
(1999) 09 AHC CK 0193
In the Allahabad High Court
Case No : C.M.W.P. No. 462 of 1983

Surendra Singh and others	Vs	APPELLANT
State of Uttar Pradesh and others		RESPONDENT

Date of Decision : 13-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 17, 17(1), 17(2), 17(4)

Citation : (1999) 4 AWC 3117 : (1999) AWC 3117

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : V.P. Goel, Birendra Dikshit, Navin Sinha, Atul Mehra and Arun Kumar Singh, for the Appellant; S.C. and H.R. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—The petitioners, who are brothers, have come up with a prayer to quash the Notifications published under Sections 4 and 6 of the Land Acquisition Act as contained in Annexures-1 and 2 to the writ petition by filing it on 10.1.1983. This writ petition was admitted on the very next day, i.e., on 11.1.1983 and notices were issued directing that in the meantime the petitioners shall not be dispossessed from the land in dispute detailed in Paragraph Nos. 1 and 2 of the writ petition.

2. The grounds taken by them are that the provisions of Section 17 of the Act were incorrectly invoked; that there was neither any urgency nor was any reasonable ground for dispensing with the inviting of objections u/s 5A of Act ; that there was no material before the State on the basis of which the Governor could form an opinion that the lands in question were required urgently for constructing Ganj-Distributory ; that there has been a discrepancy between the two Notifications in question ; that under the U. P. Rural Development (Requisition of Land) Act, 1958 the land was earlier requisitioned which was challenged before this Court in Writ Petition No. 1414 of 1982 in which the

operation of the Notification of requisition was stayed ; and that on plot No. 182 of village Sultanpur, they have constructed Samadhi as per the directions of the Will on death of their father.

3. The affidavit attached with the writ petition discloses that only the statements made in Paragraphs 4 to 7 of the writ petition are based on the information derived from a perusal of the relevant papers on record. Those paragraphs read thus :

"4. That during the pendency of the aforesaid writ petition before this Hon''ble Court, the State of U.P. by notification No, 990-I.L. A./Bijnor-576-81 dated 20th May. 1982 (published in U.P. Government Gazette dated 4th December, 1982) in exercise of power u/s 4 of the Act read with Section 17 of the Act notified that the disputed land was needed for public purpose for construction of Ganj-Distributary from Km. 15058 to Km. 16,900 in district Btjnor. The Government further expressed opinion that provisions of Section 17(1) of the Act were applicable to the disputed land. He considered land to be waste and arable and notified in notification that as land was urgently needed it was necessary to eliminate the delay likely to be caused by an inquiry u/s 5A of the said Act and directed in exercised of power u/s 17(4) of the Act that provisions of Section 5 of the said Act shall not apply. True copy of the aforesaid extract of notification u/s 4 of the Act dated 20th May, 1982 published in the U. P. Gazette dated 4th December. 1982 at P. 4196 is attached herewith and marked as Annexure 1 to this petition.

5. That then on 10.6.1982 the State of U.P. issued declaration u/s 6 of the Act which was published in U.P. Government Gazette dated 4th December. 1982 at page 4197 as notification No. 900-I.L.A./BiJnor to take possession on the expiration of fifteen days from the publication of notice mentioned in Section 9(i) of the Act even no award u/s 11 was made. A true copy of the aforesaid notification dated 10.6.1982 is attached herewith and marked as Annexure-II to this petition.

6. That, there was no urgency in the case. This fact is apparent. The Government Issued notification u/s 4 of the Act (Annexure-I) on 20.5.1982 and made declaration u/s 6 of the Act on 10.6.1982 and both the notification were got published in U. P. Government Gazette dated 4th December, 1982 at pages 4196 and 4197 which is self evident that there was no urgency so as to dispense with the enquiry and hearing contemplated u/s 5A of the Act.

7. That another fact relevant to, shows that there is no urgency is that the State Government started proceeding under requisition Act and revision proceeding have been stayed by this Hon''ble Court in Writ Petition No. 1414 of 1982. In view of this fact there was no necessity to invoke urgency clause when proceeding for obtaining possession were taken under requisition Act and stayed by the High Court."

4. The record discloses that on 28.4.1984, an application was filed for vacating

the interim stay order dated 11.1.1983 for the facts stated in the accompanying counter-affidavit, which vide order dated 22.5.84 was directed to be listed with previous papers but the said petition thereafter was never placed ; on account of the elevation of the learned counsel for the petitioners a notice was sent to them by registered post vide order dated 27.7.95 to engage another counsel and 11.9.95 was the date fixed in the notice but the case was put up by the office vide its note dated 5.4.99 and could be taken up today by us.

5. In regard to the statement made in Paragraph 6 of the writ petition, which was originally typed as Paragraph 8, and which was not initialed by the Oath Commissioner, the following facts have been stated in Paragraph 7 of the counter-affidavit :

"That the contents of Paragraph 8 of the writ petition are not admitted. In reply, it is stated that the Governor after examining the facts and circumstances of the case gave his consent to Section 5A. The minor channel was required to be constructed immediately, hence the powers u/s 17(2) of the Land Acquisition Act were exercised."

5.1. In regard to the statement made in Paragraph 7 of the writ petition, which was originally typed as Paragraph 9, and which, too, does not contain any initial of the Oath Commissioner, the following reply has been furnished in Paragraph 8 of the counter-affidavit :

"That the contents of Paragraph 9 of the writ petition are not admitted. In reply, it is stated that it is true that the stay order was passed by this Hon"ble Court on 11.1.83 but the possession had already been taken on 21.11.81. it is stated that the orders of this Hon"ble Court was ex parte and the same was obtained by the petitioner by concealing the material facts."

5.2. In other paragraphs of the counter-affidavit, it has been stated. inter alia, that it is absolutely incorrect to say that the petitioners constructed Samadhi on plot No. 182 according to the directions in the Will of their father on his death ; that the possession of the land in question was taken on 22.11.1981 under the Land Acquisition Act but on the basis of the stay order granted by this Hon"ble Court, the petitioners again took possession ; the inference drawn about the non-existence of the urgency is denied and the work had to be stopped owing to the stay order passed by this Hon"ble Court in the Writ Petition No. 1414 of 1982 filed against the order passed in requisition case ; and that the writ petition is wholly misconceived, without any merit and no ground has been made out for interference under Article 226 of the Constitution of India.

6. The only question, as urged by Sri Arun Kumar Singh, holding brief of Sri Navin Sinha, learned counsel appearing for the petitioners, and Sri H. R. Mtshra, learned standing counsel appearing on behalf of the respondents, is as to whether there were in fact materials before the State justifying invoking of emergent provisions?

7. In our view, this question has to be answered in favour of the respondents and against the petitioners. Attempt made for requisition of the lands in question for the purposes of constructing distributory to irrigate the lands obviously showed urgency and It cannot be said that there was no urgency. It has also been demonstrated by the respondents in their counter that in the earlier writ petition, the fact of taking possession of the State was suppressed by the petitioners, to which no rejoinder has been filed. Be that as it may, we are not at all impressed by the arguments that simply against the order of requisition a writ petition was filed, in which stay order was also granted, will mean that there was no urgency for constructing Ganj-distributory. In fact the Notifications under Sections 4 and 6 of the Act brought on the record by the petitioners, also show the nature of urgency required for invoking the provisions of Section 17 of the Act. We have no reason to doubt the correctness of the facts stated in the Notifications and the counter both.

7.1. Learned counsel for the petitioners falls to show us any discrepancy between the two Notifications so as to give us a handle to quash them.

7.2. The Will, referred to by the petitioners, have not been brought on the record. The question that the petitioners had in fact constructed Samadhi, besides being a question of fact, its alleged construction has not been proved by any valid material on the record. Significantly it has also not been mentioned by the petitioners as to when their father had died and when they had allegedly constructed the Samadhi.

8. Thus, we do not find any merit in this writ petition, which is dismissed. With the dismissal of this writ petition, the Interim order passed on 11.1.1983 stands evaporated and now there cannot be any impediment whatsoever in proceeding further concerning acquisition of the lands in question under the Act.

9. The office is directed to hand over a copy of this order to Sri H. R Mishra, learned standing counsel within one week for its Intimation to and further follow up action by the authority concerned.