
(2008) 02 MP CK 0073
In the Madhya Pradesh High Court

Smt. Shyam

APPELLANT

Vs

Land Acquisition Officer and Others

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 50, 5A, 6

Citation : (2008) 3 MPHT 253 : (2008) 2 MPLJ 327

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Judgement

Viney Mittal, J.

This order shall dispose of two writ petitions being W.P. No. 1066/2002 and W.P. No. 1928/2002, as in both writ petitions a common challenge has been made to the acquisition of the land of the writ petitioners and similar arguments have been raised by their learned Counsel. For the sake of convenience, the facts are borrowed from W.P. No. 1066/2002.

Indore Development Authority (IDA) had passed a resolution on May 14, 1999, proposing to frame a scheme No. 135, comprising of a total area of 28.3 hectares in Village Tejpur Gadbad, Tehsil and District Indore. After the said declaration of its intention to prepare the scheme, the said declaration was published in the Government Gazette on June 18, 1993, in terms of Section 50(2) of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as "Adhiniyam"). Thereafter in terms of Section 50(3) of the Adhiniyam, the draft scheme was prepared on May 19, 1995, which was duly published in the Government Gazette on May 26, 1995, inviting the objections/suggestions from any person with respect to the said draft development scheme.

The aforesaid invitation for objections/suggestions by IDA led to a larger number of objections being filed by various persons, including the land owners (present petitioners also), whereby objections were raised against the inclusion of their land in the said scheme by such land owners. The objections filed by various land

owners were duly considered by the Competent Authority and vide an order dated February 22, 2001, the said objections were rejected. The aforesaid order dated February 22, 2001 passed u/s 50(4) of the Adhiniyam is available on record as Annexure R-4/6 filed with the reply of respondent No. 4. After the rejection of objections vide order Annexure R-4/6 and grant of requisite approval, the final scheme, being scheme No. 135, was published in the Government Gazette u/s 50(7) of the Adhiniyam on June 15, 2001.

It appears from the record that various land owners, including the present petitioners, challenged the aforesaid final scheme and rejection of their objections, by filing revision petitions before the Director, Town and Country Planning, u/s 51 of the Adhiniyam. Various revision petitions filed by the land owners, including the petitioners, have been rejected by the Revisional Authority vide an order dated April 27, 2002. The order of Revisional Authority is available on record as Annexure R-4/11 alongwith the reply filed by respondent No. 4.

It further appears that not even satisfied with the rejection of their objections, vide order dated February 22, 2001, and even rejection of their revision petitions vide Annexure R-4/11, the land owners still filed an appeal before the State Government. However, the said appeal filed by the land owners has been rejected by the State Government vide order dated August 4, 2002 (Annexure R-4/12), as not maintainable in law.

After the scheme had been finally approved, a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was issued on March 18, 2002, which was published in the Government Gazette on April 5, 2002, whereby the land of various land owners, including the present petitioners, was proposed to be acquired for implementation/execution of the scheme in question. While issuing the aforesaid notification, the urgency provisions of Section 17 of the Act were also invoked. In view of invoking of the aforesaid urgency provisions, right to file objections by various interested persons u/s 5A of the Act was dispensed with. Thereafter a declaration u/s 6 of the Act was issued on April 22, 2001, which was duly published in the Government Gazette on May 2, 2002. It is in these circumstances that the present writ petitions have been filed by the writ petitioners challenging the acquisition of their land for purposes of the scheme No. 135 framed by IDA.

The primary grievance raised by the petitioners in the present petitions is that urgency provisions u/s 17 of the Act had wrongly been invoked by the State Government, inasmuch as, according to the petitioners, there was no urgency involved in the matter. The petitioners have pleaded that because of invoking of the provisions of Section 17, a very valuable right available to the land owners u/s 5A of the Act has been taken away. The petitioners have pleaded that this was not only unjustified, but in fact was illegal. It has also been averred by the petitioners that the notification u/s 4 of the Act was wholly vague and did not contain the details of the lands proposed to be acquired. Additionally, it has been claimed that the land of the present petitioners comprised of constructed areas

and therefore, as per the policy framed by the State Government in the year 1985, no constructed area could have been acquired for the purposes of a development scheme. The petitioners have also vaguely raised a challenge to the non-existence of public-purpose in acquiring their land.

The claim made by the petitioners has been contested by the respondents. Separate replies have been filed by the State Government as well as IDA. The framing of the scheme, following the due procedure for its finalization, and acquisition of the land of the petitioners has been justified. It has been claimed that since the scheme had been formulated and a final notification had been issued on June 15, 2001, therefore, the land of various land owners, covered under the said scheme, was urgently required and therefore, the provisions of Section 17 of the Act had rightly been invoked. The respondents have also pleaded that since the lands of various land owners were required for execution/implementation of scheme No. 135, therefore, the existence of public purpose was apparent and could not have been challenged by the petitioners. The respondent-IDA has also maintained that the land owners had not even obtained any approval/sanction for raising the construction therefore any construction raised by them could not be taken to be legal in any manner.

I have heard Shri B.L. Pavecha, learned Senior Counsel for the petitioners, Shri Umesh Gajankush, learned Government Counsel for respondent Nos. 1 to 3 and Shri S.D. Bohra, learned Counsel appearing for respondent No. 4-IDA and with their assistance, have also gone through the record of the case.

Shri B.L. Pavecha, learned Senior Counsel for the petitioners, has vehemently argued that there was absolutely no justification with the State Government to have invoked the provisions of Section 17 of the Act, thereby taking away the valuable right of the land owners to file objections u/s 5A. The learned Senior Counsel has maintained that urgency provisions could be invoked by the acquisition authorities, only after keeping in view the facts and circumstances of a situation and according to the learned Senior Counsel since in the present case the urgency provisions had been invoked without application of mind, therefore, the entire acquisition proceedings were vitiated, having been resorted to without affording any opportunity to the land owners to file objections u/s 5A of the Act. Shri Pavecha has also argued that the notification u/s 4 of the Act, was wholly vague and no details of the acquired land had ever been indicated. The learned Senior Counsel maintains that the acquisition proceedings were liable to be set aside on this ground also. Lastly, it has been contended by the learned Senior Counsel that there was a construction raised by the petitioners and therefore, the said constructed area could not have been acquired by the State/IDA, since the same was contrary to the policy of the State Government issued on December 21, 1985.

All the aforesaid contentions raised on behalf of the petitioners, have been refuted by the learned Counsel for the respondents. It has been maintained by the learned Counsel that the provisions of Section 17 of the Act had rightly been

invoked, since the commencement for implementation of a Town Development Scheme had to take place within a time bound frame and the scheme itself was required to be completed within a specified time. It has also been argued by the learned Counsel for the respondents that the construction, claimed to have been raised by the land owners, had never been raised by them after obtaining the requisite permission from the Competent Authorities and therefore, being totally without any sanction/authority, the same was to be treated as illegal and could not be claimed to have been protected under any scheme of the State Government. The learned Counsel have also contended that, in any case, the land owners are entitled to get compensation for their entire land, including the superstructures, if any, in accordance with law and since the entire land of the present petitioners was required for implementation of scheme No. 135, therefore, the same could not be exempted/released.

I have duly considered the rival contentions raised by their learned Counsel.

The main grievance raised on behalf of the petitioners, by their learned Counsel, is against the invoking of the urgency provisions u/s 17 of the Act. The petitioners claim that on account of the said urgency provisions, their valuable right to file objections u/s 5A, against the acquisition of their land, had been taken away without any justification. However, in my considered view, the complaint made by the petitioners in this regard is wholly unjustified and without any basis, under the facts and circumstances of the case.

It has already been noticed above that after passing of a resolution dated May 14, 1993, declaring its intention to prepare a town development scheme u/s 50(1) of the Adhiniyam by IDA, it was proposed to include 28.3 hectares of land in Village Tejpur Gadbad. The said declaration of intention was duly published in the Government Gazette u/s 50(2) of the Adhiniyam on June 18, 1993. Objections were invited u/s 50(3) of the Adhiniyam, through a notice dated May 15, 1995, published in the Government Gazette on May 26, 1995. Objections were indeed filed by various land owners, including the present petitioners. The present petitioners raised all possible objections, which were available to them, in accordance with law, factually as well as legally, against inclusion of their land in the said scheme. The record shows that the petitioners had even raised a specific objection by claiming that they had already raised construction in the said land. All the aforesaid objections, filed by the present petitioners, were duly considered by the Competent Authority and were rejected vide an order dated February 22, 2001 (Annexure R-4/6). Thereafter the final scheme was duly published in the Government Gazette u/s 50(7) of the Adhiniyam on June 15, 2001. The present petitioners also challenged the aforesaid final scheme and rejection of their objections, by filing a revision petition u/s 51 of the Adhiniyam. The revision petition filed by the present petitioners, alongwith similar challenge raised by various land owners, was taken up for adjudication by the Revisional Authority and vide an order dated April 27, 2002 (Annexure R-4/11), the revision petitions were dismissed. A detailed order has been passed by the Revisional

Authority also. It is, thus, apparent that all possible objections, which were available to the petitioners, having been raised by them against the inclusion of their land/construction in the scheme, were dealt with in detail by the Competent Authority, as well as by the Revisional Authority. The said objections were not accepted. Therefore, it is wholly incorrect for the petitioners to suggest that their land has been taken away for the purposes of the scheme, having been acquired, without affording an opportunity to them to raise objections. Even if the right to file objections u/s 5A of the Land Acquisition Act had been taken away from the petitioners on account of invoking of the urgency provisions u/s 17 thereof, still the petitioners had already raised all the aforesaid objections u/s 50(3) of the Adhiniyam.

Although there is no dispute with proposition of law that the statutory right u/s 5A of Land Acquisition Act has been made available to any person interested, whose land has been notified u/s 4, proposing its acquisition, still it is apparent that since the aforesaid right to file objections had already been made available to the land owners under the statute (Adhiniyam, 1973) and the land owners had in fact availed of the said right, then in such a situation, when the said objections were duly considered and adjudicated by the Competent Authorities, it could not be claimed by the land owners that any prejudice has been caused to them in any manner, when a similar right to file objections u/s 5A of the Land Acquisition Act had not been granted. It is obvious that the aforesaid objection has been raised by the petitioners/land owners merely as a technical objection, to challenge the acquisition in question, liven during the course of arguments, on a specific query being put to the learned Senior Counsel, as to what additional objections could have been raised by the land owners u/s 5A, which were not available or had not been raised by them u/s 50(4) of the Adhiniyam, the learned Senior Counsel has not been able to point out any such further grounds/objections.

In these circumstances, it must be held that the petitioners having availed of their right to file objections under the provisions of Adhiniyam, the grant of any further right to raise objections u/s 5A of the Land Acquisition Act would have been a mere case of an empty formality for the petitioners and on account of the urgency provisions having been invoked, no prejudice, whatsoever, is shown to have been caused to them.

liven otherwise, I am satisfied that urgency provisions u/s 17 of the Act had been invoked by the Acquisition Authorities for a good justification. The scheme in question had attained finality when the final scheme was published u/s 50(7) of the Act on June 15, 2001. u/s 54 of the Adhiniyam, it is mandatorily required that if a Town and Country Development Authority (such as IDA) fails to commence implementation of the scheme within a period of two years or complete its implementation within a period of five years from the date of notification of the final scheme, then in such a situation, the scheme would stand lapsed. Thus, when notification u/s 4 of the Land Acquisition Act was issued on

April 5, 2002, a period of ten months had already expired. The Acquisition Authorities and the IDA had a deadline to meet u/s 54 of the Adhiniyam. Urgency in the matter was thus obvious. Consequently, provisions of Section 17 of the Act were rightly invoked under the facts and circumstances of the case. It is also apparent that immediately thereafter a declaration u/s 6 of the Act was issued on April 22, 2002. Therefore, it cannot be suggested on behalf of the petitioners that urgency provisions had been mechanically invoked by the State. The challenge raised by the petitioners on this account is wholly unjustified and is liable to be rejected.

Although an argument has been raised that the lands of the petitioners had been acquired without there being any public purpose, but it appears that the aforesaid argument has been raised merely as a vain attempt. The existence of public purpose is apparent and obvious. The lands of the petitioners were included in scheme No. 135 and the land was required for implementation thereof.

The only other ground which has been raised to challenge the acquisition is that the petitioners had raised construction on the acquired land and as per the policy of the year 1985 issued by the State Government, such a land could not be acquired. I have gone through the policy dated December 21, 1985 (Annexure P-15). The language of the said policy shows that it is in the nature of merely guidelines to the Acquisition Authorities and cannot be treated to be having any binding force. Under the provisions of the Land Acquisition Act, if and when, any property of a person is required for a public purpose, the same can be acquired. The owner, on such acquisition, is entitled to receive market value thereof, alongwith solatium and interest thereupon. The provisions of the Act do not differentiated between the vacant land and the constructed portion. What is essential is the existence of a public purpose. Once the public purpose is shown, the right to acquire becomes available to the State, on account of its eminent Sovereign Domain. Even otherwise, as maintained by the respondents, it has not been shown by the petitioners that the construction, if any, had been raised by them after obtaining the requisite approvals/sanctions from the Competent Authorities. It has not been shown that the agricultural land had been permitted to be diverted for construction. Thus, the legality of the construction itself is questionable.

Under these circumstances, no protection can be made available to the petitioners even on the aforesaid ground.