
(1974) 03 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 69 of 1972

Shikharchand Laxmichand and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 29-03-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 3, 4

Citation : (1974) 03 MP CK 0004

Hon'ble Judges : M.L. Malik, J;G.G.Sohani, J

Bench : Division Bench

Advocate : R.G. Waghmare, for the Appellant; P.L. Mehta, Addl. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.G. Sohani, J.—This is a petition under Articles 226 and 227 of the Constitution of India for quashing notification No. 580-C.R. 32-7-SA-I, published in the State Government's Gazette dated 28th April 1972, issued by the State Government u/s 4(1) of the Land Acquisition Act, 1894, (hereinafter referred to as the Act), with regard to the acquisition of land belonging to the petitioners for the purpose of construction of a vegetable market and shops. The notification also directed that section 5A of the Act shall not apply in respect of the said land as, in the opinion of the Government, section 17(1) of the Act applied to the land.

2. The only ground which Mr. Waghmare, learned counsel for the petitioners, urged before us to challenge the aforesaid notification was that the land in the present case was neither "waste" nor "arable" land, and consequently the provisions of subsections (1) and (4) of section 17 of the Act could not be invoked in respect of the land in question, and the Government had no power to direct that section 5A of the Act shall not apply to the land in question. Learned Additional Government Advocate, on behalf of the State, did not dispute that the land in question was neither "waste" nor "arable". He, however, contended that

the provisions of section 17(1) of the Act, as applicable to the State of Madhya Pradesh, do not restrict the application of these provisions to waste or arable land" only, as the words "waste or arable land", occurring in section 17(1) of the Act, have been deleted.

3. The short question for consideration, therefore, is whether the words "waste or arable" have been omitted from section 17(1) of the Act, as applicable to the State of Madhya Pradesh. On behalf of the State, reliance was placed upon the provisions of the Central Provinces and Berar Resettlement and Rehabilitation of Displaced Persons (Land Acquisition) Act, 1949 (No. XX of 1949), as made applicable to the State of Madhya Pradesh by the Madhya Pradesh Extension of Laws Act, 1958, (Act No. 23 of 1958). No other provision of law was brought to our notice on behalf of the State in support of the contention that the words "waste or arable land" have been omitted from section 17(1) of the Act, as applicable to the State of Madhya Pradesh. Now, the provisions of Act No. XX of 1949 are applicable only in a case of acquisition of land for resettlement and rehabilitation of displaced persons. Section 3 of the Act makes it clear that the provisions of the Land Acquisition Act, 1894, as modified by the provisions contained in the Schedule to Act No. XX of 1949, shall apply to an acquisition of land for resettlement and rehabilitation of displaced persons. The modifications in the Land Acquisition Act, 1894, made by the Schedule to the said Act, have the effect of deleting the words "waste or arable land" from the provisions of sub-section (1) of section 17 of the Act. It is thus clear that section 17(1) of the Land Acquisition Act, 1894, has been amended for a limited purpose only. In the instant case, it is admitted on behalf of the State that the acquisition of land is not for the resettlement or rehabilitation of displaced persons. Therefore, the modifications in the Land Acquisition Act, made by Act No. XX of 1949 as made applicable to the State of Madhya Pradesh by the M.P. Extension of Laws Act (No. 23 of 1958), are not applicable. It has been held in *Jagannath Prasad v. State of M.P.* 1969 MPLJ 196 that for the applicability of section 17(1) of the Act, two conditions must be fulfilled. First, the acquisition of the land must be urgently necessary, and, secondly, the land must be waste or arable land. It is only when these two conditions are satisfied that it is competent for the acquiring authority to direct u/s 17(4) of the Act that the provisions of section 5A of the Act shall not apply to the proposed acquisition of the land. Therefore, when in fact the land proposed to be acquired is neither waste nor arable, the provisions of section 17(1) of the Act are not attracted and the direction of the State Government that section 5A of the Act shall not apply in respect of the land in question is clearly illegal and ultra vires.

4. For these reasons, the petition is allowed. The notification No. 580 C.R. 32-7-SA-I, published in the Government Gazette dated 28th April 1972 and issued u/s 4 of the Act, by which the State Government applied sub-section (1) of section 17 of the Act to the land in question and directed that provisions of section 5A of the Act shall not apply to the land in question, is quashed. Consequently, notification (Adhisuchana) No. 1480-C.R. 32-7-SA-I dated 4th May 1972 and

notice (Vigyapti) No. Q/Ati/Re-1/72 dated 3rd June 1972 (Annexure-8 to the return) are also quashed. The petitioners shall have costs of this petition from the respondents. Counsel's fee Rs. 100 (One Hundred), if certified. The outstanding amount of security deposit shall be refunded to the petitioners.