

(1986) 09 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 14343 of 1983

Sardar Swarup Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-09-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition (Companies) Rules, 1963 — Rule 3, 3(5), 4
Land Acquisition Act, 1894 — Section 4, 41, 5, 55, 5A

Citation : (1987) 1 AWC 153

Hon'ble Judges : Ravi S. Dhavan, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : Ravi Kiran Jain, for the Appellant;

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—This writ petition under Article 226 of the Constitution has been filed by Sardar Swaroop Singh and others challenging the validity of the notification u/s 4 of the Land Acquisition Act published on 13-9-1980 and u/s 6 of the said Act dated 13-9-1983.

2. A notification was issued by the State of U.P. for acquiring the plots mentioned therein. The purpose mentioned was "for the use of a Housing Cooperative Society, to develop it and distribute it in plots to its members for construction of houses thereon." A large number of objections u/s 5-A of the Land Acquisition Act were filed by the persons" interested in the land which were proposed to be acquired by the notification aforesaid. The objections were heard by the Land Acquisition Officer and, therefore, a report u/s 5-A of the Act had been submitted to the State Government. The State Government issued a notification u/s 6 of the Act on 13th September, 1983 declaring that the plots mentioned therein were required for construction of houses by the members of the Ambedkar Sahkari Grih Nirman Samiti. This decision had been arrived at after considering the report submitted to it u/s 5-A of the aforesaid Act. It was, thereafter, that the

present writ petition was filed in this Court.

3. It was claimed by the Petitioners' counsel that since the notice the notification u/s 4 mentioned the purpose of acquisition to be different than what was stated in the notification u/s 6, therefore, the two notifications are liable to be quashed. In the notification u/s 4, the purpose was for the construction of the houses by the members of the U.P. Sahkari Awas Sangh whereas the latter is for the purpose of construction of the houses by the members of the Ambedkar Sahkari Grih Nirman Samiti. The submission has no substance. Ambedkar Sahkari Grih Nirman Samiti was one of the constituent of U.P. Sahkari uAwas Sangh, Therefore, mere omission to mention the name of Ambedkar Sahkari Grih Nirman Samiti in the notification u/s 4 of the Land Acquisition Act was of no consequence. In reality, the purpose of acquisition was the same.

4. It was suggested by the counsel for the Petitioners that since the name of Ambedkar Sahkari Grih Nirman Samiti was disclosed after the disposal of the objections u/s 5A, the Petitioners were greatly prejudiced and could not file the objections u/s 5A on the grounds on which they would have done had they known that the acquisition was for the Ambedkar Sahkari Grih Nirman Samiti. The submission has no merit. The Ambedkar Sahkari Grih Nirman Samiti had filed before the Land Acquisition Officer the registration certificate, its bye-laws and had participated through counsel in the proceedings. The Petitioners fully knew that the land was being acquired for the members of the Ambedkar Sahkari Grih Nirman Samiti, which they themselves admitted in the application moved before the Land Acquisition Officer dated 26-11-1981. A copy of this application has been filed as Annexure II on behalf of the contesting Respondents.

5. The second point was that the Society since was a Company within the meaning of that phrase defined in the Land Acquisition Act, therefore, compliance of Land Acquisition (Company) Rules 1963 was essential and as in this case no report under Rule 4 had been obtained by the State Government before issuing the notification u/s 4 of the Land Acquisition Act, the entire land acquisition proceedings were invalid.

6. It is true that the Society is also a Company within the meaning of that phrase defined in the Land Acquisition Act and for acquiring land for the Society, compliance of Part VII is necessary. It is in exercise of the power conferred by Section 55 of the Land Acquisition Act 1894, the Central Government made the Rules for the guidance of the State Government and the officers of the State Government which are known as the Land Acquisition (Company) Rules 1963. It is, however, incorrect, as was argued by the learned Counsel for the Petitioners that an enquiry under Rule 4 should have been made before issuing the notification u/s 4. It has been held by the Supreme Court in Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others, , that enquiry under Rule 4 before issuance of the notification u/s 4 is not mandatory requirement. While coming to that conclusion the Supreme Court held that there are certain matters which are required to be done under Rule 4 but they cannot be done

unless notification u/s 4 is not issued.

7. It is clear from the above authority that issuance of the notification under Rule 4 is not the condition precedent for publishing the notification u/s 4.

8. *General Government Servants Cooperative Housing Society Ltd., Agra and Others Vs. Sh. Wahab Uddin and Others*, was not followed by the Supreme Court by which it had been laid down that compliance of Rule 4 was necessary before notification u/s 4. With respect to this ruling, the Supreme Court observed in *Fomento Resorts and Hotels Ltd. v. Gustavo Ranatoda Cruz Pinto (Supra)*.

It appears to us that the reference to Rule 4 in the context in which it was made was inadvertent. What perhaps the Court wanted to convey was the need of entering into agreement u/s 41 before the issuance of notification u/s 6 of the Act... .

9. We, therefore, reject the second argument of the Petitioners' counsel that it was necessary that enquiry under Rule 4 must precede issuance of the notification u/s 4.

10. The next argument of the Petitioners' counsel was that under the proviso I it was incumbent to make the declaration u/s 6 of the Land Acquisition Act within three years of the notification u/s 4 and as in the instant case the notification u/s 6 was made after the expiry of three years, the subsequent notification is invalid. We have noted above that the notification u/s 4 of the Land Acquisition Act was published in the U.P. Gazette on 13-9-1980, the notification u/s 6 of the Land Acquisition Act thus having been made on 13th September 1983, is within three years. The notification u/s 6 cannot be held to be invalid on that ground.

11. The expression "year" has been defined in the General Clauses Act. According to the definition, the term "year" means a year calculated according to the British Calendar. It must be construed to me that one year will have 365 days. Applying the same, we find that the period of three years had not since expired on the date when the notification u/s 6 was issued, it was not invalid on that date.

12. The next argument was that as no agreement had been entered into, as required by Section 41 of the Land Acquisition Act by the Ambedkar Sahkari Grih Nirman Samiti, the acquisition made for it does not comply with the mandatory requirement of entering into the agreement by the acquiring body with the State of Uttar Pradesh. This submission also has no substance. The Ambedkar Sahkari Grih Nirman Samiti applied for acquisition of land and at that time it entered into an agreement with the U.P. Sahkari Awas Sangh Ltd., Lucknow which is the federal authority. Before issuance of the notification u/s 6 on behalf of the Samiti the U.P. Sahkari Awas Sangh entered into an agreement with the State of U.P. The aforesaid two agreements were published in the U.P. Gazette dated 13th September, 1983.

13. Next was the argument that the hearing u/s 5A was mandatory and since the

Petitioners were not heard, the entire proceedings are invalid. This fact has been denied in the counter affidavits filed on behalf of the contesting Respondents. It was alleged in paragraph 10 of the counter affidavit filed by Niranjan Kumar Singh, who was the Land Acquisition clerk in the Collectorate Sabaranpur, "It is not correct to say that the Petitioners were not given an opportunity of hearing at the time of the report u/s 5A, on the contrary, they were given sufficient opportunity to present their case. Moreover, the evidence which they wanted to file, they could do so before the report u/s 5A."

14. To the same effect is the statement given in the affidavit of Dr. Dhara Singh, who was the Secretary of Ambedkar Sahkari Grih Nirman Samiti. In paragraph 11, it has been stated that the report u/s 5A had been submitted to the Government after hearing counsel and the parties concerned. In paragraph 19 of one of the counter affidavits, the names of the counsel who appeared for the Petitioners given are Joti Prasad Maheshwari, Brahmjeet Sharma, Sada Singh and Sarup Singh.

15. Next was argued that the Land Acquisition Officer had no authority to hear the objections u/s 5A. The submission is incorrect. It appears from the counter affidavit of the land acquisition clerk that the District Magistrate by his order dated 21-7-1981 has authorised the Land Acquisition Officer to look after the work of acquisition. In pursuance of the aforesaid order of the District Magistrate and also because that he had the authority under the law to do so, the Land Acquisition Officer submitted the report u/s 5 which was approved and recommended by the District Magistrate to the State Government.

16. The last question that remains to be decided is about the report under Rule 4 of the Land Acquisition Rules, Rule 3 of the Company Rules provides for the constitution of the land acquisition committee for the purpose of advising the Government in relation to acquisition of land under Part VII of the Act. Sub-Rule 5 of Rule 3 says:

It shall be. duty of the Committee to advise the appropriate Government on all matters arising out of acquisition of land under Part VII of the Act on which it is consulted and to tender its advise within one month from the date it is constituted.

Provided that the appropriate Government may on a request being made in this behalf by the committee and for sufficient reason extend the said period to a further period not exceeding two months.

17. The land acquisition committee was constituted on 27-7-1983 but it did not send its report within the time prescribed by Sub-rule 5 of Rule 3. Thus the requirement of constituting the committee had been satisfied. The State Government sent reminders to the Land Acquisition Committee for sending its report but with no result. From the counter affidavit filed on behalf of the contesting Respondents, it appears that the report under Rule 4 had also been submitted to the State Government.

18. In the result, the writ petition is rejected summarily under Chapter XXII Rule 4 of the Rules of the Court. Petition dismissed.