

(2004) 07 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No. 3097 of 1989

Sanjay Wagh and Others

APPELLANT

Vs

Special Land Acquisition Officer (General) and Another

RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 6(1), 6(2)

Citation : (2005) 1 ALLMR 150 : (2005) 1 MhLj 1006

Hon'ble Judges : S. Radhakrishnan, J;K.J. Rohee, J

Bench : Division Bench

Advocate : R.K. Deshpande, for the Appellant; N.S. Khubalkar, Assistant Government Pleader for respondent No. 1 and A.B. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Rohee, J.—Heard the learned counsel for the petitioners, the learned Assistant Government Pleader for respondent No. 1 and the learned counsel for respondent No. 2.

2. By this writ petition, the petitioners have challenged the land acquisition proceedings bearing Land Acquisition Case No. 15/A-65/85-86 of Rengapar, Tahsil and District - Nagpur and prayed for quashing the Notification dated 30-3-1986 u/s 4 of the Land Acquisition Act and declaration dated 16-4-1987 u/s 6 of the said Act as null and void.

3. It seems that respondent No. 2 approached respondent No. 1 for acquisition of Survey No. 191/1, 2.33 Hectors and Survey No. 124/2, area 2.17 Hectors of mouza Rengapar, Tahsil and District Nagpur for market development. A resolution to that effect was passed by respondent No. 2 on 2-8-1985. Upon the requisition by respondent No. 2, a preliminary Notification u/s 4(1) of the Land Acquisition Act was issued by respondent No. 1 on 20-3-1986. It was duly published in official gazette as well as newspapers. An individual notice was also issued to the

landowner namely Ganpati Sambhu Pawar which was served on him on 24-4-1986. On 26-5-1986, he moved an application before respondent No. 1 in which he claimed that the land is his self-acquired property, that nobody else has any right in it and that the compensation should be paid to him alone. On 29-9-1986, Ganpati Sambhuji Pawar moved an application before respondent No. 1 claiming compensation at the rate of Rs. 25,000/- per acre and employment to his grandson.

4. On 16-4-1987, declaration u/s 6 of the Land Acquisition Act was made by respondent No. 1 in respect of land Survey No. 124/2 recommending acquisition of Survey No. 124/2 and deletion of Survey No. 191/1. The said declaration was duly published in official gazette and newspapers. Thereafter, on 20-4-1989 an Award u/s 11 of the Land Acquisition Act was passed by respondent No. 1.

5. According to the petitioners, they purchased the land in Survey No. 124/2 under two sale deeds dated 6-5-1986 and 12-1-1987 from Kashinath Ganpat Pawar, who was the owner thereof. They never received any notice u/s 5-A of the Land Acquisition Act. After coming to know about the Award, petitioner Nos. 1 and 2 filed an objection before respondent No. 1 on 19-8-1989. However, the same was rejected on 29-8-1989 without hearing them. Hence, they have challenged the said acquisition proceedings. It seems that during the pendency of the petition, Kashinath Ganpat Pawar was joined as petitioner No. 3 in 2001.

6. Shri R. K. Deshpande, the learned counsel for the petitioners, mainly emphasised on three grounds for challenging the acquisition proceedings. Firstly he contended that on earlier occasion i.e. in the year 1981-82, land acquisition proceedings were initiated in respect of land Survey No. 124/2 at the instance of respondent No. 2. A Notification u/s 4 of the Land Acquisition Act was also issued. However, on 17-10-1984 the land acquisition proceedings were dropped on two grounds that there were complications in respect of the ownership of the said land and that the demand of respondent No. 2 for additional land was found to be excessive. The learned counsel for the petitioners, therefore, urged that the present proceedings are mala fide and* have been started only with a view to deprive the petitioners of the land in question.

7. It is true that in the past acquisition proceedings in respect of the land in question were initiated and were dropped. It is also true that within a year thereafter proceedings for acquisition of the same land were started at the instance of respondent No. 2. However, this by itself does not establish that the proceedings are mala fide. It may be noted that if respondent No. 2 felt that it was in need of additional land for extension of its activity, it had every right to move the concerned authorities for acquisition of land for it. Even though previously it was found that there were complications in respect of the ownership of the land to be acquired, further enquiry in that respect was not prohibited. As such it cannot be said that initiation of proceedings was mala fide.

8. Another ground which has been canvassed by Shri R. K. Deshpande, the

learned counsel for the petitioners, is that no notice u/s 5-A of the Land Acquisition Act was served on the petitioners. He submitted that the petitioners are the persons interested in the land in question and hence it was incumbent on the part of respondent No. 1 to issue notices u/s 5-A to the petitioners in this respect. He also invited our attention to rules u/s 5-A in the Manual of the Land Acquisition for the State of Maharashtra at page 213 in this respect. He also relied on the following cases :-

1) Abbas Abdul Mhaiter and Another Vs. The Dir., Resettlement and Others, , Yakub Khan Haji Harunkhan Girkar v. The State of Maharashtra and Ors., 2001(3) ALL MR 313 Khushalrao Tulshiramji Pandao and Ors. v. State of Maharashtra and Anr., 2001(4) Mh.LJ. 510 : 2001 (3) ALL MR 204 Ku. Rupali Rambhau Khedkar and Ors. v. State of Maharashtra and Ors., 2003(1) ALL MR 607.

9. It would be necessary to consider the provision of Section 5-A of the Land Acquisition Act, which reads as under :-

5-A. Hearing of objections :- (1) Any person interested in any land which has been notified u/s 4, Sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, subsection (1), or make different reports, in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

10. A plain reading of Section 5-A shows that it nowhere provides that a notice has to be issued by the Land Acquisition Officer to the "persons interested" in the land which has been notified u/s 4(1). Section 5-A however requires that opportunity of personal hearing shall be given to the objector. A close scrutiny of the judgments relied on by Shri R. K. Deshpande, the learned counsel for the petitioners, reveals that all that has been said by the Courts is that the provision of Section 5-A should not be treated lightly or casually and opportunity should be given to the objector of being heard in person. All that is contemplated u/s 5-A is to give the objector an opportunity of being heard and it is only after hearing the objectors and after making further enquiry, a report can be made. The cases cited supra nowhere show that a notice is required to be served on the "persons interested" even without such persons preferring any objection to the proposed

acquisition. From the rulings cited supra, it is apparent that what is required is that after Notification u/s 4(1) if objections are filed, personal hearing should necessarily be given to the objectors and without giving such hearing, no report can be made by the Land Acquisition Officer. It would thus be seen that the notice mentioned in Rule 5-A in the Manual of Land Acquisition for State of Maharashtra is nothing but a notice to the objector. In the present case, after the publication of Notification u/s 4(1), none of the petitioners preferred any objection and as such they were not entitled to any notice u/s 5-A. Their grievance is, therefore, unfounded and has to be rejected.

11. The last ground which Shri R. K. Deshpande, the learned counsel for the petitioners, vehemently urged is that it is mandatory to make declaration u/s 6 within one year from the date of publication of the Notification u/s 4(1). He urged that in the present case Notification u/s 4(1) was published on 30-3-1986, whereas the declaration u/s 6 was published in the newspapers on 22-4-1987 which is obviously beyond one year and as such the declaration is vitiated. In support of his submission, the learned counsel for the petitioners relied on the following cases:-

1) S.H. Rangappa Vs. State of Karnataka and Another, , AIR 2002 187 (SC) .

12. In Rangappa's case, specific question was formulated by the Supreme Court to the effect that whether the notification u/s 6(2) of the Land Acquisition Act, 1894 should be published within the period prescribed by the proviso to Section 6(1) of the said Act and while answering this question, it was observed by Their Lordships as under :

"Declaration u/s 6 is preceded by issuance of a notification u/s 4 which indicates the intention of the Government to inter alia acquire land for a public purpose. Pursuant to the issuance of the same. Objections can be filed and after hearing the same. Section 6(1) enables the appropriate authority if it is satisfied, after considering the report made u/s 5-A of the Act, that if any particular land is needed for a public purpose, then a declaration is to be made under the signature of an appropriate officer. Where notification u/s 4 is published after the commencement of the Land Acquisition Amendment Act, 1984, as in the present case, proviso (ii) requires that such a declaration shall not be made after the expiry of one year from the date of the publication of Section 4 notification.

We wish to clarify that the words "publish" and "from the date of publication of the notification" occurring in proviso (ii) to Section 6(1) refer to the publication of Section 4 notification and have no reference to the publication of any notification u/s 6. u/s 6(1), it is only a declaration which is required to be made, the time-limit being within one year of the publication of Section 4 notification. The main purpose for the issuance of a declaration u/s 6 is provided by Sub-section (3), namely, that the declaration is conclusive evidence that the land is needed inter alia for a public purpose and after the making of the declaration the appropriate Government may acquire the land in the manner provided by the Act. Sub-

section (2) requires the declaration to be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situate and in addition thereto the Collector is also required to cause public notice of the substance of the declaration to be given in the convenient places in the said locality.

It is pertinent to note that Sub-section (2) of Section 6 does not prescribe any time-limit within which the declaration made u/s 6(1) is to be published. It is well known that after an order or declaration is made there can be a time gap between the making of the order or a declaration and its publication in the Official Gazette. Whereas the time-limit for the making of an order is provided u/s 6(1), the legislature advisedly did not provide for any time-limit in respect of the steps required to be taken under Sub-section (2) of Section 6. If the contention of Mr. G.L. Sanghi, the learned Senior Counsel for the appellant is correct, the effect would be that not only the declaration would have to be published within the time prescribed under the proviso to Section 6(1) but all other steps, like publication in the daily newspaper and the Collector causing public notice of the declaration to be given at convenient places in the locality, must also be completed within a period of one year of Section 4 notification. This could certainly not be a consequence contemplated by the legislature. As already observed, the purpose of Section 6 notification being to give a final declaration with regard to the need of the land for public purpose, the interest of the landowners was sufficiently safeguarded with the requirement of the making of the declaration u/s 6(1) within a prescribed period. It is difficult for us to read into Sub-section (2) the provisions of the proviso to Section 6(1) which relate to the time-limit for issuance of the notification u/s 6(1)".

13. In Srinivas Khatod's case, the Supreme Court held as under :

"The wordings of sections 4, 6 and 11-A make it clear that the Act made a distinction between a "declaration" and "publication". u/s 4 the notification has to be published. Again u/s 11-A the period of two years has to be computed from the date of "publication of the declaration". As against this, u/s 6 a declaration has to be first made and that declaration is then to be published in the manner provided in Section 6(2). Under the first proviso to Section 6(1), a "declaration" cannot be made after the expiry of one year from the date of "publication of the notification u/s 4". The word "published" in clauses (i) and (ii) "of the first proviso to Section 6(1) refers to the publication of notification u/s 4. Thus the proviso clearly talks of "publication" in respect of notification u/s 4 and then provides a time for "making of declaration" u/s 6. Very significantly it does not lay down a time-limit within which publication of the declaration is to be made. Significantly the first proviso does not lay down that publication cannot take place after the period prescribed therein. As the first proviso to Section 6(1) only provides a time-limit for a declaration and not for publication, it has been incorporated in subsection (1) of Section 6. It is for this reason that the legislature has not put this proviso after Sub-section (2) of Section 6. Thus it is

clear that the "declaration must be made" within one year from the date of "last publication of the notification" u/s 4. Thereafter the publication u/s 6(2) may take place at a later date. The last date u/s 6(2) is only for purposes of computing limitation u/s 11-A. Publications u/s 6(2) are ministerial acts and procedural in nature".

14. It is thus clear that no time limit has been prescribed u/s 6(2) within which the declaration, made u/s 6(1) is to be published.

15. We have gone through the records of the land acquisition proceedings. It shows that the notification u/s 4 was made on 20-3-1986. It was published in the newspapers on 30-3-1986 and in the Official Gazette on 10-4-1986. A public notice was given in the office of Tahsildar (Rural) on 21-4-1986 and in the office of Gram Panchayat on 24-4-1986. The declaration u/s 6(1) was made on 16-4-1987 and it was published in newspapers on 22-4-1987 and in the Official Gazette on 23-4-1987. It would thus be seen that the declaration u/s 6(1) dated 16-4-1987 was made within one year from 24-4-1986, on which date the public notice of the notification u/s 4(1) was displayed at the office of Gram Panchayat. Thus, there is no delay in making of the declaration u/s 6(1). As such, no fault can be found with the declaration.

16. The revenue record shows that Ganpati Sambhu Pawar is the owner of Survey No. 124/2. The record and proceedings of the acquisition case shows that the notice of the notification u/s 4 was served on Ganpati Sambhu Pawar on 24-4-1986. He moved an application before respondent No. 1 on 26-5-1986 and also gave writing on 29-9-1986. The application and the writing was considered by respondent No. 1 before making declaration u/s 6.

17. The revenue record does not disclose that Kashinath Ganpati Pawar (the son of Ganpati Sambhu Pawar) was the owner of Survey No. 124/2. Even if it is presumed that Kashinath Ganpati Pawar was the owner of land Survey No. 124/2, he never raised any objection after publication of Notification u/s 4. On the contrary, the possession receipt in respect of Survey No. 124/2 and the panchanama of the situation in the said land was prepared in presence of Kashinath Ganpati Pawar on 9-9-1989. Kashinath Ganpati Pawar even signed the panchanama as one of the panchas. Hence, he is estopped from challenging the acquisition proceedings and the Award passed therein.

18. Another interesting aspect of the matter is that petitioner Nos. 1 and 2 contended that they purchased the land Survey No. 124/2 from Kashinath Ganpati Pawar under two sale deeds dated 6-5-1986 and 12-1-1987. However, no sale deeds are produced by them and they also did not raise any objection after publication of notification u/s 4.

19. Even-if it is presumed that petitioner Nos. 1 and 2 purchased Survey No. 124/2 from petitioner No. 3, it is settled that petitioner Nos. 1 and 2 do not acquire any title to the said land because the alleged sale is after publication of the notification u/s 4. The alleged sale is void against the State and petitioner

Nos. 1 and 2 do not acquire any right, title and interest in the land in question, (see U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, .)

20. In the result, we find no force in the submissions made on behalf of the petitioners. The writ petition is dismissed with no order as to costs. The rule is discharged.