
(2005) 12 UK CK 0021

In the Uttarakhand High Court

Case No : Writ Petition No. 393 (M/B) of 2005

Shri Shashank Sharma

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 17, 17(1), 17(3A), 17(4)

Citation : (2006) 2 UC 1028

Hon'ble Judges : Cyriac Joseph, C.J;Rajash Tandon, J

Bench : Division Bench

Advocate : Abhishek Atrey, for the Appellant; Learned Chief Standing Counsel and S. Dhulia, for the Respondent

Final Decision : Dismissed

Judgement

Rajash Tandon, J.—By the present writ petition, the Petitioner has challenged the Notification No. 969/PW/2003-06 (Budget)/2003 dated 5-5-2004 issued u/s 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 and Notification No. 424/111-(2)/2005-06 (Budget)/2003, Dehradun dated 14th March 2005 issued u/s 6 read with Section 17(1) of the Land Acquisition Act 1894, by which the land of the Petitioner was acquired for the purpose of extension of Secretariat at Dehradun.

2. Briefly stated the Petitioner has taken property bearing No. 24 (new No. 16, Block-II), Rajpur Road, Dehradun measuring about 4938.37 Sq. Meter on perpetual lease from its owner, Mr. Sandeep Goyal on rent of Rs. 10,000/- per annum and premium rent of 50 years i.e. Rs. 1,50,000/- has been paid by the Petitioner to Sri Sandeep Goyal and lease deed dated 22-9-1999 was duly executed before the Sub Registrar, Dehradun. Sri Sandeep Goyal died on 15-10-2003 leaving behind a Will dated 28-6-2003. According to the Petitioner the property in question was later on bequeathed in his favour by Sri Sandeep Goyal, therefore, he is the owner and in possession of the property bearing No.

24, (New No. 16, Block-II) Rajpur Road, Dehradun measuring about 4938.37 Sq. meters. On 5-5-2004, the Respondents issued a Notification u/s 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 for acquisition of the total land at 24, Rajpur Road, Dehradun measuring about 2.301 hectare for expansion of Secretariat in the North of Secretariat at Dehradun which included the land of the Petitioner in which a residential house and a wedding point namely Radha Mohan Wedding Point are situated. The notification dated 5-5-2004 was challenged before this Court by way of Writ Petition No. 480 (MB) of 2004 and the same was disposed of by this Court on 30-10-2004 with the following directions.

In view of the urgency felt, we feel that it will be better for us to fix the programme. Public notice shall, therefore, be given within seven days from today inviting the objections. The concerned Land Acquisition Officer, who is to hear the objections, shall hear them within fifteen days. All the objections shall be filed before the Land Acquisition Officer and the Land Acquisition Officer shall dispose of the matter one way or the other after giving full opportunity of hearing etc. by December 2004 or as the case may be earlier thereto.

Thereafter the Respondent No. 2, in compliance of the aforesaid order passed by a Division Bench of this Court, invited objections from the concerned parties vide advertisement published in Dainik Jagaran and Amar Ujaia news papers on 6-11-2004. The Petitioner filed his objections before the Respondent No. 2 on 22-12-2004. It is alleged that the Respondent No. 2 neither gave any opportunity of hearing to the Petitioner nor disposed of the objections. The Respondent No. 2 affixed the notification dated 14-3-2005 issued u/s 6 read with Section 17(1) of the Land Acquisition Act, on the wall of Radha Mohan Wedding Point.

3. Feeling aggrieved by the impugned land acquisition proceedings the Petitioner has filed the present writ petition before this Court under Article 226 of the Constitution of India.

4. The Respondents have contested the writ petition and filed counter affidavit stating that earlier writ petitions Nos. 469 (MB) of 2004 and 480 (MB) of 2004 challenging notification u/s 4(1) read with Section 17(1) of the Land Acquisition Act, were decided vide judgment dated 30-10-2004 and that in the present writ petition also the same notification has been challenged and therefore, the writ petition is liable to be dismissed on the ground of res judicata. It is also stated that in compliance of the order of High Court in the earlier writ petitions, the Respondent Collector, Dehradun u/s 4(1)/17 of the Land Acquisition Act gave public notice which was widely published in two daily news papers dated 6-11-2004. In response to the said public notice Special Land Acquisition Officer received objections. The Special Land Acquisition Officer gave time to the objectors to produce evidence in support of their claims. The Petitioner also had filed objection to the acquisition. His main objection was regarding the quantum of compensation. The Special Land Acquisition Officer, after considering the objections and the evidence, rejected the objection on 30-12-2004. A finding was

recorded that the acquisition of land is necessary in the public interest as there being urgency for the State and its machinery to acquire the land for construction of its offices. The land is adjacent to the State Secretariat and more than 80% of the land is vacant.

5. The counsel for the Petitioner has submitted that the Government Is not competent to issue declaration u/s 6 of the Act after notification u/s 4(1) of the Act, without disposing of the objections u/s 5-A of the Act and without giving opportunity of hearing to the affected persons. The Petitioner has submitted that the plea of urgency raised by the Respondents is baseless as the High Court in writ petition No. 480 (MB) of 2004 vide order dated 30-10-2004 issued directions to the Respondents to dispose of the objections by December 2004 but the Respondents without complying with the order of the High Court, issued impugned notification dated 14-3-2005. The counsel for the Petitioner has submitted that the Collector has not paid eighty percentum of estimated compensation to the Petitioner as provided u/s 17(3-A) of the Land Acquisition Act, 1894. He has further submitted that there was no urgency of acquisition of the land for the proposed secretariat.

6. Section 4 of the Land Acquisition Act, 1894 provides for preliminary notification and publication of notice for acquisition of land for public purpose. It reads as under:

4. Publication of preliminary notification and powers of officers thereupon(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorised by such Government in this behalf and for his servants and workmen to enter upon and survey and take levels of any land in such locality;

to dig or bore in the sub soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the

boundaries and line marked, to cut down and clear away and part of any standing crops, fence or jungle;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days" notice in writing of his intention to do so.

Section 5-A(1) of the Act provides for hearing of objections. It 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.

7. While disposing of the writ petitions No. 469 (MB) of 2004, 874 (MB) of 2004 and 480 (MB) of 2004, the High Court vide order dated 30-10-2004 passed the following order:

Mr. Sudhanshu Dhulia, Senior Advocate, in his usual fairness has shown readiness to hear the Petitioners or as the case may be the persons interested, instead of going ahead with the urgency clause and more particularly dispensing with the enquiry u/s 5-A. In view of the statement made, Mr. Naithani, Senior Advocate appearing on behalf of the Petitioners withdraws the writ petitions so far as challenge to the notification dated 5-5-2004 is concerned.

In view of the urgency felt, we feel that it will be better for us to fix the programme. Public notice shall, therefore, be given within seven days from today inviting the objections. The concerned Land Acquisition Officer, who is to hear the objections, shall hear them within fifteen days. All the objections shall be filed before the Land Acquisition Officer and the Land Acquisition Officer shall dispose of the matter one way or the other after giving full opportunity of hearing etc. by December 2004 or as the case may be earlier thereto.

Consequent to the order dated 30-10-2004 passed by this High Court in writ petition No. 480 (MB) of 2004, the Special Land Acquisition Officer, i.e. Collector, Dehradun u/s 5-A of the Land Acquisition Act, gave public notice which was widely published on 6-11-2004 in the news papers Dainik Jagaran and Amar Ujala. In response to the notice the Collector received six objections. The Petitioner Shashank Sharma also filed objections on 14-12-2004, in the light of the order dated 30-10-2004 passed by the High Court. According to the order dated 30-10-2004 of the High Court, the public notice should have been published within seven days of the order and thereafter fifteen days time was allowed to the Respondents to hear and decide the objections and the whole exercise was to be completed by December 2004 or earlier thereto. Opportunity of hearing was given to the Petitioner Shashank Sharma. On 23-12-2004 he adduced evidence and asserted himself to be the owner of 3/16 share of the total

land proposed to be acquired. He claimed that the carpet area of building situated over the land in question is 11500 Sq. feet and over a portion of 25000 Sq. feet TV class tin shed is constructed. He claimed compensation @ Rs. 60,000/- to Rs. 70,000/- per Sq. Yard and also claimed compensation for loss of business and goodwill of the firm. The Petitioner also filed copies of judgments in Family Division Suit No. 232 of 1976, Original suit No. 16 of 2003 and Transfer Application No. 232 of 1976, copy of will, death certificate of Smt. Chanda Devi, Death certificate of Sri Sandeep Goyal, lease deed and copy of Nagar Palika assessments. Before the Collector the Petitioner asserted his claim regarding compensation. But the question regarding the quantum of compensation shall be decided in the proceedings before the Special Land Acquisition Officer and thereafter by the reference Court. Section 11 of the Act provides for enquiry and award by the Collector. However, u/s 17 of the Act, special powers are given to the Collector for acquisition of the land in cases of urgency, without making award. Section 17(1) of the Act reads as under:

17. Special powers in cases of urgency (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government free from all encumbrances.

So far as the question of urgency is concerned, it is seen that after the creation of State of Uttaranchal, Dehradun city has been declared as its provisional capital. There was urgency for the State and its machinery to acquire the land for construction of its offices and residential complexes etc. The land in question is adjacent to the Secretariat of the State and since the building of the present Secretariat is not sufficient to meet the requirements of the State, it has become absolutely necessary to acquire some more land. The proposed land is 80% vacant and is suitable for the expansion of Secretariat building.

While issuing notification u/s 4(1) of the Land Acquisition Act, the inquiry u/s 5-A was dispensed with on the ground of pressing urgency for the expansion of Secretariat of Uttaranchal Government. This Notification dated 5-5-2004 was challenged by the Petitioner and other interested persons by filing as many as three writ petitions before the High Court. The writ petitions were disposed of on 30-10-2004 with certain directions as stated earlier.

The Petitioner moved an application on 14-12-2004 stating that he had not received any notice from the office of Collector for filing objections. He prayed that individual notice be issued to him so that he may be able to file objections. On this application the concerned Assistant gave a report that according to the order passed by the High Court the objections have to be disposed of by 31st December 2004 and that there is no direction for giving individual notices. On 23-12-2004 the Petitioner filed his objection and asserted himself to be the owner of 3/16 share of the total land proposed to be acquired. In his objection

he has submitted that property of 24, Rajpur Road was divided vide Division Suit No. 232 of 1976 Anand Prakash v. Ram Narain and Ors. on 15-02-1978. The property was divided into four persons as under: (a) Share of Anand Prakash and Sons 1/4 (b) Share of Om Prakash and Sons 1/4 (c) Share of Ram Narain and mother: 1/4 (d) Share of Smt. Chandra Devi 1/4

According to the Petitioner, Om Prakash Goyal died in the year 1972 and his share in the property was divided into his four sons Surendra Goyal, Vinod Goyal, Yogendra Goyal and Sandeep Goyal. Smt, Chandra Goyal who was the mother of Om Prakash gave her 1/2 share of property to Sandeep Goyal and remaining 1/2 share to Sri Vinod Goyal and Ashok Goyal by a registered will. Smt. Chandra Devi died in the year 1986. Thus Sri Sandeep Goyal had become owner of 3/16 share of the property at 24, Rajpur Road, Dehradun. Sri Sandeep Goyal executed a lease deed of the property in his share which is known as 16/32, Rajpur Road, Block 11, Dehradun, over which Radha Mohan Wedding Point is situated, in the name of Shashank Sharma Petitioner on 22nd September 1999. Sri Sandeep Goyal also executed a will by which he had donated his abovementioned leased property to the Petitioner Shashank Sharma with all rights. Sri Sandeep Goyal died on 15-10-2003 and after his death, the Petitioner has become owner of the property in question. The Petitioner has asserted in his objection that he has been carrying on business of Wedding Point on the property in question in the name and style as Radha Mohan Wedding Point. The total area of the land is 6000 Sq. feet. The Petitioner claimed that the carpet area of building situated over the land in question is 11500 Sq. feet and over a portion of 25000 Sq. feet TV class tin shed is constructed. He claimed compensation @ Rs. 60,000/- to Rs. 70,000/- Sq. Yard and also claimed compensation for loss of business and goodwill of the firm, The Petitioner also filed copies of judgment in Suit No. 232 of 1976, Original suit No. 16 of 2003, Transfer Application No. 232 of 1976, copy of will, death certificate of Smt. Chandra Devi, Death certificate of Sri Sandeep Goyal, lease deed and copy of Nagar Palika assessments. In his objection he has submitted that it would be in the interest of justice that his property may be excluded from acquisition and if it is essential for the Government to acquire his land he should be awarded compensation at the rate of 60-70 thousand rupees per square yard. Before the Collector the Petitioner has submitted that the question of compensation would be decided at the time of disposal of objections u/s 9 of the Act and the Special Land Acquisition Officer accordingly disposed of his application.

8. Thus the Respondents have fully complied with the judgment dated 30-10-2004 passed by this Court and the provisions under the Land Acquisition Act 1894. Neither the Petitioner nor any other interested person could show that the Government had no requirement of the land in question for the public purpose or that there was no urgency to dispense with the inquiry u/s 5-A. The place where the existing Uttaranchal Government Secretariat is situated is not at all sufficient to meet the requirement and its expansion is utmost necessary and urgent. We are, therefore, of the view that the urgency clause was rightly

invoked by the Government. However, in compliance with the judgment dated 30-10-2004 of a Division Bench of this Court objections were invited and the objections were considered and disposed of by the Respondents. In view of the judgment dated 30-10-2004 in the earlier writ petition and in view of the fact that the Respondents have fully complied with the directions in the judgment it is not open to the Petitioner to raise any contention that enquiry u/s 5-A was wrongly dispensed with. In the light of the judgment dated 30-10-2004 which has become final, Petitioner was given opportunity to file objection and his objection was considered also. His main objection was regarding the quantum of compensation. If he is not satisfied with the award of compensation, he has a statutory remedy. The dispute regarding quantum is not a ground for challenging the acquisition itself.

9. The Apex Court in the case Union of India (UOI) and Others Vs. S.H. Ganshyam Dass Kedia and Others, has held that the Notification u/s 4(1) and 17(1) of the Land Acquisition Act need not specifically recite the nature of the urgency. It has been observed as under:

The main question canvassed before the Division Bench in WP No. 3084 of 1987 was that the Government was not justified in invoking Section 17(1) read with Section 17(4) of Land Acquisition Act, 1894 (for short "the Act") dispensing with the enquiry u/s 5-A. The High Court following its earlier decision has quashed the notification on the ground that the notification did not recite the nature of the urgency. Planned Development of Delhi is not urgent and therefore, the exercise of the power u/s 17(4) was illegal. We do not find that the view taken by the High Court is legal and correct. In Aflatoon and Others Vs. Lt. Governor of Delhi and Others, the Constitution Bench of this Court had upheld the exercise of power u/s 17(4) dispensing the enquiry u/s 5-A. It was for planned development of Delhi which would take long time for development Yet this Court upheld the exercise of the power of urgency. It is subjective satisfaction of the Government based on the material on record. The High Court is not a court of appeal over subjective satisfaction and the opinion of the Government is entitled to great weight. Therefore, it cannot be said that the notification should specifically recite the nature of the urgency. It is enough, if the record discloses the consideration by the Government on urgency for taking action under Sections 17(1) and (4).

10. Further the Apex Court in the case First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, has held as under:

The question of urgency of an acquisition under Sections 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Sections 17(1) and (4) of the Act and issues notification accordingly, the same should not be interfered with by the court unless the court comes to the conclusion that the appropriate

authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the authorities concerned. If an order invoking power u/s 17(4) is assailed, the courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind. Any post-notification delay subsequent to the decision of the State Government dispensing with an enquiry u/s 5-A by invoking powers u/s 17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the Government or its officers are alleged. Opinion of the State Government can be challenged in a court of law if it could be shown that the State Government never applied its mind to the matter or that action of the State Government is mala fide. Though the satisfaction u/s 17(4) is a subjective one and is not open to challenge before a court of law, except for the grounds already indicated, but the said satisfaction must be of the appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency, even though cannot be conclusive, but is entitled to great weight, as has been held by this Court in *Jage Ram and Others Vs. State of Haryana and Others*, . Even a mere allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the court. The burden of establishing mala fides is very heavy on the person who alleges it.

11. In our considered opinion, having regard to the facts and circumstances narrated above, the exercise of power u/s 17(1) of the Land Acquisition Act by the State Government, cannot be held to be illegal or mala fide and consequently, the writ petition deserves to be dismissed.

12. The writ petition lacks merit and is hereby dismissed. No order as to costs.