

(2004) 04 AHC CK 0097
In the Allahabad High Court
Case No : C.M.W.P. No. 14988 of 2004

Sadgi Investment (P.) Ltd.	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 20-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17, 4

Citation : (2004) 3 AWC 2510

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : R.C. Sinha and Arvind Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed with a prayer for mandamus directing the respondents to de-notify the land in question which was notified under the Land Acquisition Act. The petitioner has also prayed for a writ of certiorari to quash the impugned notification dated 31.10.2000 u/s 4/17 of the Land Acquisition Act and the notification dated 5.10.2002, issued u/s 6 and also the impugned order dated 10.3.2003, passed by the respondent No. 1 copy of which is Annexure-1 to the writ petition. The petitioner has also prayed for a mandamus restraining the respondents from taking possession of the disputed land in pursuance of the impugned notification.

2. We are of the opinion that this petition is liable to be dismissed on the ground of laches.

3. It may be noted that the notification u/s 4/17 copy of which is Annexure-4 to the writ petition was issued on 31.10.2000, whereas the present writ petition has been filed in April, 2004. Thus, the challenge to the said notification is clearly belated. Similarly, the challenge to the notification dated 5.10.2002, is also belated. As regards the impugned order dated 10.3.2003 copy of which is

Annexure-1 to the writ petition the challenge to this order is also belated as the writ petition has been filed in April, 2004, that is more than one year after the passing of the said order. Hence this writ petition deserves to be dismissed on the ground of laches alone.

4. However, even on merits we are of the opinion that the writ petition is liable to be dismissed. A perusal of the notification dated 31.10.2000 u/s 4/17 of the Land Acquisition Act (vide Annexure-4 to the writ petition) shows that the land was being acquired for planned industrial development in district Mathura.

5. In Writ Petition No. 27317 of 2001, Kaloo Ram v. State of U. P. and Ors., decided on 5.3.2004, the entire case law on the point has been discussed in great detail by a Division Bench of this Court. In that decision also the land was being acquired for planned development and it was held that this was for public purpose vide Ajai Krishna Singhal and Ors. v. Union of India (1966) 10 SCC 721.

6. In Writ Petition No. 29031 of 2003, Amar Singh and Ors. v. State decided on 11.7.2003 the Court has held that even abadi land can be acquired. The same view was taken in Manveer Singh and Another Vs. State of U.P. and Others, and Writ Petition No. 24670 of 2003, Horam Singh v. State of U. P., decided on 2.7.2003.

7. In Kashi Nath v. State of U. P. 1993 ALJ 154 a Division Bench of this Court following the decision of the Supreme Court in Bai Malimabu and Others Vs. State of Gujarat and Others, held that the word land in Section 3(a) includes the superstructures on the land. Hence abadi land can be acquired, even if there are structures thereon, though, of course compensation has to be paid for the same.

8. In Amar Singh's case (supra) it has also been held after a detailed discussion that whether to grant exemption from acquisition or not is a purely administrative matter and this Court could not interfere. It was also held therein that directions directing disposal of the petitioner's application for exemption should not be issued by the Court as this only results in further delay of the acquisition proceedings for years and years.

9. In Writ Petition No. 15586 of 2001, Ram Charittar and Ors. v. State of U.P., decided on 4.10.2002, a similar view was taken.

10. Moreover, it appears that the petitioner had earlier filed Writ Petition No. 46299 of 2002 which had been disposed of by a Division Bench of this Court on 28.10.2002 vide Annexure-2 to the writ petition. In that decision it was held that the notification u/s 6(1) of the Act was perfectly valid.

11. As regards the prayer for exempting the land from acquisition it was held that the petitioner's representation should be decided expeditiously.

12. In the judgment dated 28.10.2002 (vide Annexure-2 to the writ petition) it has been observed that the petitioner has constructed a boundary wall and had also laid the foundation for making construction of the building of the factory.

Thus, at that time admittedly there was no building on the land in question and there was only a boundary wall. However, even if there had been a building on the land it could yet be acquired vide *Aman Singh v. State of U. P.* (infra).

13. The petitioner's application for exemption has been rejected by the order dated 10.3.2003, Annexure-1 to the writ petition. We have already observed that the challenge to this order is belated because the petition has been filed more than one year after the order was passed. Apart from that it has been stated in the said order that the acquisition of the land was very important for the establishment of the industrial area.

14. We have already held in Writ Petition No. 29031 of 2003. *Amar Singh v. State of U. P.*, decided on 11.7.2003 ; *Manveer Singh and Another Vs. State of U.P. and Others*, and Writ Petition No. 24670 of 2003, *Horam Singh v. State of U. P.*, decided on 2.7.2003, etc. that whether to grant exemption or not is a purely administrative matter and the Court cannot interfere with it. In *Amar Singh v. State of U. P.* (supra), it was also held that even the direction that the petitioner's application for exemption should be decided should not be issued by this Court as this only resulted in further delay of the acquisition proceedings for years and years. If such direction is given and the exemption application is rejected without giving reason then immediately another writ petition is filed alleging that the order rejecting the exemption application should be quashed on the ground that no reason was given. However, if reasons are given in the said order then also a writ petition is filed alleging that the reasons are arbitrary or extraneous and once again an attempt is made to obtain a stay order from this Court and often such stay order are passed and the matter lingers on for several years. In this way the entire scheme of acquisition is frustrated.

15. It may be mentioned that when a scheme for acquisition is made there is a plan for levelling the land, construction of roads, sewage system, water supply system, etc. This entire plan is frustrated if stay orders are obtained in respect of some plots in the scheme and it is well known that such stay orders often continue for years and years because of the heavy pendency in most Courts. Hence this Court should exercise restraint and not interfere with the executive function of granting exemption or not granting exemption.

16. This Court cannot ordinarily interfere in administrative matters, since the administrative authorities are specialists in matters relating to the administration. The Court does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities. It is only in rare and exceptional cases, where the *Wednesbury* principle applies, that the Court should interfere, vide *Tata Cellular Vs. Union of India*, ; *Om Kumar v. Union of India* 2001 (2) SCC 386 In *U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another*, the Supreme Court observed :

"However, we cannot lose sight of the fact that the Corporation is an independent

autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its function it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a third party to substitute its decision, however more prudent, commercial or business like it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed by making the Corporation liable."

17. In *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, , the Supreme Court observed :

"If the High Court cannot sit as an appellate authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known that more than one choice is available to the administrative authorities. They have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred". (Per Lord Diplock in *Secretary of State for Education and Science v. Metropolitan Borough Council of Tameside* 1977 AC 1014. The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, the Court can intervene, To quote the classic passage from the judgment of Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* 1947 (2) All ER 680 :

"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyer familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

18. In *Tata Cellular Vs. Union of India*, the Supreme Court observed :

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal over administrative decisions but

merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct an administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible."

19. In the same decision the Supreme Court observe that judicial review is concerned with reviewing not the merits of the decision but the decision making process (the Wednesbury Principle). See also Pramod Kumar Misra Vs. Indian Oil Corporation Ltd. and Others, and State of Kerala v. Joseph Antony 1994 (1) SCC 658, etc.

20. As Lord Denning observed :

"This power to overturn executive decisions must be exercised very carefully, because you have got to remember that the executive and the local authorities have their very own responsibilities and they have the right to make decisions. The Courts should be very wary about interfering and only interfere in extreme cases, that is, cases where the Court is sure they have gone wrong in law or they have been utterly unreasonable. Otherwise you would get a conflict between the Courts and the Government and the authorities, which would be most undesirable. The Courts must act very warily in this matter." (See "Judging the World" by Garry Sturgess Philip Chubb).

21. In our opinion, Judges must maintain judicial self restraint while exercising the powers of judicial review of administrative or legislative decisions :

"In view of the complexities of modern society", wrote Justice Frankfurter, while Professor of Law at Harvard University, "and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr. Justice Holmes applied in hundreds of cases and expressed in memorable language :

"It is a misfortune if a Judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seems to him to be first principles are believed by half his fellow men to be wrong."

(See Frankfurter's "Mr. Justice Holmes and the Supreme Court").

22. In our opinion, the administrative authorities must be given freedom to do experimentations and in exercising powers, provided of course they do not transgress the legal limits or act arbitrarily :

The function of a Judge has been described thus by Lawton LJ : "A Judge acts as a referee who can blow his judicial whistle when the ball goes out of play, but when the game restarts he must neither take part in it nor tell the players how to play" vide Laker Airways Ltd. v. Department of Trade (1977) QB 643.

23. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice Frankfurter wrote :

"It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the State. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of scepticism by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest."

(See "Essays on Legal History in Honour of Felix Frankfurter" Edited by Morris D. Forkosch).

24. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the field of administration while the Court does not. In the word of Chief Justice Neely :

"I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review -a 5,000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

25. In administrative matters the Court should therefore ordinarily defer to the judgment of the administrators unless the decision is clearly illegal or shockingly arbitrary.

26. In this connection Justice Frankfurter while Professor of Law at Harvard University wrote in "The Public and its Government" :

"With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors among his colleagues. His supremacy lay in his recognition of the practical needs of Government. The great Judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people."

In the same book Justice Frankfurter also wrote :

"In simple truth, the difficulties that Government encounters from law do not inhere in the Constitution. They are due to the Judges who interpret it. That document has ample resources for imaginative statesmanship, if Judges have imagination for statesmanship."

27. In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala,

Khanna, J. observed :

"In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the Government. The door has to be left open for trial and error."

28. In *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, the Supreme Court observed that there are three grounds on which administrative action is subject to control by judicial review. The first ground is illegality, the second is irrationality and the third is procedural impropriety. These principles were highlighted by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service*, (1984) 3 All ER 935. The Supreme Court observed that the Court will be slow to interfere in such matters relating to administrative functions unless the decision is tainted by any vulnerability enumerated above, like illegality, irrationality and procedural impropriety. The famous case, commonly known as the "Wednesbury's case", is treated as the landmark in laying down various principles relating to judicial review of administrative or statutory discretion.

29. Lord Diplock explained irrationality as follows :

"By irrationality I mean what can now be succinctly referred to as Wednesbury unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standard that no sensible person who had applied his mind to the question to be decided could have arrived at it."

30. From the above standpoint the impugned decision of the administrative authorities in the present case (Annexure-1 to the writ petition) cannot be faulted as it cannot be said to be so outrageous in defiance of logic or accepted moral standards that no sensible person could have arrived at it. It has been stated therein that plot No. 881 is next to the main National Highway, and that adjacent plot Nos. 883 and 884 are very important for the industrial area. These cannot be called arbitrary considerations.

31. Petition dismissed.