
(1998) 08 MP CK 0032

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 94 of 1994

Siyaram and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-08-1998

Acts Referred:

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

Citation : AIR 1999 MP 76 : (1999) 2 JLJ 361 : (1998) 2 MPJR 353 : (1999) 2 MPLJ 714

Hon'ble Judges : A.K. Mathur, C.J;S.P. Srivastava, J

Bench : Division Bench

Advocate : J.S.L. Sinha, for the Appellant; N.K. Mody, Nirmal Mittal and S.R. Sharma and K.B. Chaturvedi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

Feeling aggrieved by the order passed by the learned single Judge dated 30-9-1994, declining to quash the notification issued u/s 4(1) read with Section 17 of the I , and Acquisition Act, 1894 (hereinafter referred to as the Act), the petitioners/appellants have now come up in this Letters Patent Appeal, seeking redress praying for the reversal of the impugned order.

We have heard the learned counsel for the appellants as well as me learned counsel representing the respondents, and have carefully perused the record.

The facts in brief, shorn of details and necessary for the disposal of this appeal lie in a narrow compass. A notification dated 18-7-1990. issued u/s 4(1) read with Section 17 of the Act, was published in the Madhya Pradesh Gazette dated 10-8-1990, whereunder an area of 26.146 hectares situated in village Joura, district Morcna, was proposed to be acquired for a public purpose showing it to be "New Housing Policy."

Subsequently, on 10-9-1990, in the daily newspaper Bhaskar, while publishing the notification, the name of the village was shown to be Joura (Khurd) instead of Joura.

The writ petition giving rise to this appeal was filed by four persons claiming to be the bhumiswamis of the land situate in the revenue village Joura (Khurd) which formed a part of the municipal area of Morena City, tehsil and district Morena. The petitioners asserted that the city of Morena consists of mainly three revenue villages; Bhadokhar, Jauri and Joura (Khurd). The village Joura (Khurd), it was pointed out was not a small village but some of its part was included in the city of Morena and fell within the municipal limits was divided in fifteen wards having the population of more than 30,000. The revenue village Joura (Khurd) comprised of Gopalpur, Duttpura (Ganj), Bus Stand, Gandhi Colony, Sindhi Colony, S.A.F. Police Line, Keshav Colony, Commissioner's area, Chambal Colony, Officers Colony, Chouraha and open land. The petitioners also asserted that the Madhya Pradesh Housing Board had without any need and without framing a Housing Scheme had taken steps for the acquisition of the land situate in Morena City falling within the revenue village Joura (Khurd) having an area of 26.146 hectares for its new housing policy and the notification in question had been issued by the State Government for achieving the said purpose.

The petitioners further asserted that under the amended provision of Section 4(1) of the Act, it was obligatory on the part of the State to publish the notification in two daily newspapers having circulation in the locality where the land is situate, out of which one publication should be in the regional language, and further it was obligatory to give public notice of the substance of such a notification as prescribed thereunder which was not done.

The petitioners claimed that the notification was published in only one newspaper i.e., Dainik Bhaskar on 16-9-1990, and further the substance of the notification was not at all published at convenient places of the locality concerned.

The petitioners also claimed that the notification in question was not only vague but also stood vitiated in law on account of the omissions referred to hereinabove which were fatal.

It was further asserted that the Housing Board had not framed any housing scheme nor had placed the plan of the scheme before the State and there was no mention in the notification in regard to any plan or map, the inspection whereof could indicate the details of the land sought to be acquired.

It was claimed that there was an obvious mis-description of the locality in the notification and the land was sought to be acquired for a speculative venture without any public purpose and without there being any scheme for development with prior approval of the appropriate Government.

The petitioners prayed for the quashing of the notification issued u/s 4(1) of the Act, and the proceedings for acquisition consequent thereupon.

The aforesaid writ petition was contested by the State of Madhya Pradesh as well as the Madhya Pradesh Housing Board (hereinafter referred to as the Board) by filing separate counter-affidavits/returns.

The State while adopting the stand taken by the Board in the return filed by it, had asserted that the notification had been issued after taking into consideration the resolution of the Board and the scheme framed by it invoking the provisions of Section 17(1) of the Act, dispensing with the enquiry contemplated u/s 5A of the Act, after forming an opinion as required by Subsection (4) of Section 17 of the Act. It was also asserted that the notification in question had been published in two daily newspapers and was also given publicity at the convenient places complying with all the requirements prescribed u/s 4(1) of the Act, as amended.

The Board in its counter-affidavit had asserted that the land in dispute fell within the municipal limits of Morena town. It claimed that the Board had framed a Land Development Scheme and layout plans for construction of the buildings, roads, open parks, springs water supply etc., and the land in question had been acquired at the instance of the Board as there was great paucity of the accommodation in the Morena which was a growing town at a faster rate. The Board had framed a housing scheme and the land in question was sought to be acquired for fulfilling the scheme. The proceedings for acquisition had been initiated after the resolution had been passed by the Board.

The Board further asserted that the due publication was made in two daily newspapers having circulation in the locality out of which one newspaper was in the regional language. These newspapers were Madhyaraj dated 9-9-1990 and Bhaskar dated 10-9-1990. The substance of the notification was also published in various places; i.e., Panchayat Bhawan, Police Station, Block Office, Tehsil Office and Collectorate; and also by beat of drums at the concerned places.

It may be noticed that during the course of hearing before the learned single Judge, the entire record relating to the proceedings concerning the publication of the notification etc., were produced for the perusal of the Court. The said record was also produced during the course of hearing of this appeal.

The learned single Judge in the impugned order found that the notification in question did not suffer from the vice of vagueness as claimed because objections had been filed on 26-9-1990 which indicated that the petitioners were aware of the identity of the land which was going to be the subject-matter of acquisition.

The learned single Judge drawing support from the observations made by the Apex Court in its decision in the case of Phagwara Improvement Trust Vs. State of Punjab and Others, , recorded a finding that the requirements in regard to the publication as provided for u/s 4(1) of the Act were duly complied with. The land owners had filed objections to the acquisition before the publication of the notification u/s 6 of the Act, was also taken note of.

It was further held that considering the evidence and the materials brought on

record, it stood established that the petitioners had not been misled in any manner and were aware of the land which was the subject-matter of acquisition.

The learned single Judge further found that the public purpose *Nayi a was niti hetu* which referred to the new housing policy could not be held to be vague so as to vitiate the notification, expressing the view that the new housing policy was a valid public purpose and the land was required for the housing accommodation and it could not be said that the purpose was vague in any manner.

It was further found that the area adjacent to the land in dispute had already been developed and a housing colony had been constructed by the Board which existed there. It was also noticed that the publication of the notification u/s 6 of the Act was made on 6-12-1990 and 9-12-1990.

On the question relating to the absence of indication of the availability of the scheme, the learned single Judge took the view that it was not fatal to the acquisition proceedings as the scheme could be framed even at a later stage. He drew support for this from the observations made by the Apex Court in its decision in the case of *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, .

The learned single Judge dismissed the writ petition providing however that the persons who had built residential houses could be accommodated in this scheme subject to the payment of development charges, and further providing that all those who were displaced from the land were entitled to be accommodated in accordance with the principles enunciated by the Apex Court in its decision in the case of *State of U.P. Vs. Smt. Pista Devi and Others*, .

At this stage, it may be noticed that the appellants have confined their relief to the quashing of the notification u/s 4(1) of the Act, dated 10-8-1990, true copy of which has been filed as Annexure P/2, to the writ petition.

The learned counsel for the petitioners has strenuously urged that the notification in question stood vitiated in law not only on account of the vagueness of the public purpose referred to therein but on account of the omission in regard to the publication of the notification and its substance in the manner prescribed which was fatal as the defect was not curable at all.

It has further been urged that considering the circumstances brought on record, the notification deserved to be quashed and the learned single Judge has erred in exercising the direction in favour of the respondents.

The learned counsel for the contesting respondents however have tried to support the impugned order on the reasoning contained therein. It has further been asserted that after publication of the notification u/s 4(1) of the Act, the notification u/s 6 of the Act had already been published and taking into consideration the facts and circumstances brought on record and also noticed by the learned single Judge, no justifiable ground could be said to have been made out of any interference by this Court while exercising the extraordinary

discretionary jurisdiction envisaged under Article 226 of the Constitution of India, and the writ petition was rightly dismissed.

We have given our anxious consideration to the rival contentions urged by the learned counsel for the parties.

The Apex Court has consistently taken the view that planned residential development is a public purpose and elaboration thereof after acquisition may be undertaken at a later point of time. When an authority constituted under an Act initiates the action for acquisition of a large area of land comprising several plots for planned development the specification of a particular land needed for a specified purpose intended to be undertaken for the development, ultimately to be taken up, is not a condition precedent to initiate the action for acquisition and publication of the notification u/s 4(1) of the Act in the Gazette does not get vitiated on account thereof.

Further, the Apex Court in its decision in the case of *Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others*, had indicated that it is not the land and could not and would not be the law that publication of the substance of Section 4(1) notification in the locality should be established beyond the shadow of doubt. Presumption u/s 114(c) of the Evidence Act, is available that official acts have been done unless proved otherwise.

In the present case, the learned single Judge had perused the original record, and we have also done so. Nothing could be pointed out which may be taken to have rebutted the aforesaid presumption and we are satisfied that the publication was done as required by law.

It should not be lost sight of that the Board has to be taken to be a local authority in view of the provision contained in Section 49 of the Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972. The housing scheme includes land development scheme proposed u/s 34 of the aforesaid Act, and this can be undertaken by the Board subject to control of the State Government. Considering the assertions made in the separate counter-affidavits filed by the Board and the State Government, we are clearly of the opinion that the purpose for the acquisition indicated in the notification u/s 4(1) of the Land Acquisition Act, 1894, satisfied the requisite criteria.

So far as the question relating to vagueness of the notification is concerned, suffice it to say that in the case of an acquisition of a large area of land comprising several plots belonging to different persons, the specification of the purpose can only be with reference to the acquisition of the whole area. Unlike in the cases of a small area, it may be practically difficult to specify the particular public purpose of which each and every item of land comprised in the area is needed. As observed by the Apex Court in its decision in the case of *State of Tamil Nadu v. L. Krishnar*, (1996) 1 SCC 250 it is not appropriate to insist upon the Government particularising the use of each and every bit of the land so notified would be put to.

While it is true that the State has to exercise its statutory power in a reasonable and fair manner more particularly where the subject-matter is acquisition of the property/land, a person feeling aggrieved by a notification u/s 4(1) of the Act has also to be vigilant and must act for the redressal of his grievances with the utmost despatch. As observed by the Apex Court in its decision in the case of *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, to have set on the fence and allowed the Government to complete the proceedings on the basis that the notification u/s 4(1) of the Act and the declaration u/s 6 of the Act were valid and then to attack the notification on grounds which were available at the time when the notification was published would be putting a premium on dilatory tactics.

Laches on the part of an aggrieved person feeling prejudiced by a notification u/s 4(1) of the Act, seeking redress by approaching the Court of equity having discretionary jurisdiction may be taken to be fatal especially when the approach is at a time when the awards have already been passed or were about to be passed. In the present case, the award had been passed on 14-10-1992.

Further, in a situation where the Government has allotted a large portion of the land after the acquisition proceedings had been finalised and the rights of the third parties have accrued in the land in question who are not before the Court, it will be an other instance when the intervention of equity may not be called for at all.

In fact, as clarified by the Apex Court in its decision in the case of *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, the power under Article 226 of the Constitution is discretionary. It has to be exercised only in furtherance of interest of justice and not merely on the making out of a legal point and in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 of the Constitution and it is open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. It was made amply clear that there are many ways of affording appropriate relief and redressing a wrong. The quashing of the acquisition proceedings is not the only mode of redress and it is ultimately a matter of balancing the competing interests.

Considering the totality of the circumstances, we have no hesitation to hold that the findings of the learned single Judge are not beset with any illegality warranting interference. The conclusions arrived at are based on material available on record and could not be demonstrated to be vitiated by any such error of law so as to warrant an interference in the discretion exercised under the impugned order.

In view of our conclusions indicated hereinabove, this appeal fails and is dismissed.

There shall however be no order as to costs.