

(2014) 02 MP CK 0112

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14063 of 2011

Rathi Sugar Private Limited

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4 5A
National Highways Act, 1956 — Section 3A 3C 3C(1) 3D

Citation : (2015) 1 MPLJ 342

Hon'ble Judges : A.M. Khanwilkar, C.J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Sanjay Agarwal, for the Appellant; Shashank Shekhar, Vikram Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, C.J.—This writ petition under Article 226 of the Constitution of India is filed to challenge the notification dated 19.7.2010 issued in exercise of powers u/s 3A of the National Highways Act, 1956. The notification mentions the purpose of acquisition for road widening and four-lane road. The petitioners' land bearing survey No. 156/1 and 156/2 was notified as one of the land to be acquired vide said notification. The notification invited objections which the petitioners filed on 9.9.2010, annexure P/5. According to the petitioners, the objection has been decided by the Project Director, as can be discerned from annexure P/7 dated 1.2.2011. On this assertion it is argued before us that the entire acquisition proceeding qua the land owned and possessed by the petitioners is vitiated.

2. It is not in dispute, however, that section 3D notification came to be issued on 29.4.2011, which refers to the land owned and possessed by the petitioners. It is also not in dispute that the petitioners have availed of the compensation amount determined by the competent Authority. Indeed, according to the petitioners they

have accepted the said amount without prejudice to their right to challenge the acquisition proceedings. It is noticed that possession of the land in question has already been taken over by the Highway Authorities and the land has vested in the Central Government.

3. As regards the ground urged by the petitioners before us, the response of the respondents is that the objection filed by the petitioners was decided by the competent Authority, i.e. the S.D.M. (Revenue), Multai, District Betul. This factual position has been asserted in the reply affidavit filed by the Project Director of the National Highway Authority of India. The relevant portion of the affidavit reads thus:-

In the present case the objection in respect of the acquiring the land were submitted to the competent authority i.e. SDM (Revenue), Multai, Distt. Betul and one copy of the objection was received in the office of NHAI in respect of seeking the advise pertaining to the technical aspects and accordingly the answering respondent had given the opinion pertaining to the technical aspects of the land to be acquired and matter was referred to competent authority to take final decision and thereafter it is the competent authority who has taken final decision by rejecting the objections raised by to the petitioner and therefore to the best of information with the answering respondent the objections has been duly entertained by the competent authority and justifiable action has been taken by rejecting the said objection and as such there is no apparent error in taking the final decision.

4. In addition to the said reply affidavit, the respondents are relying on the documents at page 78 and 79 of the writ petition paper-book. The same reads thus:-

5. According to the respondents, the objection filed by the petitioners was decided by the competent Authority and the argument of the petitioners founded on annexure P/7 was completely ill-advised and untenable.

6. We are in agreement with this submission. The document, annexure P/7, is a communication sent by the Project Director much later on 1.2.2011. The objections came to be decided by the competent Authority on 12.12.2010 after issuing public notice in that regard in local newspaper "Dainik Bhaskar dated 4.12.2010, which reads thus:-

7. The petitioners did not remain present on the notified date of public hearing. It is not the case of the petitioners that they were in fact present in the office of the Competent Authority on the date of hearing fixed in terms of this public notice. In that case, the argument that they were not given personal hearing or opportunity of being heard is not available to the petitioners. That argument would be available only if the petitioners were to remain present at the time of public hearing and make oral submissions in addition to the written submissions filed by them. Further, the gist of the written submission of the petitioners has been considered by the competent Authority; and from the document at page 79

it is evident that the competent Authority opined that the same deserves to be rejected.

8. It is well established position that the National Highways Act is a special enactment and the scope of objection is very limited to the question of user of the land alone. In the case of Competent Authority Vs. Barangore Jute Factory and Others, , the Apex Court observed thus:-

The absence of a plan also renders the right to file objections u/s 3C(1) nugatory. In the absence of a Plan, it is impossible to ascertain or know which part of the acquired land was to be used and in what manner. Without this knowledge no objections regarding use of land could be filed. Since the objection regarding use of the land had been given up by the writ petitioners, we need not go any further in this aspect. We would, however, like to add that unlike Section 5A of the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land u/s 4 of the said Act, Section 3C(1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those under sub-section 3A(1). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned counsel for the NHAI that failure to file objections disentitles Writ Petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this court in Delhi Administration Vs. Gurdip Singh Uban and Others etc., . In our view, this judgment has no application in the facts of the present case where the right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land u/s 5A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except on the question of its user: Therefore, the present objection has to be decided independently of the right to file objections. De hors the right to file objection, the validity of the Notification has to be considered. Failure to file objection to the notification u/s 3C, therefore, cannot non-suit the Writ Petitioners in this case.

(emphasis supplied)

9. Suffice it to observe that the argument of the petitioners that the decision has not been taken by the competent Authority, but by someone-else, namely, the Project Director, is completely misplaced and ill-advised. There is no reason to doubt the stand taken on affidavit by the Project Director and more so, the contemporaneous document which was made available to the petitioners indicating that the public hearing took place on 12.12.2010 and the objection taken by the petitioners was duly considered and rejected.

10. It has come on record that as a matter of fact the competent Authority allegedly favoured the petitioners by providing excessive compensation in

respect of which criminal case has been registered and the concerned S.D.M. was arrested and has been enlarged on bail. Moreover, it is noticed that the petitioners have still not actively participated in the arbitration proceedings relating to enhancement of the compensation amount. Indeed, the petitioners were relying on the pending proceedings and had a fond hope that they would succeed in challenging the entire acquisition proceedings relating to survey No. 156/1 and 156/2. It is also noticed that except the land belonging to the petitioners through which the National Highway would pass, rest of the National Highway in the concerned segment has already been constructed and ready for use. It is because of pendency of this petition and order of status-quo, the project could not be taken forward although the possession of the land is with the National Highway Authority and the land vests in the Central Government.

11. Taking any view of the matter and in public interest we decline to exercise writ jurisdiction on such flimsy and technical argument which, as aforesaid, has not been substantiated by the petitioners. Hence, petition is dismissed. Order of status-quo is vacated forthwith.