

(1996) 07 BOM CK 0059
In the Bombay High Court
Case No : Writ Petition No. 167 of 1996

Shri Joao Mariano Fernandes

APPELLANT

Vs

State of Goa and Another

RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Evidence Act, 1872 — Section 3
Land Acquisition Act, 1894 — Section 4, 5

Citation : (1997) 1 BomCR 343

Hon'ble Judges : T.K. Chandra Shekhara Das, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : S.D. Lotlikar, for the Appellant; V. Nadkarni and A.C. Navelkar, Additional Government Advocate, for the Respondent

Judgement

T.K. Chandra Shekhara Das, J.—This writ petition is directed against the Notification No. 22/115/95-RD dated 20/12/1995, issued by the respondents u/s 4, read with 17(4) of the Land Acquisition Act, 1894 and also the Notification No. 22/115/95-RD dated 18-3-1996 issued by the Government u/s 6 of the Land Acquisition Act, 1894. Under the Notification dated 18-3-1996, the Government has invoked the emergency provision dispensing with the inquiry u/s 5-A of the Land Acquisition Act and sought taking possession of the land covered under the aforesaid Notification. The aforesaid Notification was issued for acquiring land for Industrial Development Corporation, Panaji for allotment of the land to the companies, both National and International, who are interested to set up their industrial units on large scale basis in the Verna Industrial Area. The petitioner claims that he is a tenant in respect of the land under plot No. 293, which is a large extent of land, upon which the petitioner's mother and father claim tenancy rights under the Communicate of Loutolim. Though several grounds have been taken by the petitioner in the writ petition, the main grounds on which the petitioner challenges the notification are that the land is not for the public purpose and that there exists no circumstances to invoke emergency clause, dispensing with the inquiry u/s 5-A of the Land Acquisition Act. Mr. Lotlikar,

learned Advocate appearing for the petitioner submits that even the notification issued u/s 4 does not signify any emergency situation to take possession of the land, dispensing section 5-A inquiry. Therefore, the main thrust of the arguments of the counsel for the petitioner is that there is no public purpose and there exists no situation warranting to invoke emergency clause. As spelt out in the notification itself, it cannot be said that the land under acquisition is not for the public purpose. Making available lands and other infrastructural facilities to attract huge investments into the State will definitely give phillip to the industrial growth of the State. Industrial development of the State is no doubt a public purpose. Therefore, on that point the contention of the petition is not sustainable. We hold that on examining the purpose for which the land was required, the notification u/s 4 dated 20-12-1995 has to be upheld and the petitioner cannot succeed in challenging that notification, issued u/s 4 of the Act.

2. Then comes the next point urged very vehemently by the counsel for the petitioner that there exists no situation warranting invoking emergency clause. He submits that even the notification issued u/s 4 does not spell out that the land is required urgently and it has been stated only "likely to be required". The emergency clause cannot be invoked when the land is only "likely to be needed". It is incumbent upon the respondents to satisfy that the relevant materials based on which it came to the conclusion that the land is required very urgently. In this context, the Learned Counsel appearing for the petitioner has relied upon a decision of the Supreme Court in *Jai Narain and Others Vs. Union of India and Others*, . He strongly relied upon the observations made by the Supreme Court in para (5) of the Judgement, which reads as follows :

"The power u/s 4 of the Act can be exercised when it appears to the Government that the "land in any locality is needed or is likely to be needed for any public purpose". It is no doubt correct that the expression "is needed" indicates the existing need, whereas the expression "is likely to be needed" refers to the future need. When the latter expression is used in the notification u/s 4 of the Act, it may be suggestive of the fact that there may not be emergency to acquire the land, but the question of urgency cannot be determined solely by the expression used in the notification u/s 4 of the Act. The emergency must be reflected in the need of the acquisition. The existence of urgency is a matter which is entirely based on the subjective satisfaction of the Government. The Courts do not interfere unless the reasons given are wholly irrelevant and there is no application of mind. When a notification u/s 4 of the Act uses the expression "is likely to be needed", it may be necessary in a given case, to examine the records or the attendant circumstances to satisfy that there was a material before the Government justifying the order u/s 17, dispensing with the provisions of section 5-A of the Act. If the public purpose on the face of it shows that the land is needed urgently, that, by itself is a relevant circumstance for justifying the action u/s 17(4) of the Act".

Relying on this passage, the Learned Counsel for the petitioner vehemently

argued that there is no material placed before the Court by the respondents to justify dispensation of the inquiry u/s 5-A. In the context of this argument of the Counsel for the petitioner, it is necessary for us to extract the reply filed on behalf of the respondents, explaining emergency situation. In para (7) of the reply, it is stated thus :

"With reference to grounds taken in the petition, I say that the urgency clause was invoked as the Government was satisfied that the same was necessary to be invoked. The land was to be acquired for allotment through Industrial Development Corporation to companies both National and Multinational, who were interested to set up their Industrial units on large scale basis in the Verna Industrial Area which as a policy decision has been reserved for setting up non-polluting industrial units. I say that most of such companies has a time bound schedule and therefore, the urgency clause was invoked."

3. Learned Counsel for the petitioner, submits that the reply as extracted above, does not in any circumstance, spell out any emergency, warranting invoking of emergency clause by the authorities. We find considerable force in the argument of the counsel for the petitioner. On perusal of notification dated 26-12-1995, issued u/s 4-A of the said Act, it is stated that the land is "likely to be needed" for the public purpose, viz. land acquisition at Verna Plateau for expansion (Phase III) of the Industrial Estate of the Goa, Daman and Diu Industrial Development Corporation. As indicated by the Supreme Court in the aforesaid Judgement, it is incumbent upon the Courts to examine if there are enough materials before the Government to have a subjective satisfaction with regard to the urgent need of taking possession of the land. There are no such materials either pleaded or produced before us by the State Government. While going through para 7 of the reply, as extracted above, it can be seen that a vague statement has been made which lacks many points relevant for consideration. The affidavit only says that it should be done on a time bound programme. What is time bound programme and when the time should start and when it should end and which are the companies who have come forward for starting the industries in the allotted plots or what would be the consequences that would follow, if the time required for inquiry u/s 5-A was allowed to the persons interested in the land acquired for hearing their objections, etc., have not been shown in the affidavit. According to us, in view of the observations made by the Supreme Court in the aforesaid para, it is necessary for the State Government to furnish all relevant details before this Court, under which the State Government has come to a conclusion that an emergency section has to be invoked. While invoking emergency provisions, it has to be borne in mind that valuable right of hearing of the affected persons is dispensed with. The Supreme Court had occasion to examine the scope of the right conferred on the persons, who are affected by the Land acquisition u/s 5-A. In *Krishi Utpadan Mandi Samiti Muzaffarnagar (U.P.) v. Ratan Prakash Mangal and others* AIR 1988 S.C. 1439 , it held thus :--

"..... Apparently, therefore, there has been a material change in the circumstances after the report of the Land Acquisition Officer dated 20th January, 1981 so as to justify section 17(4) of the Act being invoked. In this connection, reliance was placed by the learned Counsel for the respondents 1 and 2 on the decision of this Court in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, , where dealing with section 17(4) of the Act it was pointed out that the purpose of the said section was obviously not merely to confine action under it to waste and arable land but also to situations in which an inquiry u/s 5-A will serve no useful purpose or for some overruling reasons which should be dispensed with. The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary inquiry u/s 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry u/s 5-A which is to be considered. It was also held in that case that the development of an area for industrial and residential purpose in itself, on the face of it does not call for any such action barring exceptional circumstances, as to make immediately possession without holding even a summary inquiry u/s 5-A of the Act imperative. On the other hand, such schemes generally takes sufficient period of time to enable summary inquiry u/s 5-A of the Act to be completed without any impediment whatsoever to the execution of the scheme."

It is amply clear from the observations of the Supreme Court that a statutory right of an affected party of filing objections for hearing, cannot be lightly and mechanically taken away. The respondents should apply their mind for all the attendant circumstances and to decide not merely on the existence of emergency, but under the provisions of section 5-A emergency could be shown that any lapse of time be required u/s 5-A will thwart the very purpose of the acquisition and in such a situation, the respondents should apply their mind or relevant circumstances and then take a decision whether 5-A inquiry has to be dispensed with or not. Therefore, as far as this case is concerned we are not at all satisfied that the material placed by the State Government through the reply is sufficient to come to a conclusion that the emergency situation has emerged.

4. Relying on the above quoted pleadings in reply, the learned Advocate General appearing for the State contended that the State Government has discharged the burden of establishing the grounds that justify the invocation of emergency provision of the Land Acquisition Act. He also contended that the Courts cannot go into the veracity and sufficiency of the materials based on which Land Acquisition Officer came to his conclusion. Learned Advocate General has also brought to our notice a decision in *Rajasthan Housing Board and Others Vs. Shri Kishan and Others*, , wherein it has been held that Government's satisfaction being subjective, when there is material upon which it could have been formed fairly, Court would not interfere nor would it examine the material as an Appellate Authority to see existence of urgency.

5. We do not think that the above proposition of law is applicable in the facts of this case. As we have pointed out earlier that there is no material to come to a

conclusion for the Government as to why inquiry u/s 5-A is to be done away with. We have no hesitation to hold that except the vague statement as quoted above, there was no material warranting Government to invoke emergency provisions.

6. There is yet another controversy about taking the possession of the land. Learned Counsel for this has brought to our attention a notice issued on 15-4-1996, whereby the intention of the Government to take possession of land has been informed to the petitioner. It also suggested that the persons concerned should call on the office of Special Land Acquisition Officer, Midas Touch Building, at Panaji to be present for that purpose on 22-4-1996 at 3.00 p.m. On 24-4-1996 when the matter came up before the Division Bench of this Court, the claim of the State Government was that the possession of the land has been already taken. This position had been disputed by the petitioner and, therefore, this Court had directed to maintain status quo as on 24-4-1996. In order to substantiate the claim of the State Government that the possession has been taken on 22-4-1996, it has produced a Certificate. In the affidavit-in-reply filed on behalf of the respondents, it is stated that the possession has been taken on 22-4-1996. The learned Counsel for the petitioner submits that when his client was called upon to appear before the Office of Special Land Acquisition Officer, Panaji at 3 O'clock on 22-4-1996 it was pointed out that the standing crops are there and without the removal of the standing crops, the possession could not have been taken as claimed by the respondents. He submits that the writ petition was filed on 22-4-1996 and notice of the writ petition was served on Advocated General and the Special Land Acquisition Officer on the same day. The respondents have not placed any material on record to show that the standing crop was also collected by them at the time of taking possession. There is nothing on record to show any inventory of such crop or trees in the property at the time of taking of possession was done. In these circumstances, the claim of the State Government that the possession of the land has been taken on 22-4-1996 is unbelievable. Learned Advocate General has submitted that even if this Court found that there is some illegality in invoking emergency provisions, nothing could be done as the possession has already been taken. In view of the contentions raised in the writ petition and the plea made by the parties, we cannot accept the Government's contention that the possession has already been taken because the very nature of the land of the property, in question, would go to show that it was impracticable for the Government to take possession on 22-4-1996, after 3 p.m. when the petitioner was called upon to appear before the Land Acquisition Officer on that day, while there was standing crop in the property. Therefore, we proceed on the basis that the possession has not been taken on 22-4-1996.

7. In view of the above discussions, we hold that invoking emergency provisions by the State Government is not justified as no material has been there before the Government to arrive at satisfaction, as precondition for invocation of the emergency provisions of the Land Acquisition Act.

8. In the result, the writ petition is partly allowed. The notification dated 20-12-1995 to the extent it relates to section 4 is upheld. Notifications u/s 17(4) and section 6 of the Act are quashed to the extent they relate to the petitioner's properties. Rule is made absolute in the above terms. There shall be no order as to costs.