
(1997) 04 AHC CK 0021
In the Allahabad High Court
Case No : C.M.W.P. No. 9576 of 1992

Smt. Prakash and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 4, 4(1), 5A, 6
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 13(4), 14(2)

Citation : (1997) 04 AHC CK 0021

Hon'ble Judges : R.R.K. Trivedi, J; D.C. Srivastava, J

Bench : Division Bench

Advocate : S.V. Goswami, for the Appellant; Dilip Gupta and S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—The prayer of the Petitioners in this writ petition is for quashing notifications under Sections 4 and 6 of the Land Acquisition Act, 1894, Annexures 2 and 6 of the writ petition. Beside the writ of certiorari aforesaid, the Petitioners have claimed a writ of mandamus restraining the Respondents from interfering in the Petitioners' possession over plot No. 283 area 12.30 acres situated in village Ahilyaganj Bangar, Tehsil and district Mathura.

2. In brief the averments made in the petition are that the Petitioners 1 to 5 and Smt. Bimla wife of Petitioner No. 6 and mother of Petitioner No. 7 are the owners of plot No. 283 area 12.30 acres aforesaid. This land was purchased by them for installing a Small Scale Industry. In the year 1968 a factory known as M/s. Raman Engineering Industries, Mathura was established under a registered partnership agreement. The industry was also registered under the Factories Act and with the Director of Industries and Director of Small Scale Industries, in the Master Plan, this land was ear-marked for light industries. In the revenue record also, the industry was shown as such in the Khasara 1385 Fasali. The said factory was closed some time in the year 1986-87 because of death of a partner Suresh

Goel and also because of litigation with Bank.

3. A notification u/s 4 of the Land Acquisitions Act (for short "Act") was issued by the Collector, Mathura which was published in the Official Gazette dated 1.6.1991 vide Annexure 2 and it was also published in Hindi newspaper "Amar Ujala" on 19.2.1991, but to the best knowledge of the Petitioners till notification was not published in any other newspaper nor its substance was published in the locality where industry is situated either by affixation or by any other mode of service. The notification u/s 4(1) of the Act is thus said to be invalid, arbitrary and without application of mind. The Petitioners received the notice on 6.3.1991 whereafter they filed objection u/s 5A of the Act before the Respondent No. 3. Additional objections were also filed vide Annexures 3, 4 and 5. It was stated in the objections that the land could not be acquired for residential purpose as there is industry already existing in the land since several years. The Petitioners came to know from the news item in "Amar Ujala", dated 18.3.1992 that a notification u/s 6 of the Act had also been issued. This notification has also been challenged on the ground that it was issued in a mechanical manner without having any report u/s 5A before the Governor and that there is no mention of application of Section 17(4) of the Act alongwith Section 4(1) in the notification dated 18.2.1991. It is further stated that in the Master Plan, a mention has been made that light industry already operating in the industrial area on Mathura-Vrindavan road will continue which shows that the area so marked can not be used for residential purpose and that the acquisition without amendment in the Master Plan following the procedure laid down under the Act will be illegal. It is further stated that the notifications under Sections 4 and 6 have been issued in colourable exercise of powers and also suffer from mala fide action and malice. The change of user, according to the Petitioners, is not permissible.

4. Affidavits have been exchanged. We have heard learned Counsel for the Petitioners Sri S.V. Goswami and learned Counsel for the Respondents Sri Dilip Gupta.

5. The first contention of the learned Counsel for Petitioners has been that since in the Master Plan the area was ear-marked for light industry, it could not be acquired for any other purpose except after amendment of the Master Plan and since the purpose of acquisition mentioned in the notification u/s 4 is for construction of house development in the aforesaid village, the proposed acquisition is invalid so also the notification. Annexure 3 to the counter-affidavit shows that vide notification dated 27.5.1992 amendment in the Master Plan was already permitted and the existing use for light industry shown in the Master Plan was changed to residential purpose. It was, however, contended that this amendment will not validate the notification inasmuch as u/s 13(4) of U.P. Urban Planning and Development Act, 1973, such amendment will have prospective operation inasmuch as the amendment came into force with effect from the date of first publication of the aforesaid notice. It was further contended that since the notification u/s 4 was issued on 18.2.1991, i.e., prior to amendment in the

Master Plan, the amendment in the Master Plan cannot cure the defect in the notification, it was also contended that the area which was ear-marked for the light industry could not be acquired for other purpose, namely, for housing development plan. It was further contended that in view of Section 14(2) of U.P. Urban Planning and Development Act, 1973 after coming into operation of any of the plan in any development area no development shall be undertaken or carried out or continued in that area unless such development is also in accordance with such plans. It was stressed that since the development is not in accordance with Master Plan originally published, notifications have been rendered invalid. However, after considering the aforesaid provisions and various authorities of the Apex Court, we do not find force in any of the above arguments.

6. In *Jai Narain and Others Vs. Union of India and Others*, , it was laid down that whatever may be user of the land under the Master Plan and the Zonal Development Plan, the State can always acquire the same for public purpose in accordance with the law of the land.

In view of this pronouncement it is clear that whatever may be user of the land shown in the Master Plan or purpose of the land shown in the Master Plan, the State can always acquire a land for public purpose In accordance with law. In the case before us, the acquisition is certainly for public purpose and as such, acquisition for housing development plan cannot be invalidated simply because user of land in the Master Plan was shown for light industry or small scale industry.

7. Similar view was taken by the Apex Court in *S.S. Darshan Vs. State of Karnataka and others*, , repelling the contention that the user of acquired land shown in the Master Plan being different, there cannot be a conversion of the user except in accordance with the provisions for making the change in the land use, it was held that it is not a case of change of user by the owner of the land but one of acquisition by the State under the provisions of the Land Acquisition Act, hence this argument has no merit.

8. In *State of Rajasthan and Ors. v. Jaipur Nagar Griha Nirman Sahakari Samitiyan Association and Ors.* 1996 (2) LAL 319, quoting with approval the cases of *S. S. Darshan v. State of Karnataka* and *Jai Narain v. Union of India* (supra), it was held that such change of purpose is permissible and the view that the green belt area shown in the Master Plan cannot legally be made subject-matter of acquisition under the Acquisition Act is not sustainable.

9. In *Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others*, , it was observed that : "But one fact that needs to be emphasized and always kept in mind is that all these are developmental activities to be undertaken subsequent to the acquisition after the land is available."

From the above pronouncement, it is further clear that the developmental activities to be undertaken can be considered subsequent to the acquisition after the land is available, i.e., after possession has been taken. It was further

observed that once public purpose has been specified by the Governor-in the notification and on specification obviously on presumptive satisfaction thereof the Governor issued the notification as required u/s 4(1); the absence of the specification and further elaboration of the development do not have the effect of rendering the satisfaction reached by the Governor illegal and the notification is not rendered void.

10. In *Roshanara Begum v. Union of India and Ors.* 1998 LAC 562, Delhi High Court has also taken a similar view. It was observed in this case that if the public purpose for which the land is sought to be acquired is still in existence, the court cannot then hold that absence of detailed schemes till the completion of the acquisition proceedings would vitiate the acquisition proceedings. Even if some amendment of the Master Plan would be needed to be carried out in the scheme for planned development with regard to the land which is subject-matter of these proceedings, it cannot be urged with any rationality that at first the Master Plan should be got amended and thereafter proceeding should be taken for acquiring the land. It further observed that where it is necessary to amend the Master Plan, the authorities can initiate the process even after the completion of acquisition proceedings.

Above case, therefore, makes it clear that amendment in the Master Plan is not a condition precedent for initiation of acquisition proceedings and the said amendment may be initiated even after completion of acquisition proceedings.

Consequently the contention of the learned Counsel for Petitioner Sri S.V. Goswami that the Master Plan should be first amended does not seem to have any force. The effect of prospective operation of amendment, therefore, requires no detailed discussion.

11. At this stage, it would be relevant to mention that the proviso to Section 7 of U.P. Urban Planning and Development Act makes it clear that nothing in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force. It follows that the provisions of U.P. Urban Planning and Development Act cannot override the provisions of the Land Acquisition Act.

12. In *Union of India and Others Vs. Jaswant Rai Kochhar and Others*, , the acquisition of land was for housing scheme. It was contended that the land cannot be used for commercial purpose, namely, for district centre, It was held that notification cannot be quashed on the ground of change of user.

13. It is obvious from Section 4 of the Land Acquisition Act that the land can be acquired for public purpose whenever it is needed or is likely to be needed for any public purpose. The land was and is needed for public purpose, namely, for carrying-out house development in the village. The learned Counsel for Respondents stated that the said purpose still exists and the land is to be acquired for that purpose and further proceedings could not be taken because of stay order granted by this Court. If the public purpose still subsists, the notification cannot be quashed on the ground that amendment in the Master Plan

was made subsequent to the notification u/s 4(1) of the Act.

14. The next contention has been that the objections of the Petitioners filed u/s 5A of the Act were not considered and decided by the Collector. It was further contended that additional objections were also not considered by the Collector. This contention has also no legs to stand. Annexure 5 to supplementary counter-affidavit is the detailed order of the Special Land Acquisition Officer, dated 7.1.1992 in which he had considered each and every objection and also gave opportunity of hearing to the Petitioners. Reference has also been made to the note of local inspection prepared by the Special Land Acquisition Officer. Annexure 4 to the supplementary counter-affidavit contains the inspection note dated 1.2.1991 recorded by the Special Land Acquisition Officer on 1.2.1991. Since all the objections were considered by the Special Land Acquisition Officer, effective compliance of Section 5A of the Act was done in the instant case.

15. The next contention has been that notices were not published in accordance with the prescribed procedure and that there was no publication of notice by beat of drums. After examining the record, we found that compliance of Section 4(1) of the Act was made. The only requirement of publication under this section is that the notification shall be published in the Official Gazette and in two daily newspapers circulating in that, locality of which atleast one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. It is not disputed that notification was published in the Official Gazette, Annexure 5 to the counter-affidavit can be referred. It is disputed in the writ petition that notice was published only in "Amar Ujala", but record shows that notices were published in daily "Amar Ujala" and daily "Aaj". These two newspapers are in regional language, namely, Hindi and have circulation in the locality. It was not necessary to publish notice in the local newspaper as urged by the learned Counsel for the Petitioners. The second part was thus also complied with. There is no requirement u/s 4 of the Act for publication of notice by beat of drums. The substance of notification was published in convenient places in the said locality. Annexure 3 to the supplementary counter-affidavit shows that substance of notification was published in the office of Collector, Special Land Acquisition Officer, Nagar Palika, Kotwali, Tehsil and acquired land. In this way effective compliance of Section 4 of the Act regarding publication of notice was made by the Collector.

16. Few cases were referred to by the learned Counsel for Petitioners in support of his contention that notification u/s 4 is invalid. The case of Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, , hardly helps the Petitioner in view of our above observation that effective compliance of Section 4 was made by the Collector.

17. The case of State of Mysore v. Abdul Rajjak AIR 1973 2361, is distinguishable on facts. In this case, notification was published in the Official Gazette but notice of the substance of the notification was not given at convenient places In the

concerned locality, hence such notification was considered to be invalid. In the case before us, publication was made in convenient places in the locality as indicated above.

18. On the same ground, the case of *M/s. Jhalani Iron Metal Works v. State* 1983 ALJ 491 , stands distinguished, as well as, the case of *Shrimati Daya Wati and Another Vs. Collector, Saharanpur and Another*, . On the other hand, on the basis of pronouncement in *A.K. Singhal v. Union of India* (supra), it is clear that the publication of substance of notification in the case before us does not suffer from any infirmity.

19. We do not find any force in the contention that the action of the Collector is arbitrary. We also do not find any force in the contention that the action of the Governor is colourable exercise of Jurisdiction or action based on non-application of mind. The allegation of malice against the Collector could not be established by the Petitioners.

20. We also do not find force in the contention that the declaration u/s 6 of the Act suffers from any legal defect or is the result of non-application of mind. The corrigendum-Annexure 1 to the counter-affidavit does not vitiate the declaration u/s 6 of the Act, nor it can be said that the satisfaction of the Governor was arbitrary or based on colourable exercise of Jurisdiction, nor it can be accepted that only prescribed form was signed by the competent authority. A similar controversy arose before a Division Bench of this Court in *Lalit Kumar Arora v. State of U.P. and Ors.* W.P. No. 13683 of 1992, decided on 28.11.1992 wherein similar declaration u/s 6 was held to be valid.

21. In view of the above discussions, we do not find any merit in this petition. The writ petition is accordingly dismissed. There will be no order as to cost. Stay order dated 27.3.1992 is vacated.