act, 1894 — Section 17, 3, 4, 5A, 6

Citation : (2010) ILR (MP) 86 : (2010) 3 MPHT 163 : (2010) 2 MPLJ 682

Hon'ble Judges : S.C. Sinho, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.

In the writ appeal the challenge is to legality of the order of dismissal of the writ petitions passed by the Single Bench on 4-5-2009 assailing, the validity of notification u/s 4 of Land Acquisition Act (hereinafter referred to as "the Act") and declaration u/s 6 including the notification issued u/s 17, dated 23-6-2008.

Petitioners have submitted that with a view to set up the Sasan Ultra Mega Power Project, land admeasuring 427.08 acres situated at Village Sidhikhurd was sought to be acquired. The petitioners owned approximately 25 acres of land. Notification issued u/s 4 was vague, thus the petitioners had no knowledge about the acquisition proceedings or the proceedings taken up u/s 5A of the Act. The declaration u/s 6 of the Act was also illegal. The land was sought to be acquired for "public purpose" for setting up Sasan Ultra Mega Power Project whereas acquisition was for and on behalf of respondent No. 6 Sasan Power Limited. It was mandatory upon the respondents to mention in the notification that the acquisition was for a company. The prayer was also made to direct respondent company to give benefit as per 2007 rehabilitation package or a better package and not in accordance with the 1992 rehabilitation package/policy. Notification u/s 17(3) was assailed on the ground that enquiry u/s 5A had already been taken up, therefore, notification u/s 17 of the Act could not have been issued. It was

necessary to comply and follow the procedure prescribed under Rules 3, 4 and 6 of Land Acquisition Company Rules, 1963 (hereinafter referred to as "the Rules of 1963").

The respondent/State in its return contended that the notification u/s 4 of the Act was not vague. Opportunity of hearing and raising objection u/s 5A of the Act was given to the affected persons. The notification u/s 17 has not been given effect to by the State. The oustee shall be given the prevailing rehabilitation package. Respondent No. 6 is a Government owned subsidiary company of the Power Financial Corporation limited which is a Government of India undertaking u/s 3(cc) of the Act and, therefore, contention of the petitioners regarding strict compliance of Part VII of the Act are misplaced and misconceived.

The learned Single Judge has dismissed the writ petition with respect to challenge to the notification u/s 4 and declaration u/s 6 of the Act. Direction has been given in favour of the petitioners that Collector, Singrouli shall examine the 2007 Rehabilitation Package and the Rehabilitation Package prepared by respondent Nos. 4 to 6 and shall thereafter carve out the best possible rehabilitation package there from by selecting the clauses that are more beneficial to the persons whose land is acquired and supervise and ensure its implementation. It has also been held that writ petition suffered with delay and laches. Aggrieved thereby the writ appeal has been preferred.

Shri R.K. Samaiya, learned Counsel appearing for appellants has submitted that notification u/s 4 of the Act and declaration u/s 6 of the Act were illegal inasmuch as it was mentioned that acquisition was for "public purpose" for setting up Sasan Ultra Mega Power Project whereas acquisition was for a company. When acquisition was for a company, it could not be said to be included in the public purpose. It ought to have been mentioned that acquisition was for and on behalf of respondent No. 6 company. He has relied upon the decision of Apex Court in Shyam Behari and Others Vs. State of Madhya Pradesh and Others, and Devinder Singh and Ors. v. State of Punjab and Ors. 2007 AIR SCW 6692, in which it has been laid down that the declaration has to be made for public purpose or for a Private Company, it could not be for both. The Counsel has further submitted that the writ petition did not suffer with laches. Notification u/s 4 was issued on 8-8-2006, declaration u/s 6 of the Act was issued on 10-8-2007 and notification u/s 17(1) and (3) was issued on 23-6-2008. The writ petition was filed on 17-11-2008.

Shri Deepak Awasthi, learned Government Advocate for respondent Nos. 1 to 3 has supported the order passed by learned Single Judge.

Shri Brian D'Silva, learned Sr. Counsel appearing with Shri Alok Hoonka for respondent Nos. 4 to 6 has submitted that respondent No. 6 Company is subsidiary of Power Finance Corporation which is a Government of India undertaking. The Govt. of India is having 100% equity holding, thus the acquisition was made for a Govt. Company which is included in public purpose.

There was no prejudice caused as petitioners were fully aware of the acquisition. The procedure of Part VII of the Act had been complied with. Writ petition suffers with laches and it was filed after 15 months of the date of issuance of declaration u/s 6.

First we come to the question whether notification u/s 4 and declaration u/s 6 of the Act are illegal. It was submitted that it has not been mentioned in the notification/declaration that acquisition was for a company. It is not disputed at Bar that the procedure prescribed under Chapter VII of the Act and the Rules of 1963 has been followed. The main plank of the submission of Shri Samaiya is that either acquisition could have been for a public purpose or for a company not for both. However, before we proceed to examine the aforesaid submission on merits, we take note of few facts.

In the notification (P-1) issued u/s 4 of the Act on 8-8-2006, it has been mentioned that the Authorised Officer u/s 4 is Chief Executive Officer, Sasan Ultra Mega Power Project. The public purpose has been mentioned to be production of electricity and establishment of township. It was also mentioned that the map could be seen in the office of Land Acquisition Officer, Baidhan. In the declaration u/s 6 of the Act, the public purpose has been mentioned to be production of electricity and establishment of township. The background of acquisition is that the western region has been suffering from severe power shortage problem. In 2007-08 peak deficit stood at 10.6% and energy deficit at 14.1%. To speed up capacity addition and to meet target of power to all by 2012, the Government of India through Ministry of Power, launched a program of setting up of Ultra Mega Power Projects in the country each with the capacity of about 4000 MW. One such project is being set up of Ultra Mega Power Project of 4000 MW capacity at Sasan District Sidhi. The Power Finance Corporation formed Sasan Power Limited as a wholly owned subsidiary of Power Finance Corporation. The Sasan Power Limited is a Company registered under the provisions of the Companies Act, 1956. All the procurers of the power are Government instrumentalities. It is not in dispute that petitioner has participated in the enquiry held u/s 5A of the Act. Respondent No. 6 is having 100% share holding of Govt. of India and is a subsidiary of the Power Finance Corporation, a Govt. of India undertaking and the acquisition proceedings had been initiated at the instance of Ministry of Power, Govt. of India. The project was taken over by the Private Company by a process of bidding after issuance of declaration u/s 6 of the Act, thus it was not possible to mention the name of the selected developer in the declaration u/s 6.

Section 3(cc) defines the expression Corporation owned or controlled by the State which includes a Govt. Company as defined u/s 617 of the Companies Act. Section 3(cc) is quoted below:

3(cc) The expression "corporation owned or controlled by the State" means any body corporate established by or under a Central, Provincial or State Act, and includes a Government Company as defined in Section 617 of the Companies

Act, 1956 (1 of 1956), a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a Co-operative Society within the meaning of any law relating to Co-operative Societies for the time being in force in any State, being a Co-operative Society in which not less than fifty-one per centum of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.

Section 3(f) defines the expression public purpose. The definition is inclusive. Section 3(f)(iv) provides that the acquisition of land for a Corporation owned or controlled by the State is included in the public purpose. Section 3(f)(iv) is as follows:

3. (f) The expression "public purpose" includes (i) *** *** *** (ii) *** *** *** (iii) *** *** *** (iv) the provision of land for a corporation owned or controlled by the State.

Considering the provision of Section 3(cc) and 3(f)(iv) of the Act and the fact that the acquisition was for a Government owned Corporation/Company, it was for a public purpose. Thus, we find that non-mentioning the name of the company and mentioning the name of the project did not vitiate the notification u/s 4 and declaration u/s 6 of the Act. In the instant case, the Corporation/company had dual capacity. The Govt. owned Corporation as defined u/s 3(cc) of the Act includes such a company in its ambit. The acquisition for such Corporation/Company is for public purpose. Apart from as rightly found by Single Judge that there was no prejudice to the petitioner, they knew that acquisition was for company, they had participated in inquiry held u/s 5A of the Act.

Shri R.K. Samaiya, learned Counsel for the appellants has relied upon the decision of Apex Court in *Shyam Behari and Ors. v. State of M.P. and Ors.* (supra), in which acquisition proceedings were taken at the instance of Premier Refractories of India Private Limited, Katni. The Apex Court has laid down that Section 6 of the Act contemplates two kinds of declarations. In the first place, a declaration may be made that land is required for a public purpose, in which case in view of the proviso, the compensation to be awarded for the property to be acquired must come wholly or partly out of public revenues or some fund controlled or managed by a Local Authority. No declaration u/s 6 for acquisition of land for a public purpose can be made unless either the whole or part of the compensation for the property to be acquired is to come out of public revenues or some fund controlled or managed by a Local Authority. In the second place, the declaration u/s 6 may be made that land is needed for a company in which case the entire compensation has to be paid by the company. It is clear, therefore, that where the entire compensation is to be paid by a company, the declaration u/s 6 must contain 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, for 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. When two notifications declared that the land was needed for a public purpose in a case where no part of the compensation was to come out of public revenues or some fund controlled or managed by a local authority, they were invalid in view of the proviso to Section 6(1) of the Act. The Apex Court has laid down thus:

(3) The only question that has been urged before us on behalf of the appellants is that the High Court was in error in reading the two notifications as in substance amounting to a declaration that the land was required for a company. Section 6(1) of the Act requires that whenever any land is needed for a public purpose or for a company, a declaration shall be made to that effect. Further the proviso to Section 6(1) provides that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority. This clearly contemplates two kinds of declarations. In the first place, a declaration may be made that land is required for a public purpose, in which case in view of the proviso, the compensation to be awarded for the property to be acquired must come wholly or partly out of public revenues or some fund controlled or managed by a local authority. No declaration u/s 6 for acquisition of land for a public purpose can be made unless either the whole or part of the compensation for the property to be acquired is to come out of public revenues or some fund controlled or managed by a local authority; see: *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, . In the second place, the declaration u/s 6 may be made that land is needed for a company in which case the entire compensation has to be paid by the company. It is clear, therefore, that where the entire compensation is to be paid by a company, 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, for 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 the present case, it is not in dispute that no part of the compensation is to come out of public revenues or some fund controlled or managed by a local authority; on the other hand the whole compensation was to be paid by the company. Therefore, the notification u/s 6 if it was to be valid in the circumstances of the present case had to declare that the land was needed for a company. No valid notification u/s 6 could be made in the circumstances of this case declaring that the land was needed for a public purpose, for no part of compensation was to be paid out of public revenues or some fund controlled or managed by a local authority.

There cannot be any quarrel with the aforesaid preparation of law but when we apply the same in the facts of the instant case we find that the acquisition is for Corporation/Company wholly owned, controlled and financed by Govt. of India. Govt. of India had decided to set up power project and in respondent No. 6

entire share holding is that of Govt. of India. In Shyam Behari's case (supra), the acquisition was not for such a Corporation/Company. Thus, applying the dictum of the aforesaid decision, we find that acquisition in the instant case, cannot be faulted.

Shri Samaiya has further relied upon Anr. decision of Devinder Singh and Ors. v. State of Punjab and Ors. (supra), in which after referring to the decision of Shyam Behari and Ors. v. State of M.P. and Ors. (supra), the Apex Court has laid down thus:

38. Distinction between acquisition under Part II and Part VII are self-evident. The State was not only obligated to issue a notification clearly stating as to whether the acquisition is for a public purpose or for the company. Section 6 categorically states so, as would appear from the second proviso appended thereto.

A declaration is to be made either for a public purpose or for a company. It cannot be for both.

Devinder Singh's (supra) was not a case of Government Company. When we consider the instant case, acquisition is for Corporation/Company owned by Government. Purpose of acquisition and also considering the beneficiaries the acquisition was clearly for a public purpose. The learned Single Judge has found that petitioners were well aware of the fact that the proceedings for acquisition had been undertaken by the respondents for the purpose of establishing the Sasan Ultra Mega Power Project on the behest of a company and they also took up objections being fully aware of this fact and, therefore, it could not be said that any prejudice was caused to the petitioners on account of the fact that notification u/s 4 and declaration u/s 6 did not specifically mention that the acquisition was undertaken for a company but stated that it was for a public purpose of electricity generation and residential colony. Sasan Power Limited is 100% subsidiary of Power Finance Corporation and undertaking is having 100% equity holding of Govt. of India. Thus, we find the main plank of submission of Shri R.K. Samaiya, learned Counsel for petitioners/appellants to be meritless.

Coming to the question of delay It is not necessary to go into the question of delay, though we have examined the aforesaid submission raised by Shri Samaiya on merits that there was no delay and we have found no force in the same The fact remains that the writ petition was preferred after 15 months of the date of issuance of declaration u/s 6. Petitioners had participated in the enquiry u/s 5A of the Act. Notification u/s 17 was not acted upon, thus, there was some delay in filing of the writ appeal. But we are not throwing away challenge to acquisition on the ground of delay, we have examined the submission raised by the appellants' Counsel on merits and found the same to be meritless.

No other ground is raised.

Resultantly, writ appeal being devoid of merits, is hereby dismissed. No costs.