

(1982) 03 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1381, 1383, 1384, 1426, 1443 to 1455, 1482, 1514 to 1518, 1527 to 1531 and 1632 and 1633 of 1981

Sita Ram and

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-03-1982

Acts Referred:

Rajasthan Land Acquisition Act, 1953 — Section 17(4), 4(1), 4(5), 5A, 6

Citation : AIR 1982 Raj 256 : (1982) WLN 234

Hon'ble Judges : N.M. Kasliwal, J

Bench : Single Bench

Advocate : G.S. Singhvi, Paras Kuhed and A.K. Bhandari, Lodha, for the Appellant; G.G. Sharma, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N.M. Kasliwal, J.—As identical questions of law are involved in these cases it would be convenient to dispose of these cases by one common order.

2. According to the petitioners, they are residents of village Moongaska in the vicinity of City of Alwar. Acquisition proceedings of 189 Bighas 10 Biswas of land was taken by the respondents and in pursuance thereof a notification under Section 4 of the Rajasthan Land Acquisition Act (hereinafter referred to as "the Act") was issued on 11th March, 1981. A notification dated 7th August, 1981, published in Rajasthan Gazette Part I (Kha) dated August 13, 1981, was issued under Sections 6 and 17 (4) of the Act. According to the petitioners they were served with individual notices under Section 9 of the Act when they came to know about the "and acquisition proceedings. The acquisition proceedings are challenged mainly on the ground that:

(i) Notification u/s 4 (1) was not published in accordance with requirement of Section 45 of the Act nor was it served on the petitioners.

(ii) No notice u/s 4(5) was issued and put by the competent authority nor such

notice was served on the petitioners;

(iii) The State Government did not apply its mind on the question of urgency and dispense with the provisions of Section 5-A without any basis;

(iv) The State Government did not apply its mind to the question whether the land was waste or arable;

(v) The acquisition proceedings were started in the year 1971 also for the purpose of Rajasthan Small Scale Industries Corporation, but after objections were raised by aggrieved persons, the same were dropped on 31st August, 1971 and therefore, there was no public purpose involved in the matter.

3. The State Government as well as the Rajasthan Industrial Investment and Development Corporation (RIICO) for whose need the lands are acquired, filed replies and took an identical stand that the land was needed for extension of industrial area at Alwar and RIICO made request for immediate action of acquiring the land and handing over the same to it. The State Government, therefore, issued a notification dated 7th August, 1981 after applying its mind to the urgency of the matter and the arable nature of the land. The notification u/s 4 (1) was issued on 11th March, 1981 and a public notice was also given in accordance with Section 4 (5) of the Act. A copy of the proceedings as recorded in the daily diary of the Patwari has been submitted to prove the compliance of public notice in accordance with Section 4 (5) of the Act. The land was admitted to be agricultural land and used for cultivation by the petitioners themselves as such the arable nature of the land was undisputed. It was also pleaded that the land in dispute had already vested in the State of Rajasthan and the State had thereafter handed over the possession of the land in dispute to RIICO on 2nd September, 1981 and since then RIICO was in possession of the land in question. The petitioners had no right to make any constructions over the agricultural land and as such constructions, if any, raised over the agricultural land being unauthorised, the petitioners could not derive any advantage of such unauthorised constructions. It was also pleaded that the petitioners had not come with clean hands and obtained interim stay orders by mis-stating the facts. The petitioners did not correctly reproduce the impugned notification u/s 17 (4) and Section 6 of the Act. A very material portion with regard to clear mention of dispensing with the inquiry u/s 5A in the notification had been omitted by the petitioners. The petitioners also misstated and misrepresented about the factum of possession. Even they were dispossessed on 2nd Sept., 1981, but still they mentioned that they were in possession of the lands in question. It was also pleaded that various questions raised in these writ petitions were disputed questions of fact and as such the writ petitions deserve to be dismissed on this ground alone. It was also pleaded that in answer to the notice u/s 9 of the Act, the petitioners have claimed compensation for acquisition of land, construction, standing crop etc., and as such they were estopped from challenging the acquisition proceedings now.

4. I shall deal with the grounds taken by the petitioners ad serialum.

GROUND NO. 1:

Under this ground it is contended by the learned counsel for the petitioners that it was categorically stated in the writ petitions that no notice was served u/s 4 (1) of the Act read with Section 45 and that there had been no publication of the notice as required by the provisions of Section 45 of the Act. It was also pleaded specifically that no notice u/s 4 (5) had been issued nor received by the petitioners. The respondents in reply to these averments have clearly stated that notice u/s 4 (1) was published and in support of this a copy of the daily diary of the patwari has been placed on record as Annexure R/2. Prima facie there is no reason to disbelieve the stand taken by the respondents that notice u/s 4 (1) was published which finds support from Annexure R/2. Thai apart, it has already been decided by a Division Bench of this court in Civil Special Appeal No. 149/1975 Moti Chand v. State of Rajasthan, decided on January 12, 19SI, that so far as the publication of an order under Sub-section (1) of Section 4 is concerned, it is only for the benefit of an officer to enter upon or into any land in such locality for survey, to dig or bore into sub-soil to set out boundaries, to mark levels etc. and to do other acts necessary to ascertain whether the land was suitable for such public purpose. This provision cannot be said to be mandatory. The Scheme of Section 4 under the Rajasthan Land Acquisition Act after the substitution of Section 2 of Rajasthan Act No. XXII of 1966 was entirely different. The procedure contained up to Sub-section (4) of Section 4 of the Rajasthan Act was concerned, it was entirely for the benefit of the officers subordinate to the Government. The provision under Clause (g) of Sub-section (11 of Section 4 was also for "-he "urposg of inquiry to ascertain the number of the persons interested in such land. The stage of filing objections u/s 5A of the persons interested only arrives when a notice has been given under Sub-section (5) of Section 4 of the Ad. Section 5A itself makes a menlion that any person interested in any land in respect of which a notice has been given under Sub-section (5) of Section 4 is being proposed to be acquired ibr a public purpose or for a company may, within 30 days, after the .service of the public notice, in the manner provided u/s 45 object to the acquisition of the land or of any land in the locality as the case may be. Thus, if there was any non-compliance of the order issued under Sub-section (1) of Section 4 in the matter of publication in accordance with the provision of Sub-section (4) of Sec"ion 45 it was merely directory and not mandatory. The aforesaid view also finds support from a bench decision of this Court in Rajasthan Udyog Vs. State of Rajasthan and Others, The petitioner as such can have no grievance for any non-complisnce of the notification u/s 4 (1) if the same for arguments sake has not been published strictly in compliance with Section 4 (5) and Section 45 of the Act. The purpose of issuing this notification! is merely to give a notice to the owner of the land that the authorised officer along with his servants and workmen shall enter his premises for performing the functions of survey etc. mentioned in Sub-section (1) of Section 4, of the Act. The State Government in case of large chunk of land

may be satisfied about its suitability for acquisition without any survey of the land. Thus, I find no substance at all in the ground raised by the petitioners.

GROUND NO. 2:

5. This ground is already covered by my decision given for ground No. 1.

GROUND No. 3:

6. This is the main ground on which a serious controversy has been raised by the petitioners. It is contended that in the instant case the State Government has not been able to disclose the circumstances which necessitated elimination or an inquiry u/s 5A of the Act. The respondents have neither disclosed the nature of the industries, nor the circumstances which have rendered it so imperative to take immediate possession of the land. It is submitted that the mere fact that the land was required for establishment of industries and extension of industrial area could not have formed the basis for invoking the powers u/s 17 (4) of the Act. Neither the need to establish industries nor the need to expand the existing industrial area can come into existence over night. By the very nature of things, the requirement for the same, if any, must have gradually emerged and there was no reason as to why the Government did not initiate the acquisition proceeding well in advance. The urgency should be of such a nature as to avoid even the minimum requirement of hearing and could only be the result of some unexpected extraordinary situation e. g. floods etc. or of a nature where the scheme was a time bound one and by lapse of time the object of such scheme would become nugatory and infructuous. Strong reliance is placed on the following observations in *Motiyan and Vs. State of Rajasthan and Others*, where it was observed as under (at pp. 297-98):

"In view of this, with due respect to the view taken by the Division Bench of this Court in the above case, I have got no hesitation in holding that the question regarding the urgency u/s 17 (14) (sic) of the Act, is not immune from judicial review and once it is challenged properly, this Court has ample jurisdiction to make limited probe into the matter as per limits set up by the Supreme Court in the above case. In fact, in the present bunch of cases, no probe even is required because the only requirement of acquisition is industrial development and that too for providing land first to the corporation (R.I.M.D.C.), which itself in terms would allot the land, later on, to industrialist as and when the same is required to be done. Such a nature of requirement simpliciter without anything more like time bound programme, can never be treated as enough for dispensing with and depriving a citizen of his legal right of a summary inquiry u/s 5-A of the Act. This is a sort of right of hearing, which has been put at the highest pedestal on the principles of natural justice, in the various cases of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, I have got no hesitation in holding that invoking of urgency clause u/s 17(4) of the Act was wholly misconceived and cannot be sustained."

Reliance is also placed on *Dora Phalauli Vs. State of Punjab and Others*, *State of Punjab and Another Vs. Gurdial Singh and Others*, *Swadeshi Cotton Mills Vs. Union of India (UOI)*, *Natwar Lal Jerambhai Patel v. State of Gujarat AIR 1971 Guj 264*, and *Yesho Nathu Mahajan and Another Vs. The State of Maharashtra and Others*,

7. On the other hand, it was contended by Mr. Lodha, learned counsel for RIICO, that it was clear from the notification that the Government was satisfied that the land in question was urgently needed and dispensed with the inquiry u/s 5A of the Act. The land in dispute along with other land was urgently needed for establishment of industry as well as extension of industrial area already in existence near the disputed land. Because of the pressing demands of the entrepreneurs even the delay of few days was coming in the way of industrial development and expansion of Sataya industrial area. Alwar and complete facts and circumstances were considered by the Government right up to the Chief Minister and it was ultimately decided to invoke the powers u/s 17 (4) of the Act. It is further contended that the petitioners themselves in rejoinder have placed correspondence which shows that the Government, had applied its mind to the urgency of the matter and this Court cannot go into the question of sufficiency of such material. This Court should not strike down the notification for acquisition of land on grounds based on hypertechnicality. The petitioners have not been able to show as to what possible objections they could have raised if opportunity was given to them u/s 5A of the Act and in the absence of any prejudice this Court should not interfere in the subjective satisfaction of the government in such matters. It was contended that the case of *Dora Phalauli Vs. State of Punjab and Others*, was considered by this Court in *Ram Nath v. State of Rajasthan Civil Writ Petn. No. 1070/1981* decided on July 3, 1981 and the aforesaid case was found to be distinguishable on the ground that the language used in the notification in the Supreme Court case was entirely different from the language used in the notification issued by the Government of Rajasthan in that case.

8. I have given my careful consideration to the arguments advanced by the learned counsel for the parties in regard to this ground. There can be no manner of doubt that in case the impugned notification issued u/s 17 (4) of the Act is held to be valid which dispenses with the inquiry u/s 5A of the Act, in that case the necessity of giving a notice under Sub-section (5) of Section 4 and the service of the public notice in the manner provided in Section 45 automatically goes away. The notice to a person interested in the land under Clause (i) of Sub-section (5) of Section 4 and a public notice under Clause (ii) of the same Sub-section is given so that a person interested in the land may file objections to the notice issued u/s 4 of the Act. Such objections are heard u/s 5A of the Act. Section 17 empowers the Government to act in cases of urgency and under subsection (4) of Section 17, the Government may direct that provisions of Section 5A shall not apply and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the order under Sub-section (1) of Section 4 of the Act. Thus, under Sub-section (4) of Section 17 if

an order is validly issued, the provisions of Section 5A will not apply and automatically the question of serving a notice to the interested persons or service of public notice in the manner provided in Section 45 does not arise. Thus, the main question to be determined is whether the notification issued by the Government under subsection (4) of Section 17 on 7th August, 1981, is valid or not. Learned counsel for the petitioners placed much reliance on Dora Phalauli's case (supra). In that case the language used in the notification was as under:

"Further in exercise of the powers under the said Act, the Governor of Punjab is pleased to direct that action u/s 17 shall be taken in this case on the grounds of urgency and provisions of Section 5-A will not apply in regard to this acquisition."

9. With regard to such notification it was observed by their Lordships that:

"In the portion of the notification which we have extracted above, it is neither mentioned that the land is waste or arable nor has it been stated that in the opinion of the Government, there was any urgency to take recourse to the provisions of Section 17 of the Act. A direction to the Collector has been given to take action u/s 17 on the ground of urgency but this is not a legal and complete fulfilment of the requirement of the law. It is to be remembered that the right of a person having any interest in the property to file an objection u/s 5-A of the Act should not be interfered with in such a casual or cavalier manner as has been done in this case. In these circumstances the writ petition was allowed and the portion of the notification issued on 23rd August, 1967 was struck down."

10. In the cases in consideration before me it is an admitted case of the petitioners themselves that the land in question was agricultural land and was used for cultivation. The petitioners have even mentioned that their crops were standing over the lands. Arable land is that land which is ploughed or fit for ploughing of crops. Thus, the nature of the land being arable remains undisputed in these cases. So far as the language being used in the notification is concerned it reads as under:

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pqafd jktLFkku Hkwfe vokfIr vf/kfu;e 1953 dh /kkjk 4 ds vUrxZr vkns"k tkjh dj fn;k x;k gS A

vkSj pwafd mijksDr Hkwfe dks vokfIr fd;k tkuk vfrvko";d gS] vr,o jktLFkku Hkwfe vokfIr vf/kfu;e 1953 jktLFkku vf/kfu;e la-] 24 lu 1953? dh /kkjk 17 dh mi /kkjk 4 }kjk iznRr "kfDr;ks dk iz;ksx djrs gq;s jkT; ljdkj ,rn }kjk funsZ"k nsrh gS fd

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vkSj mDr vf/kfu;e dh /kkjk 17 dh mi/kkjk ?1? ds vxzsarj vuqlj.k es jkT; ljdkj Hkwfe vokfIr vf/kdkjh ?mi ftyk/kh"k? tyoj dks /kkjk 9 dh mi /kkjk ?1? esa mYysf[kr uksfVI ds izdk"ku ls 15 fnol dh lekfIr ij iwoksZDr Hkwfe dk dCtk ys ysus dk funsZ"k nsrh gS A

Hkwfe dh fLFkfr IEcfU/kR uD"kk Hkwfe vokfIr vf/kdkjh ?mi ftyk/kh"k? tyoj ds dk;kZy; esa dk;kZy; le; ds Hkhrj ns[kk tk ldrk gS A

The language thus used in the aforesaid notification clearly mentions that it was necessary to acquire the land urgently. Thus, the defects existing in the notification which came up for consideration in Dora Phalauli Vs. State of Punjab and Others, before their Lordships of the Supreme Court are not existing in the notification in question in the cases before me. Learned counsel for the petitioners placed reliance on the following observations of the Supreme Court in State of Punjab and Another Vs. Gurdial Singh and Others,

"The fourth point about the use of emergency power is well taken. Without referring to supportive case law, it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and preemptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14, and 19, burke an enquiry u/s 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power."

11. It was also argued by the learned counsel for the petitioners that the mind of the officer or authority concerned has to be applied to the question whether there was an urgency of such a nature that even the summary proceedings u/s 5A 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 5A which has to be considered. Reliance in this regard is placed on Motiyan and Vs. State of Rajasthan and Others, decided by C.M. Lodha J. It is contended that in the aforesaid case a notification of the present kind was struck down.

12. There can be no manner of doubt that in case[^] in which the power is exercised in such an obviously arbitrary or perverse fashion without regard to the actual and undeniable facts or in other words, so unreasonable as to leave no

doubt whatsoever in the mind of a court that there has been excess of power, the action has to be struck down. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, to what was legally imperative for it to consider, the court should interfere. But once the Court comes to the conclusion that the authority concerned was acting: within the scope of its powers and had some material, however meagre, on which it could reasonably base its opinion, the court should not and will not interfere. I find support in the above view from the observations made by their Lordships of the Supreme Court in para 10 of Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, There is a well-known presumption based on the maxim "*omnia praesumuntur rite esse acta*", which means that all acts are presumed to have been rightly and regularly done. Their Lordships of the Supreme Court also considered in detail the applicability of the above presumption and the discharging of special burden, imposed by Section 106 of the Evidence Act. In Narayan v. State of Maharashtra case (supra) their Lordships held that in the above case there was no indication whatsoever in the affidavit filed on behalf of the State that the mind of the Commissioner was applied at all to the question whether it was a case necessitating the elimination of the inquiry u/s 5A of the Act. The recitals in the notification on the other hand, indicated that elimination of the inquiry u/s 5A of the Act was treated as an automatic consequence of the opinion formed on other matters. The recital did not say at all that any opinion was formed on the need to dispense with the inquiry u/s 5A of the Act. It was certainly a case in which the recital was at least defective. The burden, therefore, rested upon the State to remove the defect, if possible, by evidence to show "that some exceptional circumstances which necessitated the elimination of an inquiry u/s 5A of the Act and that the mind of the commissioner was applied to this essential question. In these circumstances, their Lordships held that the correct way of putting it would have been to say that the failure of the State to produce evidence of facts especially within the knowledge of its officials, which rested upon it u/s 106 of the Evidence Act, taken together with the attending facts and circumstance? including contents of recitals had enabled the petitioners to discharge their burden under Sections 101 and 102 of the Evidence Act. Applying the above principle in the cases before me I find that the stand taken by the State Government in Clause (b) of para 10 of the reply to the writ petition submitted in S.B. Civil Writ Petition No, 1381/81 Sita Ram v. State of Rajasthan is as under:

"The land was urgently needed by RIICO for extension of the industrial area Alwar as such the RIICO made request to the State Government to take immediately action for the acquisition of the land. The matter was referred to the Collector along with his report to the State Government. The matter was dealt with at the various level of the State Government and ultimately the file went to the highest level and it was decided that the matter was urgently needed and the recourse to Section 17 (4) of the Rajasthan Land Acquisition Ad may be taken. The State also decided that the matter was arable in nature."

The reply is supported by an affidavit by Narendra Kumar Agarwal, Assistant Collector and Executive Magistrate, H.R. Alwar, who has deposed that he was officer-in-charge of the case and the contents of reply of paras Nos. 1 to 19 (a) to (e) were true to his knowledge based on official record. I am constrained to observe that the Assistant Collector could not have any personal knowledge in the matter to state that such urgency existed in the matter which prevented even to take recourse to Section 5A of the Act. Even in the reply filed by the State Government it has not been stated as to what was such urgency on account of which even the inviting of objections was necessary to be dispensed with. The only reason given is that the land was urgently needed by RIICO for extension of industrial area, Alwar. This in my opinion totally lacks the furnishing of requirement that the urgency was of such a nature that even the summary proceedings u/s 5A of the Act was required to be eliminated. It has already been observed in *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, that:

"All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary enquiries u/s 5A of the Act. There is no indication whatsoever in the affidavit filed on behalf of the State that the mind of the Commissioner was applied at all to the question whether it was a case necessitating the elimination of the enquiry u/s 5A of the Act."

In the cases in hand also no affidavit has been filed that the mind of Secretary concerned or the Minister concerned or the Chief Minister was applied at all to the question whether it was a case necessitating the elimination of the inquiry u/s 5A of the Act. The recital used in the notification also does not show that mind was applied to the question whether the urgency was of such a nature as to require elimination of the inquiry u/s 5A of the Act. NO such case has been made out even in the reply submitted by the Government much less it finds support from any documents placed on record. The original record was no doubt shown to the Court but from a Perusal of that record also it was not revealed that mind was applied to the question that there was an urgency of such a nature which necessitated even the elimination of the inquiry u/s 5A of the Act. The case of *Narayan v. State of Maharashtra* (supra) thus applies on all fours to the facts and circumstances of these cases and it is held that the part of the impugned notification dispensing with the provisions of Section 5A of the Act is invalid.

GROUND NO. 4:

13. I have already taken the view that the nature of land being arable is an admitted case of the petitioners as such I find no force in this ground raised by the petitioners.

GROUND NO. 5:

14. Merely because the proceedings were dropped in the year 1971, it cannot be held that there is no public purpose now. The land in question is needed for the public purpose for the need of Rajasthan Industrial Investment Corporation Ltd., Jaipur and which in my opinion was a public purpose and there cannot be any ground to hold that the land could not be acquired for such public purpose in 1981. Thus, I find no force in the arguments raised by the petitioners under this ground.

15. In view of my above findings on ground No. 3 in favour of the petitioners, all these writ petitions are allowed. Notification issued on 11th March, 1981, u/s 4 of the Act is held to be valid, but the notification issued u/s 17 (4) and u/s 6 of the Act Dt. 7th August, 1981, published in the Gazette dated 13th August, 1981, and all further proceedings taken in consequence of such notification are quashed. It would be open to the respondents to take fresh proceedings by following the procedure prescribed u/s 5A of the Act. It is also made clear that in case, any extraordinary exceptional situation of urgency arises in future, the respondents would be at liberty to invoke the powers u/s 17 (4) of the Act also. Parties are left to bear their own costs.