

(1968) 07 AHC CK 0005

In the Allahabad High Court

Case No : Special Appeal No. 39 of 1967

State of U.P. and Another

APPELLANT

Vs

Sure and Others

RESPONDENT

Date of Decision : 30-07-1968

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(1A), 17(2), 17(4), 4(1)

Citation : AIR 1969 All 245 : (1968) 38 AWR 554

Hon'ble Judges : Rajeshwari Prasad, J;B.D. Gupta, J;A.K. Kirty, J

Bench : Full Bench

Advocate : S.N. Upadhaya, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rajeshwari Prasad, J.—As a result of the direction given by Division Bench, this special appeal has been referred for decision to a Full Bench.

2. The material facts leading up to the special appeal are these.

3. A notification dated February 11, 1963, was published in the U. P. Gazette dated February 16, 1963 u/s 4(1) of the Land Acquisition Act, notifying that the land mentioned in the schedule was needed for a public purpose. A number of plots were mentioned in the schedule which are situate in village Gursarai, Fergana Garoth, district Jhansi. Some of these plots belonged to the respondent Shri Surey and the other respondents. The purpose for which acquisition was made as disclosed in the notification was for establishing Irrigation Demonstration-cum-Research Farm. This was followed up by another notification dated February 25, 1963, u/s 17(4) of the Land Acquisition Act (hereinafter called "the Act"), The last notification runs as hereunder:--

"In continuation of notification No. H6100/ XXII-B dated February 11, 1963, the Governor of Uttar Pradesh, being of opinion that the provisions of Sub-sections (1) and (1-A) of Section 17 of the Land Acquisition Act, 1894 (No. 1 of 1894),

are applicable to the land, is pleased, under Sub-section (4) of the said section, to direct that the provisions of Section 5-A of the said Act shall not apply in the case of the land mentioned in the Schedule."

Thereafter, notification u/s 6 together with a notification u/s 17(1) and (1-A) was issued on April 10, 1963. This notification gave direction to the Collector, Jhansi, to take possession of land though no award u/s 11 had been made.

4. The respondents filed a petition under Article 226 of the Constitution challenging the notification made u/s 17(4) and the notification made u/s 6 read with Section 17(1) and (1-A) of the Act.

5. The main ground on which the petitioner-respondents relied was that the notification made u/s 17(4) was illegal inasmuch as no such notification could be issued in respect of land to which the provisions of Sub-section (1-A) of Section 17 applied.

6. The learned Single Judge who heard the writ petition referred to the decision of the Supreme Court in Sarju Prasad Saha Vs. The State of U.P. and Others, and came to the conclusion that the notification issued u/s 17(4) of the Act dated February 25, 1963, and the notification issued under Sections 6 and 17(1) and (1-A) of the Act were illegal. The writ petition was allowed and the aforesaid notifications were quashed.

7. Against the order of the learned Single Judge, State of Uttar Pradesh along with the Land Acquisition Officer, Jhansi, filed the instant special appeal.

8. When the special appeal came up for hearing before a Division Bench of this Court, Mr. S. Section Verma, learned counsel appearing for the petitioner-respondents, urged that he wanted to support the order of the learned Single Judge on a fresh ground. According to him, unless a notification had been previously issued u/s 17(1) of the Act, no notification u/s 17(4) of the Act could be issued and for that reason also, the notification made u/s 17(4) was illegal.

9. While giving consideration to the fresh ground urged by Mr. Verma, the Division Bench observed that it found some difficulty in following the reasoning given by another Division Bench of this Court in the case of Sheikh Ghulam Maula Vs. State of U.P. and Another, . In this view of the matter, the Division Bench proceeded to refer the special appeal for decision to a Full Bench. On account of the above circumstance, the ground on which the learned Single Judge had quashed the notifications could not come up for consideration, on merits, before the Division Bench.

10. Before us, Mr. Verma urged that apart from the fresh ground that he had proposed to urge with a view to support the order of the learned Single Judge, the order of the learned Single Judge was perfectly correct even on the ground which found favour with the learned Single Judge. We, therefore, considered it appropriate to decide whether the view taken by the learned Single Judge was correct or not before proceeding to hear the counsel for the respondents on the

proposed fresh ground in support of the order of the learned Single Judge. In case the view taken by the learned Single Judge was found by us to be correct, we would not be called upon to consider the correctness of the new ground proposed by the learned counsel for the respondents for the purpose of maintaining the order of the learned Single Judge.

11. After hearing the learned counsel for the parties, we have arrived at the conclusion that the view taken by the learned Single Judge is perfectly correct and the order of the learned Single Judge, therefore, must be maintained.

12. It may be recalled that Clause (1-A) was added to Section 17 by the U.P. Amending Act, 1954, and it reads as follows:--

"The power to take possession under Subsection (1) may also be exercised in the case of other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development."

Though such a provision was added in Section 17, no amendment was made in Section 17(4) and the words "or Sub-section (1-A)" were not inserted between the words "Sub-section (1)" and "or Sub-section (2)". This being so, the language of Section 17(4) indicates that a notification under that Sub-section could be made only in those cases to which Sub-sections (1) and (2) of Section 17 of the Act were applicable.

13. In the case of Sarju Prasad Sahu Vs. The State of Uttar Pradesh and Others, a Division Bench of this Court took the view that as the purpose behind the addition of Sub-section (1-A) could have been achieved by suitably amending Sub-section (1) itself, the effect of the addition was that the power to be added by it is to be included in the power conferred by Sub-section (1). It was observed that though the form of the amendment was to add a new section, the real effect of the amendment was only to add a few words in the old Sub-section (1), i. e., to increase its scope in one respect, and that, consequently, it was not necessary to add anything in Subsection (4). On that reasoning, it was held that the power under Sub-section (4) of Section 17 of the Act could also be exercised in respect of a case governed by Sub-section (1-A) of Section 17 of the Act.

14. Later on another Division Bench of this Court in the case of Sheikh Ghulam Maula Vs. State of U.P. and Another, found it difficult to agree with the view taken by the Division Bench in the case of Sarju Prasad Sahu Vs. The State of Uttar Pradesh and Others, . The case of Sheikh Ghulam Maula Vs. State of U.P. and Another, however, was ultimately decided on other grounds.

15. The case of Sarju Prasad Sahu Vs. The State of Uttar Pradesh and Others, was, however, taken in appeal to the Supreme Court and the decision of the Supreme Court is reported in Sarju Prasad Saha Vs. The State of U.P. and Others, . It is that decision on which the learned Single Judge placed reliance in this case and took the view that he did. The decision of the Division Bench of this Court in that case was set aside and the appeal was allowed by the Supreme

Court and the notification issued u/s 17(4) as well as notification issued u/s 6 in that case were set aside. The view taken by the Supreme Court was that the power exercisable in case of urgency to take possession of land only for a public purpose before an award is made has been extended by U. P. Legislature to cases where the land is acquired for or in connection with the sanitary improvement of any kind or planned development; the Legislature has, however, not authorised the Government to direct that the provisions of Section 5-A shall not apply to acquisition of land other than waste or arable land. Reference was made to an earlier decision of the Supreme Court in the case of Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, . In the case of Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, it was held that Section 17(1) and Section 17(4) are independent of each other in the sense that an order under the former one does not necessarily require an order under the latter. Similarly, Section 17(1-A) must be independent of Section 17(4) and an order u/s 17(1-A) would not necessarily mean that an order u/s 17(4) must be passed. In that case, it was further observed that if the Legislature intended that provision of Sub-section (4) should also apply to a case falling under Subsection (1-A) it has failed to carry out that intention. Sub-section (1-A) has been added as an independent Sub-section and no amendment has been made either in Subsection (1) or Sub-section (4) nor has any separate provision been made for applying Sub-section (4) to a case falling under Subsection (1-A) and so Sub-section (4) cannot be applied to Sub-section (1-A).

16. In view of the above decision of the Supreme Court, it must be held that the order passed by the learned Single Judge is perfectly correct.

17. The learned Standing Counsel urged that it has been conceded by the petitioner-respondents that the entire area with regard to which petition under Article 226 of the Constitution has been filed was arable land inasmuch as it was under cultivation at the time of the notification. That being so, it has been further urged that the mention of Sub-section (1-A) in the notification was the result of inadvertence and mistake and that it should be ignored for the purpose of holding the validity of the notification made u/s 17(4) of the Act. It has, however, not been disputed by the learned Standing Counsel that the impugned notifications were made not only in respect of the area which is owned by the petitioners but also in respect of land which was held by persons other than petitioners. The learned Standing Counsel, however, conceded that there was no material on the record to indicate the nature of the land held by persons other than petitioners which was the subject-matter of the impugned notifications on the date of the notification, though, at present, the entire area notified has been put under cultivation. It is, however, clear from the notifications themselves that the Governor after applying his mind was of the opinion that some part of the area with regard to which the notifications were proposed to be issued, was land other than waste or arable land it was for that reason that mention of Sub-section (1-A) was made in the notification. In view of the contents of the notifications, we must assume that, at least a portion of the land covered by the

notification was land other than waste or arable land to which Sub-section (1-A) applied. The case that mention of Sub-section (1-A) was made by inadvertence or mistake had never been taken on behalf of the State in the counter-affidavit filed in this case.

18. The learned Standing Counsel then requested us to grant him a fresh opportunity to adduce evidence and materials to show that the entire area covered by the notifications was waste and arable land. As we find that no such case was put forth on behalf of the State, we do not consider it appropriate to afford a fresh opportunity to the appellants in this case.

19. In the view we have taken, there is no occasion for entering into the merits of the fresh ground which had been proposed by the learned counsel for the respondents.

20. The special appeal is dismissed but under the circumstances of the case, we direct that the parties will bear their own costs of the appeal. The stay order is vacated.