

**(2009) 04 MP CK 0081**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 11274 of 2008**

Vijay Singh and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

**Date of Decision : 08-04-2009**

**Acts Referred:**

Companies Act, 1882 — Section 3(3)  
Constitution of India, 1950 — Article 226, 227  
Land Acquisition (Companies) Rules, 1963 — Rule 4  
Land Acquisition Act, 1894 — Section 16, 18, 23, 24, 28  
Madhya Pradesh Co-operative Societies Act, 1960 — Section 2, 2(2), 2(3), 3  
Madhya Pradesh Societies Registration Act, 1959 — Section 2

**Citation : (2009) 3 J.L.J. 70 : (2009) 4 M.P.L.J. 577**

**Hon'ble Judges : Sanjay Yadav, J**

**Bench : Single Bench**

**Advocate :** Hitendra Singh and Brindavan Tiwari, for the Appellant; Harish Agnihotri, Government Advocate, R.P. Agrawal and Abhijeet Dave, for the Respondent

**Final Decision : Dismissed**

## Judgement

Sanjay Yadav, J.

Challenge put forth in these bunch of petitions filed under Articles 226/227 of the Constitution of India is the acquisition of lands belonging to the respective Petitioners. The lands were acquired under the provisions of the Land Acquisition Act, 1894 and for the purpose of establishing mega Cement Plant by M/s. Bhilai J.P. Cement Ltd. The lands acquired are situated in village Sakariya and Birouhali of Tahsil Raghurajnagar and has been subjected to acquisition by virtue of notification u/s 4(1) dated 9.7.2008. Since the issue involves in these petitions being similar they were heard analogously and are disposed of by this common order.

The relevant facts briefly are that, for establishing a Mega Cement Plant at village Birouhali with the production capacity 2.2 million tones of cement per

year land admeasuring 235.59 acres was required. The Respondent Bhilai Jaypee Cement Ltd. purchased about 157.96 acres of land in village Birhouli and Sakariya from 64 individual land owners by registered sale-deeds executed on different dates between 7.8.2007 to 7.3.2008 and since the remaining land, i.e., about 72.77 acres could not be purchased because of unwillingness of the respective owners, therefore, the State Government at the instance of the Company, resorted to acquire the same under the Land Acquisition Act, 1894. Notifications were issued u/s 4(1) and 6 of the Act of 1894 and 28 persons from whom the land was sought to be acquired were served with a notice u/s 9 of the Act of 1894. It is at this stage, the Petitioners have approached this Court seeking quashment of the entire acquisition proceedings including the quashment of notification u/s 4(1) and 6 of the Act of 1894.

The quashment of the acquisition proceedings have been sought on four grounds, viz., (i) that the same is in violation to the provisions contained under Part VII of the Act of 1894 and Rule 4 of Land Acquisition (Companies) Rules, 1963; (ii) that the notification u/s 4 of the Act of 1894 did not specify the particular land to be acquired and thus violated the mandate of the Supreme Court in Hindustan Oil Mills Ltd. and Another Vs. Special Deputy Collector (Land Acquisition), ; (iii) that there is non-compliance of the provisions contained u/s 42 of the Act of 1894 which contemplate publication of an agreement with appropriate Government in on official gazette; (iv) that more land is being acquired than required. It is on these grounds the Petitioners seek quashment of the acquisition of their land.

The Respondents on their turn, while refuting the allegation that, the land is not acquired for the purpose likely to prove useful to the public; contends that the procedure laid down in Part VII of the Act of 1894 and Rule 4 of the Rules of 1963 was strictly adhered to, before resorting to proceed under Sections 4 and 6 of the Act.

To ascertain, as to whether proper procedure has been adhered to while acquiring the land in question, relevant it will be to note few provisions of the Act of 1894 and of the Rules of 1963.

Section 3(f) of the Act defines the expression "public purpose", as is applicable in the State of Madhya Pradesh, in following terms ;

(f) the expression "public purpose" includes the provision of land for agriculture or for residential, business or industrial purpose, or for any purpose incidental to any of these with a view to resettlement and rehabilitation of displaced persons". (Substituted in Section 3 for Clause (f) vide C.P. and Berar Act 20 of 1949, Section 3 and Sch. para 1 (w.e.f. 22.4.1949).

Section 4 makes a provision regarding publication of preliminary notification and powers of officers thereupon, it is extracted as under:

4. Publication of preliminary notification and powers of officers thereupon. -

(1) Whenever it appears to be appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification.

(2) Thereupon it shall be lawful for any officer, either, generally or specially authorized by such Government in this behalf, and for his servants and workmen,  
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to enter upon and survey and take levels of any land in such locality; to dig or bore in the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to make such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days" notice in writing of his intention to do so.

Section 6 provides for declaration regarding the public purpose for which the land is acquired. The same stipulates:

Declaration that land is required for a public purpose. - (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 a Secretary to such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) u/s 5A, Sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1),--

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984) shall be made after the expiry of three years from the date of publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of publication of the notification.

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

Explanation 1: In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued u/s 4, Sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2: Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

(2) Every declaration shall be published in the official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration 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 a manner hereinafter appearing.

Part VII of the Act of 1894 makes a provision for acquisition of land for companies and the expression "Company" u/s 3(3) means:

(e) the expression "Company" means a company registered under the Indian Companies Act, 1882 (6 of 1882), or under the (English) Companies Act, 1862 to 1890 or incorporated by an Act of Parliament of the United Kingdom or by an Indian Law, or a Royal Charter, or Letter Patent and includes a registered society within the meaning of Clause (b) of Section 2 of the Madhya Pradesh Societies Registration Act, 1959 (1 of 1960), and a society within the meaning of Clause (3) of Section 2 of the Madhya Pradesh Cooperative Societies Act, 1960 (1 of 1961).

(Vide Madhya Pradesh Act 43 of 1965, Section 2 (w.e.f. 21.12.1965).

In Section 3, in Clause (e), for the words, brackets, letter and figures "and a society within the meaning of Clause (z) of Section 2 of the Madhya Pradesh Cooperative Societies Act, 1960 (17 of 1961)", substitute the words, brackets, letter and figures "a society within the meaning of Clause (2) of Section 2 of the Madhya Pradesh Cooperative Societies Act, 1960 (No. 17 of 1961) and a corporation within the meaning of Clause (3) of Section 2 of the Madhya Pradesh Non-Trading Corporation Act, 1962 (No. 20 of 1962)" shall be substituted.

(Vide Madhya Pradesh Act 26 of 1973, Section 2 (w.e.f. 7.5.1973).

Section 39 requires previous consent of appropriate Government and execution of agreement. It stipulates:

39. Previous consent of appropriate Government and execution of agreement necessary. - The provisions of Sections 6 and 16 (both inclusive) and Sections 18 - 37 (both inclusive) shall not be put in force in order to acquire land for any company, under this part, unless with the previous consent of the appropriate Government, nor unless the Company shall have executed the agreement hereinafter mentioned.

Similarly, Section 40 contemplates previous enquiry into the facts enumerated therein before a consent is tendered. It provides for:

40. Previous enquiry. - (1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector u/s 5A, Sub-section (2), or by an enquiry held as hereinafter provided, -

(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.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, 1908 (5 of 1908) in the case of Civil Court.

Section 41 requires as execution of agreement with appropriate Government. It stipulates:

41. Agreement with appropriate Government. - If the appropriate Government is satisfied after considering the report, if any, of the Collector u/s 5A, Sub-section (2), or on the report of the officer making an inquiry u/s 40 that the proposed acquisition is for any of the purposes referred to in Clause (a) or Clause (aa) or Clause (b) of Sub-section (1) of Section 40, it shall require the company to enter into an agreement with the appropriate Government, providing to the satisfaction of the appropriate Government for the following matters, namely:

- (1) the payment to the appropriate Government of the cost of the acquisition;
- (2) the transfer, on such payment, of the land to the company;
- (3) the terms on which the land shall be held by the company;
- (4) Where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided;
- (4A) where the acquisition is for the construction of any 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, the time within which and the conditions on which, the building or work shall be constructed or executed; and
- (5) where the acquisition is for the construction of any other work the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.

Section 42 requires publication of such agreement in the official Gazette; it stipulates:

42. Publication of agreement. - Every such agreement shall, as soon as may be after its execution be published in the official Gazette, and thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

Section 44B stipulates:

44B. Land not to be acquired under this Part except for certain purpose for private companies other than Government companies. - Notwithstanding anything contained in the Act, no land shall be acquired under this Part, except for the purpose mentioned in Clause (a) of Sub-section (1) of Section 40, for a private company which is not a Government company.

Section 55 empowers the appropriate Government to frame rules in consistent with the Act. The Central Government in exercise of its power u/s 55 has framed rules, known as, the Land Acquisition (Companies) Rules, 1963, Rule 4 whereof stipulates:

4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings. - (1) Whenever a company makes an

application to the appropriate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely-

- (i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;
- (ii) that the company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;
- (iii) that the land proposed to be acquired is suitable for the purpose;
- (iv) that the area of land proposed to be acquired is not excessive;
- (v) that the company is in a position to utilize the land expeditiously; and
- (vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the company a reasonable opportunity to make any representation in this behalf, hold an inquiry into the matters referred to in Sub-rule (1) and while holding such enquiry he shall-

- (i) in any case where the land proposed to be acquired is agricultural land consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land;
- (ii) determine, having regard to the provisions of Section 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the company; and
- (iii) ascertain whether the company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation: For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average production productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under Sub-rule (2) the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by the Government to the Committee.

(4) No declaration shall be made by the appropriate Government u/s 6 of the Act unless-

- (i) the appropriate Government has consulted the committee and has considered the report submitted under this rule and the report, if any, submitted u/s 5A of

the Act; and

(ii) the agreement u/s 41 of the Act has been executed by the company.

Thus, in case of acquisition for a company there must exist previous consent of the appropriate Government, previous enquiry before the consent is accorded, execution of an agreement, publication of such agreement in the Government Gazette.

In the case of hand, as the record reveals, the State Government through its Additional Secretary, Department of Revenue vide its letter dated 27.12.2007 called upon the Collector, Satna to conduct an enquiry regarding the need for acquisition of 76.27 acres of land in compliance to Rule 4 of the Rules of 1963. A report in pursuance thereof was furnished on 1.3.2008, and the same was forwarded to the Principal Secretary, Government of Madhya Pradesh, Department of Revenue, the report also had with it the report by the Deputy Director, Kisan Kalyan Tatha Krishi Vikas Satna, tendering department's no objection for acquisition of 76.22 acres of land for Bhilai Jay Pee Cements, subject to, if the farmers have no objection. Thereafter a meeting of Land Acquisition Committee was held on 11.3.2008 and the State Government granted its consent for acquisition vide its letter dated 14.5.2009 on the following conditions:

1- vftZr dh xbZ futh Hkwfe dk okf?Zd O;iorZu dj daiuh }kjk ns; gksxkA

2- Hkwfe ft mi;ksx ds fy, vftZr dh tk jgh gS ogh mi;ksx daiuh }kjk fd;k tk,xkA

3- Hkwfe ij fuekZ.k dk;Z djr le; lkekU; turk ds fuLrku vkfn dk /;ku j[kk tk,xkA

4- daiuh ?bl vk?; dh djkukek ;k opuc}rk ds vuqlkj? ftu d`?dksa dh Hkwfe vf/kx`ghr dh tk jgh gS mu d`?dksa ds ifjokj ds de ls de ,d InL; dks daiuh esa vkn?Z iquokZl uhfr esa fn, x, funsZ?ksa ds vuq:I ukSdjh nsxhA

5- daiuh dks nh xbZ Hkwfe ;k mlds fdlh Hkkx vFkok ml ij fufeZr fdlh Hkh fuekZ.k vFkok Hkou vkfn dks cspus] ca/kd j[kus] nku nsus] iV~Vs ij nsus ;k vU; izdkj ls varfjr djus dk vf/kdkj ugha gksxkA ?/kkjk 44,?

6- ;fn daiuh dks nh xbZ Hkwfe @ Hkou mls fdlh Hkh Hkkx dks fo?; djrh gS rks Hkwfe vFkok ml ij fufeZr Hkou] bekjrsZa ?klu dks vius dCts esa ysus dk vf/kdkj gksxk vkSj daiuh dks fdlh izdkj dk eqvkok ns; ugha gksxkA

7- Hkwfe dks dsoy lrg dk gh mi;ksx fd;k tk,xkA vko";d fu.kZ; tsls Hkou fuekZ.k] uhao vkfn ds vfrfjDr [kqnkbZ ugha dh tk,xh rFkk ,slh [kqnkbZ eas izkIr [kfut ,oa xkSM+ [kfut ij fu;ekuqlkj jk;YVh dk Hkqxrku djuk gksxkA

8- ?klu dh iwokZuqefr ds fcuk Hkwfe ds mi;ksx ds Lo:I dks cnyk ugha tk,xkA

9- i;kZoj.k dh n`f"V ls iz;kZIr vko";d o` {kkjksiu fd;k tk,xkA

10- iznw?.k ugha fd;k tk,xkA bl laca/k esa lacaf/kr foHkkx ds vkns?ksa dk ikyu djuk gksxk rFkk muls ,oa iznw?.k fuokj.k eaMy ls vukif?k izek.ki= izkIr djuk

gksaxs fd i;kZoj.k] ty L=ksr ;k ok;q esa iznw?.k ugha fd;k tk,xkA

11- Hkwfe ds fdlh mi;ksx ;k ml ij fdlh fuekZ.k ds iwoZ lHkh vko";d vuqefra;ka vuqeksnu ,oa vukif;k;ka lacaf/kr ,oa LFkkuh; laLFkk dks tSlS uxj fuxe] uxj rFkk xzkeh.k fuos? foHkkx] dyDVj vkfn ls izkIr djuk gksxk rFkk ekLVj Iyky ,oa ik;kZoj.k laLFkk ds fu;eksa vkfn dk iw.kZ ikyu fd;k tk,xkA

12- ;fn dHkh Hkh mDr Hkwfe dk mi;ksx mDr iz;kstu ds fy, ugha gksrk gS rks ;k ckn esa dHkh can dj fn;k tkrk gS rks Hkwfe rFkk ml ij fufeZr Hkouksa] laif;k;ksa ds lFk ?klu esa fufgr gks tk,xh vkSj daiuh dks eqvкотk ns; ugha gksxkA

13- Hkwfe ;k mlds fdlh Hkkx ;k ml ij cus fdlh Hkou vkfn dks mDr mYysf[kr m;ksx ds vykok uk rks fdlh vU; O;fDr dks mi;ksx djus fn;k tk,xk vkSj uk gh iV~Vs ;k fdjk;s ij fn;k tk,xkA

14- Hkwfe ft iz;kstu gsrq nh xbZ gks mlls fHkUu iz;kstu gsrq mi;ksx fd, tkus ls vukf/kd`r dCtk ekudj Hkwfe ?klu esa fufgr dj yh tk,xhA

15- ?klu ds izfrfuf/k ;k dyDVj ;k mlds }kjk vf/kd`r izfrfuf/k dks Hkwfe ds lgh mi;ksx rFkk ?rksZ ds ikyu dh n`f"V ls dHkh Hkh Hkwfe fufeZr Hkou vkfn rFkk iflj ds fujh{k.k.djus dk vf/kdkj gksxkA

16- ekSds dh fLFkfr ;k LFkkuh;; vko";drkuqljk Hkw&vtZu dh dk;Zokgh ds nkSjku dyDVj }kjk yxkbZ vU; vko";d ?rsZaA

17- izpfyr fu;eksa ds varxZr vfxze jkf? daiuh ls ?klu ds [kkrs esa tek djus ds fu;ekuqljk dk;Zokgh dh tkosA

Subsequent thereof on 18.6.2008 an agreement was entered into between the State Government and the company, viz., Bhilai Jay Pee Cement Ltd. The execution of agreement being in consonance to the provisions contained u/s 39 and 41 of the Act of 1894, incorporated therein all the conditions on which the consent was accorded. Regarding its publication, the contention is raised that the agreement was entered on 18.6.2008 and because the interim orders in three writ petitions, the same could not be published in official gazette. Be that as it may, the fact remains that the agreement was entered into only after the enquiry held by the Collector in the manner provided under Statute. Thereafter the Respondent company deposited an amount of Rs. 1.50 crores on 26.6.2008 in context to the acquisition of 72.77 acres of private land. A notice u/s 4(1) of the Act of 1894 was thereafter issued on 30.6.2008 and published in the Government Gazette dated 4.7.2008 declaring the intention to acquire 22.448 hectares of land in village Birhouli and 7.00 hectares in village Sakaria in Tahsil Raghurajnagar indicating therein the public purpose for its acquisition, viz., establishment of Mega Cement Plant by M/s. Bhilai Jay Pee Cement Ltd. It was further indicated in the notice that the land plan can be seen in the office of Collector, Satna. Subsequently, a declaration u/s 6(1) of the Act that the land is required for public purpose was issued on 4.8.2008, which was published in M.P. Gazette Part I dated 8.8.2008.

These facts leave no iota of doubt that the acquisition of land in question was after following the procedure as prescribed under Part VII of the Act of 1894 and the Rules of 1963. The State Government having satisfied itself from the enquiry held by the Collector that, the land is required for the purpose useful for public, and the notification under Sections 4 and 6 having satisfied the conditions stipulated therein, no interference is called for in the procedure adopted in acquiring the land. The Petitioners, if are aggrieved of the quantum of compensation, would be at liberty to question the same by resorting to reference u/s 18 of the Act of 1894. However, in the present, no case is made out by the petitioners.

Consequently, the petitions are dismissed. No costs.