

(1999) 11 AHC CK 0100

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23573 of 1996

Shanti Devi and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1999) 11 AHC CK 0100

Hon'ble Judges : Binod Kumar Roy, J and Lakshmi Bihari, J

Final Decision : Dismissed

Judgement

1. The petitioners have come up with prayers to (i) quash the notification dated 5495 published under Section 4(1) of the Land Acquisition Act (hereinafter referred to as the Act) as contained in Annexure 6 to the writ petition; and (ii) command the respondents not to give effect to the aforementioned notification as well as the notification published under Section 6 of the Act during the pendency of this writ petition and dispossess them on the basis thereof.

2. The relevant facts are that Plot No. 236 in Mauza (village) Vrindavan Bangar, Tehsil and District Mathura measures 6.57 Acres of land in all. Out of the aforementioned area 6.15 Acres of lands were acquired earlier under the provisions of the Act for public purpose by the State for respondent No. 4 the Mathura Development Authority for the purposes of consir acting residential houses in a planned way which was challenged by the petitioners Nos. 1 and 2 by filing CM. Writ Petition No 20364 of 1991 which was dismissed vie! order dated 15492 and S.L.P. Nos. 5701 and 5702 of 1993 before the Supreme Court, were also dismissed vide order dated 2791993. According to the petitioners the lands are sought to be acquired malafide. This land is agricultural in nature capable of producing two crops in a year which is their only holding and if acquired they will be rendered landless. No notice was published as mandatorily required. The notification under Section 6 was also made illegally which was not published. No step as yet has been taken by respondent No. 4 to make construction. According

to the respondents as the remaining 42 decimals of land was left out inadvertently, hence notification under Section 4 was published followed by another notification under Section 6 of the Act. The statements made by the petitioners in paragraph 16 of the writ petition that there was nonpublication of the notices in the official Gazette or in the local papers is false. The notification dated 21121994 under Section 4(1) of the Act was published in the Gazette on 21121994 which is apparent from the copy appended as Annexure CA4. Even a corrigendum was published in the Gazette dated 5495 a copy of which has been appended as Annexure CA5. The notification dated 211294 was also published in two daily news papers Dainik Rajpath and Dainik Jagaran dated 6195 and 7195 respectively. The corrigendum notification dated 5495 was also published in two daily news papers Dainik Jagaran and Amar Ujala dated 8995 and 9995 respectively. The substance of the public notice was also notified in the locality on 131195. Similarly declarations under Section 6 of the Act were also made by publication in the Gazette and two news papers fully mentioned in paragraphs 12 and 13 of the counteraffidavit. It has also been stated that the Governor being satisfied that it was a case of emergency, the provisions of Section 17(1) of the Act were invoked and thereafter a publication notice was given under Section 9(1) of the Act on 13796 and possession of the land in question was handed over to respondent No. 4 on 1 896 who had already deposited a sum of about two lacs with the Special Land Acquisition Officer towards the compensation to be awarded. A representation on behalf of the petitioners was also submitted to the State Government as contained in Annexure CA8 in regard to which a detailed reply dated 6396 was sent by the Vice Chairman of respondent No. 4 as contained in Annexure CA9 and thereafter the State Government rejected that representation made on behalf of the petitioners and a communication dated 25496, as (sic).

3. "TWO submissions have been made by Sri Ashutosh Srivastava, the learned counsel appearing on behalf of the petitioners.

(i) The mandatory provisions of Section 4(1) of the Act was not followed which required publication of the notices.

(ii) Before proceeding to acquire the lands of the petitioners permission of the Land Utilisation Board in terms of the G.Os. dated 20288 and 31788 as contained in Annexures 7 and 8 respectively were not obtained and thus the acquisition stands vitiated.

4. Shri H.R. Mishra, the learned Standing Counsel appearing on behalf of respondent Nos. 1 to 3 and Shri Dilip Gupta, learned counsel for respondent No. 4, on the other hand, contended as follows:

(1) No interference is required by this Court as nearly the entire area of the Plot was already acquired earlier for public purpose in view of urbanization of the locality around the city of Mathura and Vrindaban and the challenge of the petitioner has already been rejected upto the Supreme Court.

(ii) Since the petitioners have not challenged the order of the State Government rejecting their representations, they are not entitled to the reliefs prayed for, more so when they have not filed any rejoinder to the counteraffidavit of respondent No. 4.

(iii) It was open for the State Government in the peculiar facts and circumstances not to follow its Government Orders referred to by the petitioners.

5. In our view no interference is required by this Court.

6. As the statements made in the counteraffidavit of respondent No. 4 which are supported by the relevant documents to which no rejoinder has been filed, we are of the view that the statements of the petitioners that the notification under Section 4(1) of the Act was not published as required by law, which is claimed to be based on perusal of record, are incorrect. The record belies their claim.

7. Mr. Srivastava failed to show as any Section of the Act which required taking of prior permission of the Land Utilisation Board by the Government before proceeding to acquire them for public purpose. True it is that the Government has issued some guidelines which should be followed but the instant case appears to be different in nature inasmuch as only 42 decimals of left out land is sought to be acquired for a planned development of MathuraVrindavan Region. We do not see any justification in allowing their prayer.

8. This writ petition is thus dismissed, but in the peculiar facts and circumstances we do not think that we should saddle the petitioners with cost.

9. The office is directed to hand over a copy of this order within a week to Shri H.R. Mishra, learned Standing Counsel for its intimation to the State Government. Petition dismissed.