

(1987) 04 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14718 of 11984 and Writ Petition No"s. 13364, 13705, 13706, 14317, 14336, 14709 and 14917 of 1982, 1998, 13933 and 15373 of 1983, 1220, 1221, 13299 and 14719 of 1984 and 11453, 11849, 12657 and 12698 of 1985

Smt. Krishna Devi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-04-1987

Acts Referred:

Constitution of India, 1950 — Article 14

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 4, 5A

Citation : (1989) RD 72

Hon'ble Judges : K. Jagannatha Shetty, C.J;V.K. Khanna, J

Bench : Division Bench

Advocate : V.D. Singh, for the Appellant;

Judgement

V.K. Khanna, J.—These are three batches of Writ Petitions raising common questions of law as to the validity of acquisition of lands by Moradabad Development Authority for construction of residential houses for the house less residents of Moradabad.

2. The lands in question are scattered in three different villages. The lands concerned in the first batch of Writ Petitions (Writ Petitions No. 14719/84 etc.) are located in village Mukarrabpur Mustehkam. The lands concerned in the second batch of writ petitions (Writ petition Nos. 15373/83 etc.) are situated in village Bhainsia The lands in the third batch of writ petition (Writ petition No. 11453/85 etc.) are situated in village Sonakhur. All are adjacent villages in the Moradabad.

3. The notification issued Under Sections 4 and 6 of the Land Acquisition Act (called shortly as the Act) in respect of these lands are of different dates. The dates may not be relevant, but what is important to note is that the provisions of Section 17 of the Act have been invoked. The enquiry contemplated u/s 5A of the

Act has been dispensed with. It has been stated that the acquisition of lands was urgently necessary for the purpose of construction of residential houses.

4. In the village Mukarrabpur Mustehkam, the total extent of land acquired was 22.45 acres the possession of which was said to have been taken on September 22, 1984. In the village Bhainsia a large extent of 72.81 acres has been acquired. It is said that the possession of that land was taken on November 24, 1982, still a large extent of land measuring about 96 acres has been acquired in the village Sonakhur, the possession of which was also said to have been taken. The owners of all those lands have not challenged the acquisition. Only some of them have preferred the writ petition.

5. In these cases, leading arguments were addressed by Sri V.D. Singh counsel in writ petition No. 14719 of 1984 and Shri Sunil Gupta counsel in some other cases. The contentions of both the counsels ultimately had only one point, that is, as to the validity of dispensing with the compliance of Section 5A of the Act. It was rested on a two-fold submission (i) that there was no urgency justifying the elimination of enquiry prescribed u/s 5A of the Act ; (ii) that it would be for the State to satisfy the court with acceptable material that there was such an urgency even to eliminate the enquiry u/s 5A of the Act and there is a lack of evidence in regard to this aspect. The counsel also relied upon the decision of the Supreme Court in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, in support of the contentions.

6. Sri Rishi Ram, learned Counsel for the Respondents, on the other hand, has placed reliance on the recent decision of the Supreme Court in State of U.P. Vs. Smt. Pista Devi and Others, . He urged that since the lands have been acquired for providing housing accommodation which is a dire need of the people, the dispensing with the enquiry contemplated u/s 5A of the Act cannot be doubted or denied. He also urged that the Government on the material on record was justified in dispensing with the compliance of Section 5A. He went a step further and said that this Court should take judicial notice of the population explosion and the acute shortage of housing accommodation in Urban areas in U.P. State.

7. It seems to us, that much of the controversy from both the sides could be avoided if we first refer to the ratio of the recent decision of the Supreme Court in Smt. Pista Devi case, 1986 AWC 1027. The question raised therein was also as to the validity of elimination of enquiry u/s 5A of the Act. There the land in the city of Meerut was acquired for the purposes of housing accommodation. Meerut is an adjacent district of Moradabad with which we are concerned. Notification u/s 4(1) of the Act was issued on July 12, 1980. It was also issued u/s 17(4) of the Act dispensing with the enquiry u/s 5A. It was followed by a declaration u/s 6 of the Act published on May 1, 1981. The possession of the land was taken and handed over to the Meerut Development Authority in July 1982. The acquisition was challenged by the owners by riling writ petition in this Court. This Court held that the notification u/s 4 containing a direction u/s 17(4) dispensing with the enquiry u/s 5A was invalid. The main ground on which this Court had quashed

the notification was that there was no such urgency in the matter since there was a post delay of nearly one year for issuing the declaration u/s 6 of the Act. In other words, this Court held that failure to issue declaration u/s 6 immediately after the notification u/s 4 of the Act was fatal. This view has been reversed by the Supreme Court. It was held that due to some error committed by the officials entrusted with the duty of processing of the case at the level of the Secretariate, there was a delay of nearly one year to issue the declaration u/s 6 of the Act. It was further observed that the correspondence on the record clearly demonstrated that at that time there was great urgency to provide housing accommodation at Meerut. It was then observed:

...The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance of Section 5A of the Act.

8. In the case of Shrimati Pista Devi (Supra) the Supreme Court has referred to the earlier decision in Narain Govind Gavate (Supra) on which reliance has been placed by counsel for the Petitioners. It was observed that in Gavate's case the acquisition proceedings which had been challenged related to the year 1963. Ever since then the population of India has gone up by hundreds of millions. So the court could take the view that the scheme to provide residential accommodation does demand emergent actions as to eliminate summary enquiries u/s 5A of the Act. With these observations, the acquisition of lands for housing schemes in Meerut has been upheld despite the post delay of nearly one year in issuing the declaration u/s 6 of the Act.

9. The decision in Smt. Pista Devi's case (Supra) is an authority for the proposition that the elimination of enquiry u/s 5A of the Act in the matter of acquisition of lands for housing schemes can not generally be found fault with. The court would be justified in taking judicial notice of the hard fact of acute problem of housing accommodation which is required to be tackled on war footing.

10. With these principles, let us now revert to the facts of the present case. It is necessary to note that there is no post notification delay. Admittedly, the land is being acquired for providing housing accommodation under a planned development scheme by the Moradabad Development Authority. A detailed counter affidavit has been filed on behalf of the Moradabad Development Authority Respondent No. 2 in writ petition No. 15373 of 1983. In paragraphs 14 and 16 therein, it has been inter-alia, stated:

That the Moradabad Development Authority proposes to construct houses for weaker sections of the Society, Village artisans, labourers etc. The constructions have already been made in some of the lands acquired. The necessity of constructing the houses arose in view of the acute shortage of houses in

Moradabad. It was also to meet the urgency of the civil problem. The Labour Department has not constructed any labour colony for the labourers. It has, therefore, become necessary to rehabilitate people belonging to houseless weaker sections of the Society.

11. These averments have not been and indeed cannot be denied or disputed. We are, therefore, of opinion that there was every jurisdiction for the State to dispense with the requirements of Section 5A of the Act.

12. The second ground raised by learned Counsel for the Petitioners in the first group of writ petitions relate to discrimination. It was urged that in the neighbouring village, the land has been acquired for the same purpose but not dispensing with the provisions of Section 5A of the Act. The procedure adopted by the State was characterised as violative of Article 14 of the Constitution. A bare reading of the averments made in these writ petitions would show that the averments made are absolutely vague and no details have been given. Apart from that, it appears that the State may not need all the lands of all the villages at the same time. One cannot therefore find fault with the State in giving opportunity to file objections for some persons in one village while denying such opportunity in another village. We are, therefore, not impressed with this submission.

13. Learned Counsel for the Petitioners in the first group of writ petitions, lastly urged that the land of certain influential persons has been exempted from acquisition and the action of the State Government was therefore violative of the provisions of Article 14 of the Constitution. Here again, the contention is not supported by adequate material. We have carefully perused the sketch map which indicates the lands which has been acquired by the State Government. A perusal of the map shows that only a plot belonging to the Gaon Sabha has been left out which is at the extreme corner of the area. Some lands in the centre of plot No. 18 has been left out but the notification itself shows that major part of the plot No. 18 has been left out. It can not, therefore, be said that the lands of certain influential persons have been left out on extraneous consideration.

14. No other point has been urged before us.

15. For the reasons stated above, the writ petitions fail and are dismissed but no order as to costs.

16. At the time of signing this order, the counsel for the Petitioners passionately pleaded that the Petitioners, if they are siteless and houseless, must be given a site from out of the lands acquired upon reasonable terms of payment. There can be no difficulty to accept this submission. Similar observations have been made by the Supreme Court in Pista Devi's case itself, 1986 AWC 1027.

17. We, therefore, direct Moradabad Development Authority to consider the applications of the Petitioners for grant of house site on reasonable terms if they are found to be houseless and siteless persons and if sites are still available for

allotment.