
(2008) 08 MP CK 0010
In the Madhya Pradesh High Court

Smt. Gomti Bai Tamrakar and Others	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 3, 4, 5A, 6

Citation : (2009) ILR (MP) 136 : (2009) 2 MPHT 26 : (2008) 4 MPLJ 536

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J.

The writ petition has been filed challenging the notification dated 28th March, 2008 issued u/s 4 (Annexure P-1) and the notification dated 15th May, 2008 (Annexure P-2) issued u/s 6 of the Land Acquisition Act.

The case of the petitioners is that the petitioner No. 1 is owner of the house situated on Hiraganj Tiraha and the petitioner No. 2 is the owner of the house situated on Garg Chowk, Malviya Ganj, Katni. The notification dated 28th March, 2008 issued u/s 4(1) of the Land Acquisition Act was published in the M.P. State Gazette dated 25-4-2008. Thereafter, the declaration u/s 6 was published on 15-5-2008. In the present petition, the notifications u/s 4(1) of the Act as well as declaration u/s 6 are under challenge.

Learned Counsel appearing for the petitioners submitted that the notification u/s 4(1) of the Act is vague inasmuch as it does not contain the full details of the land proposed to be acquired and also the public purpose is not specific. The notification is so vague that the petitioners have been deprived of their right u/s 5-A of the Act. He further submitted that by the impugned notification approximately 4763.229 sq. mt. of land of Patwari Halka No. 43 and number Bandobast 493 was proposed to be acquired which is part of larger piece of land. He further submitted that invocation of urgency clause u/s 17 of the Act is bad

and unsustainable.

Learned Counsel for the respondents submitted that Section 4 notification contains sufficient details of the land as required by law and the notification is not vague in any manner. He further submitted that the acquisition proceedings have been taken up strictly in accordance with law and there is no flaw in the proceedings.

I have heard the learned Counsel for the parties and perused the record.

The question, which arises for consideration, is whether the impugned Section 4 notification contains the sufficient details of land proposed to be acquired and the public purpose to save it from the challenge on the ground of vagueness?

Section 4 requires the appropriate Government to publish the notification when land in any locality is needed or likely to be needed for any public purpose. On the issuance of Section 4(1) notification, u/s 4(2) it becomes lawful for any officer authorised by Government to enter upon and survey any land in such locality and ascertain if the land is adapted for such purpose and also set out the boundaries of the land proposed to be taken. Division Bench of this Court in the order dated 8-8-2008 passed in W. A. No. 1145/2007 in the matter of Executive Engineer, M.P. Housing Board and Others Vs. Shri Kant Mishra and Others, , and connected writ appeals, while considering the object of notification u/s 4, has held that:

It is apparent from Sub-section (1) of Section 4 of the Act that only locality in which the land was likely to be needed for any public purpose, is required to be mentioned. Sub-section (2) of Section 4 provides that thereupon after issuance of notification under Sub-section (1) of Section 4, it shall be lawful for any officer to enter upon and survey and take levels of any land in such locality; to dig or bore into 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 any part of any standing crops, fence or jungle. Thus, Section 4 provides a first step towards acquisition of land. The main purpose of the notification is to take the preliminary proceedings. The notification is of exploratory character and discloses tentative intention. After discharging the functions u/s 4, the authorised officer is required to make report under Sub-section (4) of Section 4. At the stage of Section 4, Govt. may not in fact possessing all the necessary details which are dependent upon the survey on which it can decide which land in the locality would be suitable for the public purpose. Investigation into necessary data provided u/s 4(2) empowered the entry to carry out various operations mentioned therein on any land in such locality. Only after such survey is made, Govt. can decide, which particular land in the locality is adapted or suitable for

the public purpose.

The issue about the particulars of the land which are required to be disclosed in Section 4 notification to save it from vagueness came before the Supreme Court on earlier occasion. In the matter of Narendrajit Singh v. State of U.R reported in (1970) 1 SCC125, the Supreme Court opined that Section 4(1) does not require the identity of the proposed land to be specified with too many details but it requires to "specify the locality in which the land is needed". It is held that:

8. Section 4(1) does not require that the identity of the lands which may ultimately be acquired should be specified but it enjoins upon the Government the duty to specify the locality in which the land is needed. In the instant cases, the notifications suffer from a very serious defect in that the locality where the lands were needed was not specified. The notification merely showed that lands mentioned in the schedule were needed. The schedule in its turn though it contained the headings District, Pargana, Mauza and approximate area, gave no particulars of the same and all that was mentioned by way of a note was that the plan of the land might be inspected in the office of the Collector of Rampur. As no details were given, the only indication about the locality of the lands was possibly the District of Rampur inasmuch as the plan of the land was to be found in the office of the Collector of the same district. Certainly the Act did not intend that all the persons owning land in a district should rush to the Collector's office to find out whether his lands were covered by the notification.

The Supreme Court in the matter of Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, , while considering Section 4(1) notification which only contained the name of the District and approximate area proposed to be acquired without any other further details such as Khasra number Patwari Halka number or locality etc. held that:

8. It is settled law that the process of acquisition has to start with a notification issued u/s 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification u/s 4 is a condition precedent to the exercise of any further powers under the Act. Any notification which is aimed at depriving a man of his property, issued u/s 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the Courts. The object of issuing a notification u/s 4 of the Act is two-fold. First, it is a public announcement by the Government and a public notice by the Collector to the effect that the land, as specified therein is needed or is likely to be needed by the Government for the "public purpose" mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is thus, required to give with sufficient clarity not only the "public purpose" for which the acquisition proceedings are being commenced but also

the "locality" where the land is situate with as full a description as possible of the land proposed to be acquired to enable the "interested" persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged "public purpose" also. If a notification u/s 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad.

Thus, in view of the aforesaid judgment, by Section 4(1) notification the locality where land is situated is required to be disclosed with as full possible description of the land proposed to be acquired to enable the interested persons to know as to which land is being acquired and for what purpose.

Division Bench of this Court also in the matter of Executive Engineer, M.P. Housing Board and another (supra), has considered the same issue and held as follows:

14. Thus, the ratio of the decisions of the Apex Court consistently is that locality should be mentioned with precision not the precise identity of the locality at the stage of notification u/s 4 of the Act. Similar is the view expressed by several High Courts. In *Abdul Jabbar v. State of West Bengal* ILR (1967) Cal 157, it was laid down that the notification u/s 4 is merely exploratory or preliminary in nature and the exact area to be acquired need not be particularized at that stage, but it is otherwise with the declaration u/s 6, which is issued after the Government has applied its mind to the exact area and location of the lands which are needed for the purpose of and are, therefore, acquired. Delhi High Court in *Raj Kumar and Another Vs. The Union of India and Others*, has laid down that at the stage of notification u/s 4(1) it is not absolutely necessary that Government should have particularized the land. In *Bahadur Singh etc. Vs. Union of India*, , it was laid down in Para 68 that it is not necessary that each and every items of the land should be mentioned in the notification u/s 4 which means that survey numbers are not required to be mentioned. A Division Bench of Allahabad High Court in *Chandan Singh Gosain Vs. State of U.P. and Another*, following the decision of *Narendrajit Singh's* case held that plot numbers and other details are not necessary to be mentioned in the notification issued u/s 4 of the Act. Only the locality is to be mentioned which by very purpose of Section 4 can be mentioned. A Division Bench of Calcutta High Court in *Jogendra Nath Chatterjee and Others Vs. State of West Bengal*, held that neither the plots nor their boundary has to be specified in notification u/s 4(1), but, the locality must be stated. In *Nagar Mahapalika, Varanasi v. Durga Shankar and Ors.* AIR 1975 Allahabad 9, Allahabad High Court held that when the notification u/s 4(1) did not mention the details about the purpose of the plots or their boundaries, the notification could not be held to be vague as other sufficient particulars were mentioned.

Thus, the law is settled that Section 4(1) does not require the identity of the land

with too many details to be disclosed in the notification but the notification must specify the locality in which the land is needed.

The impugned Section 4 notification in the present case needs to be considered in the light of the aforesaid settled legal position. The Section 4 notification dated 28th March, 2008 (Annexure P-1) which is under challenge was issued containing the following details of the land proposed to be acquired:

vuqlwph Hkwfe dk o.kZu /kkjk 4?2? ds vUrZxr lkoZtfud -----
----- iz;kstu
dk o.kZu ftyk rglhy uxj@xzke yxHkx {ks=Qy ?vftZr jdck? izkf/kd`r ua-ca- ?oxZ
eh-? vf/kdkjh
?1? ?2? ?3? ?4? ?5? ?6?

dVuh dVuh dVuh 1- futh LoRo 2647-386 dk;Zikyu ;a=h] f[kjguh jsyos i-g-ua- 43
2- vkcknh utwy 247]982 ?yks-fu-fo-? lsrq vksOgj fczt gsrq fuekZ.k laHkx] vf/
kxzghr tcyiqj ua-ca- 943 3- jketkudkjh eafnj 746-561 izca/kd dysDVj 4-
dsUnzh; ljdkj 779-450 jsyos 5- vkcknh utwy la- 39-750 V?kfQd Fkkuk 6-
vkcknh utwy 299-120 QkjsLV vkfQl ----- ;ksx% 4763-229

A perusal of the aforesaid details indicates that in the notification Patwari Halka number and number Bandobast of the land, which was proposed to be acquired, has been disclosed.

Learned Counsel for the petitioners has argued that Patwari Halka No. 43 and number Bandobast 493, which is mentioned in Section 4 notification admeasures thousands of hectares out of which only 4763.229 sq. mt. is proposed to be acquired, therefore, the locality is not specified. Such an argument is devoid of merit since along with Patwari Halka number and number Bandobast, the notification also discloses that the land is proposed to be acquired for constructing Khirhani Railways over- bridge which makes the location and the locality of the land proposed to be acquired explicit. Thus, petitioners' challenge to the impugned notification on the ground of vagueness for want of requisite particulars of land is meritless and is hereby rejected.

The petitioners have also raised the challenge on the ground that the notification is vague since it does not specify the public purpose. Such a challenge is also meritless since the notification in clear terms provides the public purpose as "acquired for Khirhani Railway over bridge". Such a purpose is covered within the meaning of expression "public purpose" contained in Section 3(f) of the Act. Thus, public purpose has been disclosed in Section 4(1) notification with sufficient clarity, therefore, it is found that the challenge of the petitioner to the notification u/s 4(1) is without any substance.

The learned Counsel for the petitioners has also argued that the order for invoking the urgency clause was passed subsequent to Section 6 declaration dated 15-5-2008. A perusal of the writ petition indicates that no such ground has been raised by the petitioners in the writ petition questioning the legality and

correctness of the invocation of the urgency clause. Therefore, such an argument raised at the time of final hearing cannot be considered since State had no opportunity to respond to the same.

It has also been pointed out by the respondents that the award has already been passed in the matter on 14-7-2008, therefore, writ petition is liable to be dismissed in view of the judgment of this Court in the matter of Rambharose and Ors. v. State of M.P. and Ors. reported in (2002) 3 MPLJ 378, holding that once the award is passed challenge to Sections 4 and 6 notification cannot be entertained.

Even otherwise, it is found that the petitioner has challenged the notification dated 28th March, 2008 (Annexure P-1).after elapse of almost 3 months by filing the writ petition sometime in July, 2008 whereas Annexure P-3 . indicates that the petitioner was aware of the acquisition proceedings and before filing of the writ petition substantial progress had taken place in the acquisition proceedings. Therefore, no interference can be made also for the reason that the petitioner was not prompt in approaching the Court. It is also worth noting that no other person has approached this Court challenging the acquisition proceedings except for the petitioners and also that the land is being acquired for constructing a Railway overbridge to ease the traffic problem at Katni Railway crossing as the Railway line going towards Allahabad and Calcutta is busy Railway line, which results into traffic jam at Khirhani Railway crossing and causes suffering to the public at large and also loss of lives due to the accidents while crossing the Railway line. Considering the eminent public purpose and considering the fact that Section 4 notification is not vague as alleged by the petitioners and that land is being acquired after following the due procedure prescribed under the Land Acquisition Act no interference is required in this writ petition and the writ petition is, accordingly, dismissed.

No orders as to costs.