

(1977) 10 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 590 of 1976

Ramjidas and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-10-1977

Acts Referred:

Land Acquisition Act, 1894 — Section 5A

Uttar Pradesh Land Acquisition (Amendment) Act, 1974 — Section 17, 17(4), 4, 6

Citation : AIR 1977 All 544

Hon'ble Judges : K.N. Singh, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : H.S. Nigam, for the Appellant; B.D. Madhyan and S.C., for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—By this petition under Article 226 of the Constitution the petitioners have challenged the validity of the notifications issued under Sections 4(1) and 6 of the Land Acquisition Act (briefly stated as the Act), dated 30th October, 1975, and 29th October, 1975, respectively. The petitioners claim themselves to be the bhumidhars of the land in dispute situate in village Kukuda, district Muzaffarnagar. A notification u/s 4 of the Act dated 14th March, 1975, was published by the State Government notifying a number of plots which were likely to be required for public purpose, namely, for the construction of market yard for Krishi Utpadan Mandi Samiti, Muzaffarnagar (hereinafter referred to as the Mandi Samiti). The petitioners filed a writ petition in this court on 10th July, 1975, challenging the validity of the said notification issued u/s 4 of the Act. The petition was admitted, and the respondents were restrained from dispossessing the petitioners from the land forming subject matter of the acquisition proceedings. During the pendency of the above writ petition, the State Government issued another notification on 5th August, 1975, cancelling the notification dated 14th March, 1975. The writ petition filed challenging the notification dated 14th March, 1975, was thereafter dismissed on the ground that

it had become infructuous. Subsequently, the State Government issued another notification u/s 4(1) of the Act on 30th October, 1975. The Governor, being of the opinion that the case was one of urgency and, as such, the provisions of Sub-section (1) of Section 17 of the Act were applicable to the land, was further pleased to direct under Sub-section (4) of Section 17 of the Act that the provisions of Section 5-A would not apply to the acquisition of the land in dispute. In this notification, the purpose disclosed for acquisition was the construction of market yard for Krishi Utpadan Mandi Samiti, Muzaffarnagar. This was followed by a notification u/s 6 of the Act. The petitioners have filed the present writ petition challenging these notifications under Sections 4 and 6 of the Act.

2. The first ground urged in support of the writ petition by the petitioners was that a substantial portion of the land was covered by constructions and, therefore, the State Government did not have power to dispense with the mandatory provisions of Section 5-A of the Act inasmuch as under Sub-section (4) of Section 17, the power of dispensing with Section 5-A could be applied only with respect to waste and arable land and not with respect to the land over which constructions were standing on the date of the notification issued u/s 4(1) of the Act. The petitioners gave the details of the various constructions which according to them were standing on the land in dispute on the aforesaid date. In the counter affidavits filed on behalf of the Collector, Muzaffarnagar, as well as the Mandi Samiti, the fact that the constructions were standing on the land in dispute has been denied. The aforesaid respondents in their separate affidavits asserted that there were no constructions on the land on the date on which the notification u/s 4(1) of the Act had been issued.

3. The view which we are going to take in the instant case does not require us to give any concluded finding on the question whether any constructions were standing on the land or not. Had it been necessary for us to do so, we would have declined to go into this disputed question of fact as this court has said that it is not proper and appropriate for the High Court to enter into disputed questions of facts in the proceedings under Article 226 of the Constitution. But, the controversy can be resolved on the legal aspect of this question which we will presently deal.

4. We may, very briefly, refer to the scheme of the Land Acquisition Act, which provides machinery for compulsory acquisition of land, amongst others, for public purposes. u/s 4(1) of the Act, the appropriate Government, if it appears to that government that land in any locality is needed or is likely to be needed for any public purpose, may publish a notification to that effect in the official gazette. On the issue of such a notification, it is open to an officer authorised to enter upon and survey and take possession of any land in such locality. By Section 5-A opportunity is provided to any person interested in any land in respect of which the notification u/s 4(1) has been issued to raise objections either to the acquisition of the land or of any land in the locality, as the case may be. On such

an objection being raised, the Collector is required to give an opportunity of hearing to the party concerned and, thereafter, to submit the case for decision of the appropriate Government, together with this recommendations on the objections, and if the appropriate government is satisfied after considering the report, if any, made under Sub-section (2) of Section 5-A of the Act that any particular land is needed for a public purpose, a declaration u/s 6 may be made to that effect by the Government. Sub-section (3) of Section 6 of the Act makes the declaration issued by the Government as conclusive evidence that the land is needed for a public purpose. The next relevant section with which we are concerned is Section 17. It confers special powers exercisable in cases of urgency. Under this section, in cases of urgency, when the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice, mentioned in Section 9(1), take possession of any waste or arable land needed for public purposes. Sub-section (4) of Section 17 lays down that in the case of any land to which the provisions of Sub-section (1) or (2) were applicable, the appropriate Government may direct that the provisions of S, 5-A shall not apply.

5. This would show that Section 17 confers special power on the appropriate Government to be exercised in appropriate cases of urgency. Under Sub-sections (1) and (2), the State Government is empowered to take possession of land notified for acquisition even though an award is not made. This power, however, could be exercised only in respect of waste and arable land. By Sub-section (4) power has been conferred upon the appropriate Government to direct that the provisions of Section 5-A relating to the filing of the objection would not be applicable. As these powers could under the Act be exercised only in respect of lands described in Sub-sections (1) and (2), by Sub-section (1-A), added by U. P. Amendment Act XXII of 1954, power was conferred on the appropriate Government to take possession under Sub-section (1) even in respect of lands other than waste and arable. It, however, appears that even under the amended provision, the State - Government was not authorised to use the power conferred by Sub-section (4) to a case falling under Sub-section (1-A). Accordingly, the provisions of Section 5-A had to be complied with in all the cases of urgency. Reference may be made to a case of the Supreme Court reported in Sarju Prasad Saha Vs. The State of U.P. and Others, where the Supreme Court held that by the Land Acquisition Act No. XXII of 1954, the State legislature did not provide that the provisions of Section 5-A could be dispensed with in cases of lands other than waste and arable. It, however, appears that subsequently by U. P. Act No. VIII of 1974, the Legislature amended Section 17(4) of the Land Acquisition Act and made a provision to that effect. After amendment, Section 17(4) reads as under (at pages 1765, 1766 of AIR):

"In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1), or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the

land at any time after the publication of the notification u/s 4, Sub-section (1)."

6. By the aforesaid amendment, it is now clear that the power of dispensation of Section 5-A can be exercised with respect to the land other than waste and arable as well. Accordingly, the submission of the learned counsel for the petitioners that Sub-section (5-A) could not be dispensed with in the present case as the land was not waste and arable, cannot be accepted. As already stated, the effect of the amendment made by U, P. Act. No. VIII of 1974 was that the proceedings contemplated by Section 5-A can be dispensed with also in respect of land other than waste and arable. This view of ours is amply supported by the decision of our court reported in *Somdutt v. State of U, P.* ((1976) 2 A LR 529 : AIR 1977 SC 10 end *Ram Surat and Others Vs. State of U.P. and Others*, . In view of the above, it is not necessary for us now to go into the controversy whether the constructions belonging to the petitioners were standing on the land in dispute or not. As a matter of fact, this writ petition was mainly filed on the ground that the power of Sub-section (4) of Section 17 could not be exercised in respect of lands other than waste and arable, presumably due to the ignorance that the said provision had been amended by U. P. Act, No. XXII of 1974.

7. The second contention advanced on behalf of the learned counsel for the petitioner was that the purpose for which the land was acquired was not planned development, hence the power conferred by Section 17(4) could not be exercised in the above case. We may mention at the very beginning that the petitioners did not take any such ground in the writ petition. The respondents therefore, had had no opportunity to rebut the same, Even on merits, we do not find any substance in this argument. The question relating to acquisition of land for making construction of market yard for *Krishi Utpadan Mandi Samiti* came up recently for consideration before a division Bench of this Court in *Babu Lal v State of U. P.* Writ Petn. No. 3499 of 1976, decided on 12-7-1977. (Reported in *Babu Lal and Others Vs. State of U.P. and Others*, . The Bench held that the land was sought to be acquired for planned development as contemplated by Section 17(1-A) of the Act. We are in respectful agreement with the view taken by the Division Bench in the aforesaid case. Market yards are being constructed in U. P. by way of planned development under the Fifth five year plan. Hence, the submission made by the learned counsel for the petitioners is not acceptable to us.

8. Learned counsel for the petitioners next contended that as neither the notifications issued u/s 4 nor u/s 6 mentioned that the land was being acquired for the planned development, therefore, the notifications were invalid. Elaborating the submission, the learned counsel contended that if the Government intended to exercise the power conferred by Sub-sec. (4) of Section 17 of the Act, it ought to have mentioned that the land was being acquired for the planned development. We do not find any merit in this submission. We have carefully examined the various provisions of the Land Acquisition Act, but fail to

find anything either in Section 4 or Section 6 which made it a condition precedent for the exercise of the powers under Sub-section (4) of Section 17 for the appropriate Government to mention the fact of the requirement of the land for the planned development in the notifications issued thereunder. Even if a recital in a notification is defective and does not contain the necessary statement that the required conditions have been fulfilled, evidence can be led to show that the condition precedent to the exercise of the power has been actually fulfilled. This was laid down by the Supreme Court in *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, . The relevant portion of the aforesaid (case) is quoted below:--(at pp. 1387 and 1388)

"Our conclusion therefore is that where certain conditions precedent have to be satisfied before a subordinate authority can pass an order, (be it executive or of the character of subordinate legislation), it is not necessary that the satisfaction of those conditions must be recited in the order itself unless the statute requires it, though, as we have already remarked, it is most desirable that it should be so, for in that case the presumption that the conditions were satisfied would immediately arise and burden would be thrown on the person challenging the fact of satisfaction to show that what is recited is not correct. But even where the recital is not there on the face of the order, the order will not become illegal ab initio and only a further burden is thrown on the authority passing the order to satisfy the court by other means that the conditions precedent were complied with. In the present case this has been done by the filing of an affidavit before us."

9. It is thus clear that if it appears upon an examination of the entire fact and the evidence on the record that the power conferred had been exercised for the purpose for which it was provided, the same cannot be declared to be invalid merely because there is some defect in the notifications issued by the Government concerned. As already said, there is nothing in the Land Acquisition Act which required the State Government to mention that the land was required for the planned development. In the instant case, we have already found that the power conferred by Sub-section (4) of Section 17 was utilised by the State Government for the purposes of the planned development

10. The last point urged by the learned counsel for the petitioners was that the State Government did not have any material before it to enable it to come to the conclusion that the urgency in the instant case was of such a nature that even the summary proceedings, u/s 5-A of the Act ought to have been eliminated. According to his submission, it was not just the existence of an urgency but the need to dispense with an enquiry u/s 5-A which had to be considered by the Government while exercising the power conferred by Sub-section (4) of Section 17 of the Act. In support of this assertion, the learned counsel for the petitioner invited our attention to paragraph 17 of the writ petition in which the petitioners alleged that the State Government had no evidence to come to the conclusion that the need for which the land was intended to be acquired was such that

Section 5-A could be dispensed with. This allegation has been denied in the counter-affidavits filed on behalf of the respondents. Denying the allegation, the respondents stated that the need was so urgent that an enquiry u/s 5-A would have delayed the matter resulting in defeating the purpose of the acquisition. Along with the supplementary counter-affidavit of Rampal Singh Verma filed on behalf of the Mandi Samiti, a copy of the letter written by the District Magistrate dated July 26, 1974, was annexed. In this letter, the District Magistrate clearly stated that the funds for the construction of the market yard had been sanctioned, and that if the constructions were started at an early date there were chances that the World Bank might also grant some loan for the same. Considering the urgency, the Collector recommended to the State Government that the acquisitions which were intended to be started for constructing the market yard, were such which required the dispensing with the enquiry u/s 5-A.

11. After perusal of the counter-affidavits file on behalf of the respondents and the papers filed along with the same, it appears that the State Government applied its mind to the question whether it was a case necessitating the elimination of the enquiry u/s 5-A of the Act. After having found the existence of the urgency and the need to dispense with the enquiry u/s 5-A the impugned notification u/s 4 of the Act was issued. It is, therefore, not correct, as urged by the learned counsel for the petitioners that the notifications issued under Sections 4 and 6 were liable to be quashed on the ground that the petitioners had not been given opportunity to file objections u/s 5-A of the Act.

12. Reliance was placed by the learned counsel for the petitioners on a case of the Supreme Court reported in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , in support of the submission that the powers conferred by Section 5-A could be exercised only in cases where the land is intended to be acquired for meeting the exigencies emerging due to natural and physical forces beyond human control. We have had an occasion to consider this argument recently In Writ Petition No. 343 of 1977, *Smt. Kailashwati v. State of U. P.* (decided on 12th Sept. 1977 (All)). On the basis of the decision of the said case, we find that Narayan's case (*supra*) relied upon by the learned counsel for the petitioners does not help the petitioners in advancing his argument. We, accordingly, find that the last contention urged on behalf of the petitioners also has no substance.

13. In the result, the writ petition is dismissed with costs. The stay order, if any, shall stand discharged.