

(2005) 09 GAU CK 0056
In the Gauhati High Court

S.Joykumar Singh and Ors.

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Citation : (2005) 09 GAU CK 0056

Hon'ble Judges : H.N.Sarma, J and T.Nanda Kumar Singh, J

Bench : Division Bench

Advocate : I.Lalit Kumar Singh, Niranjan Sanasam, Advocates appearing for Parties

Judgement

1. Heard Mr. I. Lalitkumar, learned senior counsel assisted by Mr. Niranjan S, learned Advocate for the appellants and also heard the learned Addl. Govt. Advocate appearing on behalf of the State respondents.

2. This writ appeal is directed of the impugned Judgment and order dated 3.6.2005, passed by the Learned Single Judge in W.P.(C) No.600 of 2005. In the aforesaid writ petition, the petitioners/appellants challenged the Notification No.21/ 18/ 2005Pt dated 11.4.2005, issued by the Commissioner (Revenue), Government of Manipur under section 4 (a) of the Land Acquisition Act, 1894, by which it was notified that the lands specified in the schedule appended therewith are likely to be needed for acquisition/protection of Historical Monuments of Maharajas and Raj Darbar of New Palace. Pursuant to the aforesaid Notification, notice dated 7th May, 2005, inviting objection from the interested person was also issued by the Collector. Notification was also published in the Local Daily Newspaper as required under u/s 4 of Land Acquisition Act, 1894. The petitioners/appellants had challenged the said Notification submitting interalia that the matter relating to protection of historical monuments is occupied by two corresponding Acts of the State namely, Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Manipur Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1976. It is also submitted that in view of such occupation of the field relating to subject matter of dispute by aforesaid

Acts, the provisions of Land Acquisition Act cannot be applied in the instant case. Further submission of the learned senior counsel is that the purpose as reflected in the Notification dated 11/4/2005 is not a public purpose within the meaning of law.

3. The Learned Single Judge after an elaborate discussion in the matter held interalia that prima facie the purpose mentioned in the impugned Notification is taken as public purpose for which the said land may be acquired under the Land Acquisition Act. It is also observed by the Learned Single Judge that section 5A of the Land Acquisition Act provides for hearing of objections under which any person interested in the land proposed to be acquired and which has been notified u/s 4(1), are entitled to object to the acquisition of such land and the concerned authority is to dispose the same u/s 6 of the Land Acquisition Act. The Learned Single Judge however quashed the public notice issued in Local Daily dated 17.5.2005, which was published after publication of the Notification in the Official Gazette providing liberty to the authority to make such publication in the Local Daily in terms of u/s 4(1) of the Land Acquisition Act.

4. Under the provision of the Land Acquisition Act 1894, objection filed u/s 5(a) of the Act is to be disposed of by providing necessary opportunity of hearing to the objector. Thereafter, u/s 6(a) of the Act the concerned authority is required to make a declaration that the land is required for public purposes. These are statutory provisions under the Land Acquisition Act and the petitioners/appellants are entitled to raise their grievances that the Land in question is not required for public purpose, before the concerned authority. Such a statutory right having been provided under the Act itself, exercise of extraordinary power under Article 226 of the Constitution of India to quash the impugned Notification is not to be encouraged. The power of judicial review under Article 226 as sought to be invoked, is not available to the petitioner at this stage. The other submission of the petitioners/appellants is that amended provision of Manipur Ancient and historical Monuments and Archaeological Sites and Remains Act, 1976, passed in the Manipur Gazette extraordinary No.345 (B) dated 11.4.1996 is ultravires, also cannot grant into a collateral manner in this case. The petitioner is always entitled to challenge the said Act in an appropriate proceeding provided a case is made out to that effect. It is settled principle that a piece of legislative enactment is to be treated as Constitutionally valid and inter vires, unless it is otherwise declared by a Competent Court.

5. In our considered view, the challenge of the impugned notification is a premature one and the petitioners/appellants has got available Statutory remedy under the Land Acquisition Act itself. That apart point raised by the petitioners/appellants also involved factual assessment relating to the justification of the issuance of notice declaring the land in question to be public purpose and such decision can be appropriately be arrived by the Collector himself while deciding the objection u/s 5 of the Act, on factual evaluation of the relevant aspects.

6. In view of the above discussion, we do not find any merit in this appeal.

However, the petitioner is given liberty to raise his objection before the competent authority at the time of hearing of the objection, if so advised.

With the above observations, this appeal is disposed of.