
(1972) 11 AHC CK 0023
In the Allahabad High Court
Case No : Sp. A. No. 561 of 1967

The District Land Acquisition Officer Aligarh and others	APPELLANT
Vs	
Lala Ram Kishore Mital and others	RESPONDENT

Date of Decision : 13-11-1972

Acts Referred:

Land Acquisition Act, 1894 — Section 6(1), 6(2)

Citation : (1973) 43 AWR 67

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : V.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—This appeal is directed against the judgment of our brother G.C. Mathur, J., allowing writ petitions and restraining the Appellants from taking any further steps to acquire the land or taking its possession.

2. A notification u/s 4 of the Land Acquisition Act was published on April 19, 1949. It covered a large area of land including plots Nos. 2009 and 2010, having an area of 4 bighas and 4 biswas, which alone are now in dispute. The notification stated that the land was needed for a public purpose. The purpose for which the land was required was stated to be "For the construction of residential quarters for the members of Aligarh Co-operative Housing Society, Limited, Vishnupuri, Aligarh". On 6th November, 1951, the State Government entered into an agreement with the Aligarh Co-operative Housing Society Ltd., Vishnupuri, Aligarh. This agreement was published in the State Gazette of November 30, 1951. Under this agreement, the entire amount of compensation and other expenses in respect of the acquisition were to be paid by the Society.

The notification u/s 6 of the Act was also published on November 30, 1951. On 22nd January, 1964, the Land Acquisition Officer framed the award of compensation. Thereafter, the authorities issued notices u/s 9 of the Act for

taking possession. At this stage, the tenure-holders came to this Court by way of a writ petition.

3. Our brother, G.C. Mathur, J., held that the notification u/s 6 was invalid because, though the acquisition was for a company, as defined by the Land Acquisition Act, the notification stated that the land was needed for a public purpose. Since the compensation was to be paid entirely by the company, the declaration was in violation of Section 6(1) of the Act.

4. The Land Acquisition Act, 1894, is by Article 31(5) of the Constitution expressly exempted from the operation of Article 31 (2). Acquisition of land under the Land Acquisition Act need not hence be for a public purpose, as understood Under Article 31(2) of the, Constitution See *Lilavati Bai Vs. The State of Bombay*, , *Babu Barkya Thakur Vs. The State of Bombay and Others*, and *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, . Clause (f) of Section 3 of the Act defines the expression "public purpose" to include the provision of village-sites in districts in which the appropriate Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision. Section 6(1) of the Act requires the State Government to make a declaration whether the land is needed for a public purpose or for a company. Section 6(1) is subject to the provisions of Part 7 of the Act, Part 7 consists of Sections 38 to 44. Section 40 mentions the purpose for which land can be acquired for the benefit of a company. The purposes are:

(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company, or for the provision of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a company, which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) that such acquisition is needed for the construction of some Work and that such work is likely to prove useful to the public.

5. Clause (aa) was introduced in Section 40 by the Amending Act of 1962. Section 41 requires the appropriate Government to enter into an agreement with the company in regard to various matters mentioned in it. Reading these provisions, the Supreme Court in *Babu Barkya Thakur Vs. The State of Bombay and Others*, , held that though it may appear on the words of the Act contained in Part II, which contains the operative portion of the proceedings leading up to acquisition by the Collector, that acquisition for a company may or may not be for a public purpose, the provisions Government cannot permit bringing into operation the effective machinery of the Act unless it is satisfied as aforesaid, namely, that the purpose of acquisition is to enable the company to (sic) willing houses for workmen employed by it or for the provision of amenities (sic) connected with the company or that the land is needed for construction of some work of public utility. The Court then held:

These requirements indicate that the acquisition for a company also is in substance for a public purpose inasmuch as it cannot be seriously Contended that constructing dwelling houses and providing amenities for the benefit of the workmen employed by if and construction of some work of public utility do not serve a public purpose.

It was emphasised that the court had recognised in the case of *The State of Bombay Vs. Bhanji Munji and Another*, that providing accommodation to the homeless is a public purpose. The Court held that where the land was needed for the purposes of a company, it would amount to public purpose under Part VII.

6. In *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, , the Supreme Court reiterated its decision in *Barkaya Thakur*'s case and held that the purposes of public utility, referred to in Sections 40 and 41 of the Act, are akin to public purpose. Section 6 of the Act provides:

6(1) subject to the provisions of Part VII of this Act when the appropriate Government is satisfied after considering the report, if any made u/s 5A, Sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of Secretary to such Government or of some officer duly authorised to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the official Gazette and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

Under Section 6(1), the Government has to make the declaration that the land is needed for a public purpose or for a company. Section 6(2) requires that the declaration shall be published in the official Gazette and that the published declaration shall contain, inter alia, the purpose for which the land is needed. Section 6 does not prescribe any form for making the declaration of for the declaration as published. If the published declaration contains the information mentioned in Section 6(2), the notification satisfied the requirement of the law. If the notification states that the land is needed for a public purpose and also gives the information from which it can be understood that the actual purpose is to benefit a company, the notification ought, in our opinion, be equally valid; because, as seen above, acquisition for a company is also for a public purpose.

The second proviso to Section 6(1) says that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company. But Section 6(2) does not require this fact to be published in the notification.

7. Read as a whole, Section 6 does not make a water-right compartmentalization in respect of acquisitions for a company and for a public purpose. In this context, the notification published u/s 6(2) cannot be held invalid, if it states that the acquisition is for a public purpose and also gives information that the actual purpose is for the benefit of a company.

8. In the present case, the notification stated that the Governor is pleased to declare u/s 6 of the Act that he is satisfied that the land mentioned in the schedule is needed for a public purpose. In the schedule, after giving the details of the land, the notification stated:

For what purpose required : For the construction of residential quarters for the members of the Aligarh Cooperative Housing Society Ltd., Vishnupuri, Aligarh.

The notification indicates that the Governor was satisfied that the land was needed for a public purpose. It also stated the actual purpose. The mention of the Aligarh Cooperative Housing Society Ltd. shows that the beneficiary of the acquisition was a company. The notification conveys the information that the land is being acquired for the benefit of a company and that the Governor is satisfied that the purpose, for which the land is required, is a public purpose. Learned Counsel did not suggest that the actual purpose, for which the land was required, was not a public purpose. In our opinion, the notification does not contravene Section 6(1), because that Section does not require that the declaration that the land is needed for a public purpose cannot be made where the land is needed for a company. We find no invalidity in this notification.

9. This very notification dated 30th November, 1951 was challenged in another writ petition of Ram Swamp v. District Land Acquisition Officer, Aligarh. The writ petition was dismissed by Hon. Broome, J. He upheld the validity of the notification. An appeal was dismissed by a Division Bench. The matter was then taken to the Supreme Court. The Supreme Court's decision is reported as Ram Sarup Vs. The Land Acquisition Officer, Aligarh and Others, . The Supreme Court held that the decision in Shyam Behari and Others Vs. State of Madhya Pradesh and Others, was distinguishable and that on facts, the case was similar to the case of State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others, . Their Lordships of the Supreme Court held that "In the present case also, an agreement had been entered into and in view of the statements contained in the schedule in the notification, we have no manner of doubt that the acquisition was clearly being made for a company". Thus, even though the opening part of the notification mentioned that the land was needed for a public purpose, yet the statement, as to the purpose, for which the land was required, made in the schedule was taken

into consideration in order to see whether the land was needed for a company. This decision of the Supreme Court completely upholds the validity of the impugned notification u/s 6.

10. It was urged that the actual purpose mentioned in the notification referred to the construction of residential quarters for the members of the Cooperative Society. A registered cooperative society is an entity separate and distinct from its members and the purpose of the members is not the same thing as the purpose of the company. So the actual purpose mentioned does not show that the acquisition was for the purposes of the company. This submission stands negated by Jhandu Lal's case and also by *State of West Bengal v. P.N. Talukdar* (Supra). In this case, the notification u/s 6 stated, "whereas the Governor is satisfied that the land is needed for a public purpose...namely for the construction of staff-quarters, hostel building and playground of Ramkrishna Mission...." The Supreme Court held that this language showed that the land was needed for a company. It is true that the members of a cooperative society may notionally be separate identifies than the society itself. But that is not very material. The stated purpose shows that the land was required for members of the Society as such. Any one reading this statement will have no doubt in his mind that the land was needed for the purposes of a company.

11. It was urged that where the declaration of satisfaction made u/s 6(1) is in an unambiguous and unequivocal language, it is not permissible to enter into the question whether the satisfaction is otherwise. The statement Under Sub-section (2) cannot be used in such cases to ascertain what the satisfaction was. Section 6 does not require the declaration of satisfaction made u/s 6(1) to be published as such. Section 6(2) only requires the published notification to state the purpose for which the land is required. The publication of the statement of satisfaction not being a necessary ingredient, of the published notification, the publication of the satisfaction cannot, in our opinion render the notification invalid, if the notification otherwise indicates the purpose for Which the land is required. Where the land is required for a company the notification should state that purpose and if it does so, the notification will be valid. Moreover, this submission stands negated by the decision of the Supreme Court in *Ram Swarup*'s case mentioned above, where the statement in the schedule was taken into consideration to ascertain whether the satisfaction related to the acquisition for a company.

12. For the Respondents, reliance was placed upon the decision of *Shyam Behari v. State of Madhya Pradesh* (Supra). In that case, the notification stated the purpose, for which the land was needed, as "for the Pismire Refractory; and Work connected therewith." The Supreme Court held mat this phrase cannot be read either in substance or in law that the, acquisition of land was for a company, became a factory is something different from a company and may belong to a company or to Government or a local authority of even to an individual. In the present case, no such difficulty arises. The mention of the Cooperative Society"

leaves no room for doubt that the land was needed for the purposes of a company, as defined in the Land Acquisition Act.

13. Our attention was invited to a single Judge decision of this Court in *Dau Dayal v. State of U.P.* 1965 ALJ 1187. In our opinion, that decision does not lay down the law correctly.

14. As the learned Single Judge held that the notification u/s 6 was invalid, he did not consider the other points raised in the writ petition. It is hence necessary to send the case back.

15. In the result, the appeal succeeds and is allowed. The judgment of the learned Single Judge is set aside and it is held that the notification u/s 6 issued in the present case was valid. The case is sent back to the learned Single judge for decision of the retaining points in the cases. The parties would, however, bear their own costs.