

(1975) 01 AHC CK 0010

In the Allahabad High Court

Case No : Spl. Appeal No. 312 and 316 of 1974

Sahkari Kraya Vikraya Samiti Ltd.

APPELLANT

Vs

Ram Kumar and Others

RESPONDENT

Date of Decision : 10-01-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition (Companies) Rules, 1963 — Rule 4(1), 4(4)
Land Acquisition Act, 1894 — Section 41, 5A, 6, 6(3)

Citation : AIR 1975 All 276

Hon'ble Judges : Satish Chandra, J;H.N. Seth, J

Bench : Division Bench

Advocate : S.H. Abdi, for the Appellant;

Final Decision : Dismissed

Judgement

H.N. Seth, J.—These two special appeals are directed against the judgment of a learned single Judge of this Court dated 17th of May 1974 by which he allowed a petition under Article 226 of the Constitution filed by respondents Nos. 1 to 7 Ram Kumar and others, and quashed the notification dated 3-8-1963 issued u/s 6 of the Land Acquisition Act. Whereas Special Appeal No. 312 of 1974 is by Sahkari Kraya Vikraya Samiti, the body for whose purposes land had been acquired under the impugned notification, Special Appeal No. 316 of 1974 is by the State Government.

2. On 22nd April 1959 the Collector Fatehpur issued a notification u/s 4 of the Land Acquisition Act stating that plot No. 680 situate in village Kuberpur Aima district Fatehpur was needed for a public purpose namely, for construction of a godovvn for storing foodgrains of Co-operative Marketing Society, Sahkari Kraya Vikraya Samiti Bindki (hereinafter referred to as the Society). In due course, the Collector made a report u/s 5A of the Land Acquisition Act. As the acquisition was being made for a Co-operative Marketing Society which was a Company as defined in the Land Acquisition Act, the Society executed an agreement, as

envisaged by Section 41 of the Act on 13th June, 1963. Before however, as required by Section 42 of the Act, the aforesaid agreement could be published in U.P. Gazette on 29th June 1963, the Central Government framed and enforced the rules entitled as Land Acquisition (Companies) Rules 1963 with effect from 24th of June 1963. Rule 3 of the Rules provides for the constitution of a Land Acquisition Committee for advising the Government on matters relating to and arising out of acquisition of land under Part VII of the Land Acquisition Act. Rule 4 runs thus:--

4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings:--

(1) Whenever a Company makes an application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely :--

(i) that the Company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition.

(ii) that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the company is in a position to utilise the land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The collector shall, after giving the company a reasonable opportunity, to make any representation in this behalf, hold an enquiry into the matters referred to in Sub-rule (1) and while holding such enquiry he shall :--

(i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of Sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the Company; and

(iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined) to the persons interested in the land proposed to be acquired.

Explanation:.. For the purpose of this rule "good agricultural land" means any land which considering the level of agricultural production and the crop pattern of

the area in which it is situated, is of average or above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under Sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by that Government to the committee.

(4) No declaration shall be made by the appropriate Government u/s 6 of the Act unless-

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, and

(ii) the agreement u/s 41 of the Act has been executed by the Company.

3. According to this rule, before initiating land acquisition proceedings at the instance of a company, the appropriate Government has to obtain a report with regard to the matters enumerated in Sub-rule (1) from the Collector and has to forward the same to the Land Acquisition Committee for opinion. Generally speaking the aforesaid procedure is to be followed so as to enable the appropriate Government to ensure that the Company is in a position to utilize the acquired land expeditiously and that only suitable land to the minimum extent is acquired for the use of the Company, on payment of reasonable price therefore. The sub-rule further contemplates that for the aforesaid purpose good agricultural land should be acquired only when it becomes absolutely necessary to do so. Sub-rule (4) clearly prohibits the State Government from issuing a declaration u/s 6 of the Land Acquisition Act unless it has consulted the Land Acquisition Committee, has considered the reports u/s 5A of the Act, if any, and that submitted to it by the Collector. In this case, the State Government issued the notification u/s 6 of the Act on 3rd August 1963 without following the procedure laid down in rule 4 of the Land Acquisition (Companies) Rules and declared that the land in question was needed for a public purpose.

4. Main question that arises for consideration in this appeal is whether, in the circumstances, it was open to the State Government to issue a notification u/s 6 of the Land Acquisition Act without following the procedure prescribed in Rule 4 of the Land Acquisition (Companies) Rules 1963.

5. Learned counsel for the two appellants contend that the proceedings for the acquisition of the land in dispute commenced as far back as the year 1959 when a notification u/s 4 of the Land Acquisition Act was issued. In due course, not only a report u/s 5A of the Land Acquisition Act had been submitted, but an agreement as required, by Section 41 of the Land Acquisition Act had also been executed on 13-6-1963. Thus the Land acquisition proceedings were practically over when the Land Acquisition (Companies) Rules 1963 came into force on 24th June 1963. According to them these Rules did not have any retrospective operation and did not apply to the Land Acquisition Proceedings in question. They relied upon the opening words of Rule 4 (1) which run thus :--

"Whenever a Company makes an application to the appropriate Government for acquisition of land,"

and urged that these words indicate that Rule 4 applies only to such cases where an application for acquisition of land is made by a company after the enforcement of the rules. The marginal note of the Rule also points out that the purpose of Rule 4 is to enumerate the matters regarding which the State Government is to be satisfied before initiating acquisition proceedings. Accordingly, the procedure laid down in the rule will apply only in such cases where the proceedings for acquisition of land had not been initiated before the coming into force of the Land Acquisition Companies Rules 1963.

6. Various clauses of rule 4 of the Land Acquisition (Companies) Rules 1963 are parts of an integrated scheme and have to be read as a whole. The marginal note to Rule 4 clearly indicates that the appropriate Government has to be satisfied with regard to certain matters before initiating acquisition proceedings. Sub-rule (4) of Rule 4, when it prohibits the State Government from making a declaration u/s 6 of the Land Acquisition Act till it has consulted the committee and has considered the report if any mentioned in Section 5A of the Act as also that submitted under Sub-rule (1), makes the intention of the rule making body, that this rule is intended to apply to such cases only where the proceedings for acquisition of land for a company have not commenced, obvious. The rule does not contemplate that the Land Acquisition proceedings that commenced before the coming into force of the Rule are to lapse and are to be recommenced. However the argument of the appellant that in this case the Land Acquisition proceedings had commenced before the coming into force of the Land Acquisition Rules docs not appeal to us. It is not disputed that before the enforcement of the Land Acquisition (Companies) Rules the only thing that happened in the instant case was that after issue of notification u/s 4 of the Act the report u/s 5A of the Act had been submitted. The notification u/s 6 had not been issued till then. The purpose of issuing a notification u/s 4 of the Land Acquisition Act merely is to notify to the public at large that land in the locality is or is likely to be needed for a public purpose so that the persons likely to be affected by the proposed acquisition may raise such objections as they like, and if necessary to enable the State Government to do certain acts specified in Sub-section (2) of that Section so that it may be able to decide as to which particular land in the locality should be acquired. After the objections, if any, made by the public are heard, the State Government is required to issue a notification u/s 6 declaring that it is satisfied that particular land is needed for a public purpose or for a Company. According to Sub-section (3) thereof, such declaration shall be conclusive evidence that the land is needed for a public purpose or for a company as the case may be and that thereafter the appropriate Government is to take steps to acquire the same in the manner provided in subsequent sections of the Act. The phraseology of Section 6(3) clearly makes out that the proceedings till the stage of making a declaration contemplated by Section 6 are anterior to actual initiation of acquisition proceedings which commence only as a consequence of a notification

u/s 6 of the Act. It follows that in the present case, the proceedings for acquisition of land had not commenced before the enforcement of Land Acquisition (Companies) Rules, 1963. Sub-rule (4) of Rule 4 thereof when it provides that the appropriate Government shall not make a declaration u/s 6 of the Act unless the conditions mentioned therein are satisfied, in effect lays down that the proceedings for acquisition of the land in the manner provided under the Land Acquisition Act are not to be initiated unless the conditions mentioned therein have been satisfied. The prohibition contained in Sub-rule (4) will therefore apply to all such cases where the necessary notification u/s 6 of the Act has not been issued before the enforcement of the Land Acquisition (Companies) Rules 1963. Viewed in this light it cannot be said that in the instant case the respondents are seeking to invoke the applicability of Rule 4 (4) of the rules retrospectively.

7. The matter may be looked into from yet another aspect. The procedure adopted by the relevant authorities in the present case, prior to coming into force of the Companies Land Acquisition Rules 1963, did not vest the acquiring body with any legal right which could be affected by the application of the Rule 4 (4) of the Rules. The provisions contained in Rule 4 (4) merely regulate the procedure for considering an application made by a Company for acquisition of land. It is well settled that any change in rules relating to procedure, applies to all pending matters. Accordingly, so long as the application made by the petitioner for acquiring land was pending consideration, and a declaration u/s 6 had not been made, such application had to be considered and disposed of in accordance with the changed procedure. Proceedings for acquiring the land could therefore be initiated only after completing the procedure laid down in Rule 4 of the Rules.

8. Learned counsel for the appellants contended that after the report u/s 5A had been made and considered and the agreement u/s 41 had been executed by the Company, nothing further remained to be done before issuing a notification u/s 6. There was absolutely no point in asking the Collector to submit a report mentioned in Rule 4 (1). A report under that rule is required only to place before the Government material indicating whether or not it is desirable to acquire the land in question. That very purpose is achieved by a report made u/s 5A of the Act. The procedural provision contained in Rule 4 had therefore been substantially complied with and there was no defect in the impugned notification.

9. We are unable to accept this submission. Sub-rule (4) to Rule 4 clearly indicates that the report submitted by the Collector under Sub-rule (1) is something quite different from that made u/s 5A. Although the two reports are made in order to help the State Government in arriving at the conclusion whether or not a particular land should be acquired, they are (sic) intended to be made under Rule 4 is meant to indicate to the Government that the Company, for whose purposes the land is sought to be acquired, has made genuine efforts to find out land in the locality which is fit for being acquired and that it had made all

reasonable efforts to get such land by private negotiation after paying a reasonable price etc. A report u/s 5A of the Act is merely intended to indicate which land in the locality would suit the purpose of acquisition. The requirement of a report under Rule 4 (1) is a requirement which is in addition to the requirement of a report u/s 5A of the Land Acquisition Act. There is nothing in Sub-rule (4) of rule 4 of the Rules to indicate that once a report u/s 5A is made and an agreement u/s 41 is executed, it is not feasible or possible for the appropriate Government to obtain the report from the Collector under Rule 4 (1) and to consult the Land Acquisition Committee constituted under Rule 3 before issuing a notification under Section 6 of the Act. In our opinion even though the request for acquiring the land had been made on behalf of the Company prior to the coming into force of the Land Acquisition (Companies) Rules, 1963 the State Government as provided in Rule 4 (4) of the Rules was bound to obtain a report from the Collector under Rule 4 (1) and to consider the same after consulting the Land Acquisition Committee. The notification issued u/s 6 of the Act, in contravention of the aforesaid rule was therefore, void and was rightly struck down by the learned single Judge.

10. Learned counsel for the appellant next urged that the impugned notification u/s 6 of the Land Acquisition Act was issued as far back as 3-8-1963 and the writ petition giving rise to the present appeal was filed only on 13-3-1973 i.e. after about ten years. The petition is accordingly belated and as such was liable to be dismissed without going into the merits of the controversy raised therein. It may be mentioned here that the present petitioners claim to have obtained title to the land in dispute in the year 1906 through two persons named Munna and Jumman whose title was upheld in proceedings under the U.P. Consolidation of Holdings Act. According to them, neither Munna and Jumman nor they, were aware of the land acquisition proceedings. When they came to know that the plot in question had been acquired, they, on 15-2-1973, filed objections before the Collector asserting that the entire acquisition proceedings were fictitious and without notice to them. One Kunjjilal who had withdrawn the compensation in respect of the land in dispute, had nothing to do with it. The petitioners apprehended that the respondents were going to dispossess them from the land in dispute without deciding their objections. They accordingly filed the writ on 13-3-73 and prayed that the present appellants be restrained from taking possession of the land in dispute. In our opinion the petitioners could come to this Court only when they came to know about the land acquisition proceedings and the intention of the respondents to dispossess them from the land in dispute in pursuance of an invalid notification. It cannot be said that the petitioners had been guilty of laches even after they came to know either about the land acquisition proceedings or about the threat extended by the respondents to dispossess them from the land in dispute. We are accordingly not satisfied that the present petition deserves to be rejected merely on the ground that a notification issued in the year 1963 is being challenged by a petition filed in the year 1973.

11. In the result, both the appeals fail and are dismissed with costs.