
(1987) 03 AHC CK 0085

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6789 of 1982

Ratan Prakash Mangai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 1, 17, 4, 5A, 6

Citation : (1987) 03 AHC CK 0085

Hon'ble Judges : S.K. Mookerjee, J; B.D. Agrawal, J

Bench : Division Bench

Advocate : B.D. Agarwala and R.P. Goyal, for the Appellant; B.D. Mandhyan, for the Respondent

Final Decision : Allowed

Judgement

B.D. Agrawal, J.—This petition Under Article 226 is directed against notifications dated May 20, 1982, and May 21, 1982, issued by the State Government Under the provisions of the Land Acquisition Act, 1894, (hereinafter referred to as the Act).

2. Facts need be stated in some detail because the case has a chequered history. Plot No. 289 (3 bighas 14 biswa) situate in village Kukra, district Muzaffarnagar, was purchased by the Petitioners on June 7, 1978, through a registered deed of sale for consideration of Rs. 99,000/- for the purpose of raising residential colony. Sub-plots were carved out and some of those transferred by sale to others during November and December, 1978. Krishi Utpadan Mandi Samiti, Muzaffarnagar initiated acquisition for the construction of Market Yard and notification was issued u/s 4(1) of the Act accordingly covering 80 acres of land on March 20, 1975. By another notification of the State Government dated August 30, 1975 this was rescinded and a fresh notification was issued u/s 4(1) dated October 20, 1975 for 60 acres of land which did not include plot No. 289 in dispute. Market Yard was constructed in a portion of the land thus acquired

including certain shops and go downs etc. by the Mandi Samiti. During the process of construction need was felt for larger area. This led to the notification dated October 26, 1978 u/s 4(1) read with Section 17(4) in respect of land covering the area of 1947 acres including plot No. 289. This notification was followed by notification made u/s 6/17(1) dated October 27, 1978. Possession was taken in pursuance thereof by the Mandi Samiti on January 2, 1979. Validity of these two notifications was challenged by the Petitioners in so far as plot No. 289 is concerned in Writ Petition No. 163 of 1979 on the ground inter alia that there was no case of urgency to dispense with enquiry u/s 5A of the Act. The petition was allowed in its entirety by a Division Bench of this Court on September 6, 1979. Both the notifications dated 26th and 27th October, 1978 were quashed in respect of plot No. 289. The Mandi Samiti filed an appeal in the Supreme Court being registered as Civil Appeal No. 2970 of 1979 which was allowed in part by the Supreme Court on October 22, 1979. It was affirmed that enquiry u/s 5A had been wrongly dispensed with by the State Government but that this Court was not right in having set aside the notification u/s 4(1) read with Section 17(4) in its entirety. That notification could be set aside, it was pointed out, in so far only as it dispensed with proceedings u/s 5A. Following this decision of the Supreme Court, proceedings were held u/s 5A and the Land Acquisition Officer gave his report dated January 20, 1981. He considered the objections raised by the Petitioners and also, their transferees in respect of plot No. 289 and expressed the view that it was not necessary to acquire plot No. 289 for the purpose of Mandi Samiti even in case the Mandi Samiti expanded its activities in the future. On November 20, 1981, it appears, the Mandi Samiti issued notification contemplated u/s 7(2)(b) of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 thereby requiring the traders and the dealers to shift to the Market Yard. Against this notification Gur, Khandsari and Grain Merchants Association, Muzaffarnagar filed Writ Petition No. 1318 of 1982 Under Article 32 of the Constitution before the Supreme Court. The petition was decided on March 2, 1982. The Supreme Court recorded the undertaking advanced on behalf of the Mandi Samiti to the

3. Effect that 120 shops shall be raised within a period of 6 months from of the decision and the shifting to the new Market Yard will take place upon these shops being constructed.

4. The State Government followed this up by issue of a fresh notification u/s 4(1)/17(4) of the Act dated May 20, 1982 to acquire 1947 acres of land including plot No. 289. Enquiry u/s 5A was dispensed with thereunder. The notification recites that the public purpose is the construction of Market Yard under the Planned Development Scheme and the raising of the shops in terms of the judgment of the Supreme Court dated March 2, 1982. The notification u/s 6/17(1)(1A) was issued with the same declaration by the State Government on May 21, 1982.

5. Aggrieved against these two notifications the Petitioners have filed this

petition on June 25, 1982 seeking writ of certiorari to quash these notifications and also mandamus directing the Respondents not to give effect to them and to restore possession of plot No. 289 to the Petitioners.

6. The question raised is whether in the facts and circumstances of the case the enquiry u/s 5A of the Act could have been legitimately dispensed with. Sri B.D. Agarwal, assisted by Sri R.P. Goyal, learned Counsel appearing for the Petitioners, urged that this is an act of bad faith on the part of the concerned authorities. The decision to that effect, it was added, proceeds upon oblique motive and was designed to circumvent the decision of the Supreme Court and is irrational. For the Mandi Samiti Sri B.D. Mandhayan sought to support the notifications impugned laying emphasis upon the need for additional land to raise shops in the Market Yard.

7. As mentioned above, plot No. 289 (3 bighas 14 biswas) was included in the notification dated October 26, 1978 made u/s 4(1)/17(4) in respect of 19.47 acres. This Court held on 6th September, 1979, in writ petition No. 163 of 1979 between the parties that there was no pressing need for additional land and in any case there appeared no such urgency as to justify application of Section 17(4) dispensing with the enquiry contemplated by Section 5A. The Supreme Court affirmed this in its judgment dated October 22, 1979 in Civil Appeal No. 2970 of 1979 filed by the Mandi Samiti vide Annexure 8. The view expressed was that the urgency clause had been wrongly applied. Notification u/s 4(1)/17(4) was set aside to the extent it invoked Section 17(4). It was directed that copies of the notification be served on the Respondent Nos. 1 and 2 (the Petitioners before us) and their transferees so that they might have opportunity to file objections to the proposed notification within 3 weeks and the appropriate authority was then to hold enquiry into the objection u/s 5A and process the matter in accordance with law. This thus was the position till about the end of the year 1979.

8. In compliance to the direction of the Supreme Court a report was called for from the Land Acquisition Officer, who after considering the objections reported on January 20, 1981 that it was not necessary to acquire plot No. 289 for the purpose of the Mandi Samiti and that even if the Mandi Samiti expanded its campus later, the exemption of this plot would not adversely affect the plan. Instead of proceeding further with the then existing notification made u/s 4(1) dated October 26, 1978 the authorities took recourse to ignore it and proceeded with a fresh notification u/s 4(1) dated May 20, 1982, wherein the enquiry u/s 5A was again dispensed with. The question naturally arises what could possibly be the compelling reasons which intervened to justify the invocation of the urgency clause so far as this notification is concerned;

9. In the impugned notification there is mention made of the decision of the Supreme Court dated March 2, 1982 in Writ Petition No. 1318 of 1982, vide Annexure 10 to the writ petition. This was in the sequence of the notification The Mandi Samiti requiring the traders and the dealers to shift to the Market and. It

was held that the shifting could not take place without the shops being raised. There was undertaking on behalf of the Mandi Samiti that within six months 120 shops would be constructed in the new Market Yard. Now the Mandi Samiti already had 77 acres of land in its possession. In paragraph 15 of the counter-affidavit filed for the Mandi Samiti the averment is that 120 shops had been raised earlier and that 60 acres of land left with the Samiti could suffice to raise another block of 90 shops only. The Mandi Samiti, it is recited, intended to raise 540 shops in all. In all fairness, keeping in view the report which the Land Acquisition Officer had given earlier on January 20, 1981, it should have been left to enquiry u/s 5A to determine, considering the location etc. and after hearing the parties, whether the inclusion of plot No. 289 was indispensable. The Land Acquisition Officer having found earlier categorically after considering the stand taken on both sides that the Mandi Samiti could proceed with its project in the future also without it being necessary to cover plot No. 289 under acquisition, it does not appear that in all reasonableness the enquiry should not have been got held over again, in case it was felt for or on behalf of the Mandi Samiti that the situation had changed such as to necessitate the acquisition of plot No. 289 also. It should have been left to be considered by the Land Acquisition Officer upon hearing the two sides whether the earlier report which he had given stood any need of a modification. It is then not merely the need for additional land but the urgency to invoke Section 17(4) which has also to be shown to exist. The Supreme Court gave its decision on March 2, 1982; the notification impugned came to be made nearly 2-1/2 months thereafter. Time being of the essence, it does not appear why the impugned notification could not issue earlier and this time availed for the purpose of enquiry u/s 5A. In the discharge of public duty Under the Rule of law the authorities are expected to act in good faith and not arbitrarily. The rule of law postulates that the exercise of power by the executive or any other authority must not only be conditioned by the constitution but must also be in accordance with law. It constitutes the core of the Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limits. That which cannot be done directly may not be brought about indirectly. In so far as plot No. 289 is concerned, the chapter may have been taken as closed with the report of the Land Acquisition Officer dated January 20, 1981. But if the executive felt it necessary for raising additional shops that this plot be as well acquired, the matter could have been again taken up as mentioned above u/s 5A. The Land Acquisition Officer could also be impressed to keep in mind the time limit which the Supreme Court had laid down for the construction of the additional shops. We are conscious of the view which this Court has taken in a series of cases to the effect that the construction of Market Yard may be covered under a planned Development Scheme and that depending on the facts and circumstances enquiry u/s 5A may be dispensed with for that purpose. It may suffice to refer in this connection to some of those decisions only vide, Satyendra Prasad Jain etc. v. State of Uttar Pradesh, Writ Petition No. 18419 of 1986 1987 AWC 382;

Vishwanath Tewari v. State of UTTAR PRADESH, Writ Petition No. 6255 of 1978 decided on 16.1.1980 and Qaiser Sibtain Khan v. State of Uttar Pradesh Writ Petition No. 9730 of 1978 decided on 6.9.1979. But in the ultimate analysis the facts and circumstances of each case weigh in arriving at the conclusion (see State of Uttar Pradesh v. Smt. Pista Devi 1986 AWC 1027. In the back ground of the circumstances shown to exist in the instant case the conclusion to our mind is irresistible that the dispensing with of enquiry u/s 5A was not bonafide or rational.

10. Considered in the light of the discussion made above, the petiti succeeds and is allowed accordingly. The notification made u/s 4(1)/17(4) dated May 20, 1982 (Annexure "1") is set aside with respect to plot No. 289 (3 bighas 14 biswas) in so far as it invokes Section 17(4) and dispenses with enquiry u/s 5A of the Act. The notification u/s 6/17(1), (IA) of the Land Acquisition Act dated May 21, 1982 (Annexure-2) is set aside also in so far as plot No. 289 is concerned. The possession over this and shall be delivered back to the Petitioners or their transferees as the case may be by the Krishi Utpadan Mandi Saniiti, Muzaffarnagaf, Respondent No. 4, within three weeks from this day. There will be no order as to costs.