
(1956) 12 AHC CK 0007

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 181 of 1956

Sri Mutsaddi Lal and Others

APPELLANT

Vs

State Government UP and Others

RESPONDENT

Date of Decision : 19-12-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 4, 49, 49(1), 55
Land Clauses Consolidation Act, 1845 — Section 92

Citation : (1957) 27 AWR 856

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

Advocate : S.B. Johari, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Chaturvedi, J.—This is a petition under Article 226 of the Constitution.

2. The Petitioners are owners of plots Nos. 1498 to 1504 measuring more than three Bighas of land situate in the town of Modinagar, district Meerut. The plots are enclosed by a Kuchha boundary wall, and the Petitioners have a bungalow on some of the above plots and also a pucca well. The land is adjacent to the Grand Trunk Road. Proceedings for the acquisition of this land were first started in 1949 at the instance of a Co-Operative Development Union, and a notification u/s 4 of the Land Acquisition Act was issued. The Petitioners filed objections u/s 5A of that Act and the notification was withdrawn. The present land acquisition proceedings were started at the instance of the UP Roadways and a notification u/s 4 of the Act was issued on 28-7-1954. The, Petitioners filed objections again u/s 5A of the Act, and the Land Acquisition Officer was of the opinion that the acquisition of this land would prove very costly to the Government, though the land was quite suitable for the purpose for which it was being acquired, namely, the construction of a Roadways Bus Station. The Collector was of the opinion that the Petitioners' property would be ruined if the land was acquired by the

Government, and he recommended that the Bus Station be constructed on plot No. 1479 owned by the Government itself. The Government then made a reference to the Executive Engineer, and the Executive Engineer sent a report saying that the levelling of plot No. 1479 would cost about Rs. 7,200. On this report being received, the Government appears to have decided to acquire the land in dispute and issued a notification u/s 6 of the Act on 27-8-1955. The Petitioners then submitted a representation to the Minister for Transport on 3-10-1955, but the representation was not accepted, and the present petition was filed on 31-1-1956 praying for the issue of a writ of certiorari quashing the notification issued u/s 6 of the Act and for the issue of a writ of mandamus commanding the Respondents to refrain from taking any further steps whatsoever towards the acquisition of the land in dispute.

3. The learned Counsel for the Petitioners has urged three points in support of his petition. His first submission is that the notifications issued under Sections 4 and 6 of the Land Acquisition Act were not valid, inasmuch as they did not specify the land which was to be acquired. The second submission is that the proceedings for the acquisition of the land were mala fide and were started at the instance of the Co-operative Development union which, after having failed in their attempt to have the land acquired, set up the Roadways department to do the same. Lastly, he has submitted that the provisions of Section 49 of the Land Acquisition Act are applicable to the facts of this case, and the Government could not acquire a part of the Petitioners' compound and were bound to acquire the entire property including the bungalow and the rest of the compound.

4. On behalf of the Respondents it has been averred in the counter-affidavit that the notifications issued under Sections 4 and 6 of the Act were valid notifications and fully complied with the provisions of those sections, and that the Collector had also notified at convenient places in the locality that the land sought to be acquired was the land in dispute. The allegation of the mala fides is strongly denied, and it is stated that this is the only land in the locality which is suitable for purposes of the Roadways Bus Station, and the Roadways department had acted bona fide in trying to acquire this land. It is then averred that only plot No. 1500 has been acquired, and the plot is situate in corner of the compound, and the acquisition of this plot would not, in any way, affect the value of the bungalow and the rest of the compound.

5. As regards the first point it is true that notifications issued under Sections 4 and 6 do not give the plot number or the boundaries of the land sought to be acquired, and the only description of the property given in the area, the village in which it is situate, the Pargana and the district. But a note is appended at the end of the notification saying that a plan of the land might be inspected in the office of the Collector, Meerut. Apart from these Gazette notifications, the Collector had notified in the locality that the Government intended to acquire plot No. 1500 having an area of 8 Biswas 6 Biswansi for the purpose of the construction of a Bus Station. The Petitioners did come to know that it was their

land which was sought to be acquired, and they filed objections u/s 5A of the Act, which were duly considered by the Land Acquisition Officer and then by the Collector of Meerut. Section 4 of the Act requires a notification to be published in the official Gazette, and the Collector to cause public notice of the substance of such notification to be given at convenient places in the locality. Both these requirements have been fulfilled. Nor can the Petitioners be said to have, in any way, been prejudiced by the omission to specify the land in the body of the notification itself.

6. u/s 6(2) of the Act, the declaration made by the Government is to be published in the official Gazette stating the district or other territorial division in which the land is situate, the purpose for which it is needed, its appropriate area, and the place where the plan, if prepared, may be inspected. The notification issued u/s 6 contains all these specifications and fulfills the requirements of Section 6(2). The above contention of the learned Counsel, therefore, has to be rejected.

7. The second contention of the acquisition being a mala fide one is equally without any substance. The Co-operative Development Department and the Roadways Department are quite independent of each other, and there is no reason to suppose that the Roadways department could, in any way, be influenced by the Co-operative Development department. The Roadways department appears to have been of the opinion that the land in dispute was best suited for their purpose, as plot No. 1479 is situate on a lower level and is likely to be filled up with water during the rainy season, and raising the level of that plot was an expensive business. This opinion of theirs is supported by the report of the Executive Engineer, who said that the filling up by earth of Plot No. 1479 was likely to cost more than Rs. 7,000. In any case, the acquisition has been made by the Government and not by any officer of the Roadways Department. The report of the Collector was in favour of the Petitioners but as the filling up of plot No. 1479 was likely to prove costly, it decided to acquire the land in dispute. For the State Government it has not even been suggested that it ordered acquisition of this land for any improper reason. I think the action of the officers of the Roadways department in trying to acquire this land is also above suspicion and not based on any mala fide ground.

8. The last point urged by the learned Counsel appears to have force. His contention is that the acquisition of a part of the compound would ruin the entire property and the arrival and departure of Roadways buses with all the attendant commotion and bustle would make residence in the bungalow impossible. Sub-section (1) of Section 49 of the Act is important and it is as follows:

49(1) - The provisions of this Act, shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be acquired:

Provided that the owner may, at any time before the Collector has made his

award u/s 11 by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

9. A reading of the above Sub-section would show that the acquisition only of any part of a house, manufactory or other building is prohibited unless the owner withdraws his desire that the whole of the house, manufactory or building be acquired. The question that arises is whether the acquisition of a part of the land in the compound of a house can be said to be the acquisition of a part of the house itself. That, I think, would depend upon the facts of each case. If the land is such that its use is required for purposes of using the house, it would be a part of the house. If the use of the land is not required for using the house itself, it is difficult to say that the land is a part of the house. But the Legislature has gone further and, (according to the 2nd proviso and the last para of Sub-section (1) of Section 49), in deciding Whether the land forms part of the house regard must be had to the fact whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house. This question is to be decided by the court which, in the Act, means the principal civil court of original jurisdiction, unless the State Government has appointed some particular Judicial Officer to perform the functions of the court under the Act. Under the 2nd proviso, if a question arises whether the land proposed to be acquired does or does not form part of a house, the Collector is bound to refer the matter for determination to the court and is not to take possession of the land till after the question has been determined by the court. As the matter is to be decided by the court, I would not like to say anything on the question whether the land in dispute should be taken to form part of the Petitioners' bungalow, because that is a matter to be determined by a subordinate court on reference by the Collector. I am only concerned with the question whether it can possibly be said that the land in dispute is a part of the Petitioners' bungalow standing in the same compound, and a reading of the section, I think, makes it clear that it is possible to hold that the land in a compound is part of the house standing in the same compound.

10. I would briefly refer to some of the decided cases. The first case cited before me is the case of *Khairati Lal v. The Secretary of State* ILR 11 All. 278. This case was decided under Land Acquisition Act No. X of 1894, Section 55 of which was word for word the same as the 1st para of Section 49(1), quoted above. The two following provisos and the last para did not then exist. But the learned Judges, on the analogy of some English cases decided u/s 92 of the Land Clauses

Consolidation Act, held the section to be applicable to the case of the acquisition of some outhouses attached to the dwelling house and a part of the compound in which the dwelling house stood. It was accordingly ordered that the Government was bound to acquire the whole of the property, as the owner had expressed his desire that the whole of it should be acquired. The principle which the learned Judges accepted was that, if by conveying the house by a deed the compound would also be deemed to have been transferred, the compound should be considered to be a part of the house.

11. But in a latter case of this Court reported in *Nita Ram v. The Secretary of State for India* in Council ILR 30 Alld. 176 a more restricted meaning was given to the expression "part only of any house", and it was held that the land, which was not reasonably required for the full and unimpaired use of the house, manufactory or building, could not be considered as a part of the house, manufactory or building within the meaning of Section 49 of the present Land Acquisition Act. It was further held that the question whether the land was so reasonably required was a question of fact depending upon the particular circumstances of each case. This decision is binding upon me, and no other decision of this Court taking a different view has been brought to my notice.

12. The Madras High Court in the case of *Venkataraman Naidu v. Collector of Godawari* ILR 27 Mad. 350 held that where the Government sought to acquire any portion of a block of buildings, which was structurally connected with the main block, the onus was on the Government to show that the portion sought to be acquired was not reasonably required for the full and unimpaired use of the house. The facts of that case were different from the facts of the instant case, and the question with which the learned Judges were mainly concerned was the question of onus of proof on the facts of that case.

13. In the case before me, the Petitioners did write to the Land Acquisition Officer, Meerut, on 6-9-1954 that, if the Government was keen to acquire the land in dispute, it must acquire the entire land of the objectors together with all the constructions standing on any part of it. It is thus clear that the owners desired that the whole of their properties should be acquired, and the question contemplated in the 2nd proviso to Section 49 had arisen. This being the position the Collector was bound to refer the matter to the court for the determination of this question. Till this question has been decided, the Collector is prohibited under the 2nd proviso from taking possession of the land. In the petition it is prayed that a writ of mandamus may issue commanding the Respondents to refrain from taking any steps towards the acquisition of the land in dispute. I think the Petitioners are not entitled to a writ in the above words but are entitled to a modified order.

14. Consequently I allow this petition and direct that a writ of mandamus shall issue to the Collector of Meerut (third Respondent) directing him not to take possession of the land in dispute until after the question whether the land forms part of the Petitioners' bungalow has been determined by the court on a

reference made by the Collector.

15. As the petition has succeeded only in part, I direct the parties to bear their own costs.