
(2010) 08 MP CK 0075

In the Madhya Pradesh High Court

Case No : Writ Petition No. 635 of 2009

Vineet Kabra and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

General Clauses Act, 1897 — Section 3(31)

Land Acquisition Act, 1894 — Section 17(1), 4, 4(1), 4(2), 6

Citation : (2010) ILR (MP) 2533

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Singh, J.—These three writ petitions are being disposed of by this common order as they are of similar nature and were heard together.

2. The Petitioners of Writ Petition No. 635/2009 are owners of agricultural lands in village Niwari, Tahsil Gadarwara, District Narsinghpur. Likewise, the Petitioners of other two writ petitions are owners of agricultural lands in village Paudi which is also in the same tahsil and district. They are aggrieved with the acquisition of their agricultural lands by the State Government under provisions of the Land Acquisition Act, 1894 (in short, "the Act"). They have, therefore, prayed for quashing of notification dated 3.1.2009 published u/s 4(1) of the Act in "See Times" newspaper and subsequent notification dated 30.1.2009 published under the same section in the official gazette. They have also prayed for quashing of declaration dated 12.2.2009 made u/s 6 of the Act.

3. Briefly stated the facts are that the State Government, in order to meet the shortage of power generation, decided to set up power plants with the collaboration of private sectors and signed Memorandum of Understanding (MOU) with several companies. Respondent BLA Power Private Limited (in short, "BLA Limited") is one such company. On 10.8.2007 BLA Limited also signed a MOU with the State Government. As per the MOU, BLA Limited has agreed to set up

140 MW Thermal Power Station at Gadarwara, District Narsinghpur. For this purpose BLA Limited has purchased lands by private negotiations and claiming requirement for more private lands, it approached the Collector, Narsinghpur, for acquisition under the provisions of the Act. The request was forwarded to the State Government which was allowed by order dated 10.9.2008. After receipt of permission from the State Government, BLA Limited deposited the entire cost of acquisition and asked for invocation of urgency clause provided u/s 17(1) of the Act. The Collector, by letter dated 10.10.2008 sought approval from the Commissioner, Jabalpur Division, to invoke Section 17(1) of the Act in order to expedite the process of acquisition. The Petitioners, on receiving information about the proposal of their lands being acquired, made a written objection dated 12.12.2008 to the Commissioner against the acquisition and prayed not to accord approval for invoking Section 17(1). The Petitioners had made the objection to the Commissioner because they were told by the office of Collector that the file for acquisition of their lands has been sent to the office of Commissioner. But the Commissioner by order dated 26.12.2008 accorded permission for the invocation of Section 17(1).

4. The Collector and ex-officio Deputy Secretary, Revenue Department, issued a notification dated 3.1.2009 u/s 4(1) of the Act in the "See Times" newspaper to the effect that the lands of village Niwari mentioned therein were required for acquisition. This notification was not published in any official gazette and the "See Times" has no circulation in the Narsinghpur District. The notification also suffered from inherent defects such as non-mentioning of public purpose and the authority for carrying out the purposes of Section 4(2) of the Act.

5. Aggrieved with the notification, the Petitioners of Writ Petition No. 635/2009 rushed to this Court and filed the writ petition on 16.1.2009. The Collector also realized about the inherent defects of the notification and decided to publish another notification.

6. On 30.1.2009, another notification u/s 4(1) of the Act was published in the official gazette. By this notification different private lands, including that of Petitioners, were notified for acquisition for the alleged public purpose of establishment of 140 MW Thermal Power Station. The notification also authorized Managing Director of BLA Limited to enter upon and survey the lands in the locality and to do all other acts required or permitted by Section 4 of the Act. It further directed that action u/s 17(1) of the Act shall be taken.

7. In Writ Petition No. 635/2009 this Court by an interim order dated 30.1.2009 directed that the parties shall maintain status quo.

8. On 12.2.2009 the Collector, however, made a declaration u/s 6 of the Act to the effect that State Government was satisfied that the lands specified in the schedule were required for public purpose i.e. for setting up 140 MW Thermal Power Station. The declaration also mentioned about the approval dated 26.12.2008 accorded by the Commissioner for invoking Section 17(1).

9. By an interim order dated 18.2.2009 passed in Writ Petition No. 1678/2009 this Court directed the parties to maintain status quo in respect of their lands and later by similar order dated 24.6.2009 passed in Writ Petition No. 5848/2009 directed the parties to maintain status quo in respect of their lands.

10. The Petitioners thereupon amended their writ petitions for challenging the validity of above mentioned notification dated 30.1.2009 u/s 4(1) and declaration dated 12.2.2009 made u/s 6 of the Act.

11. The main thrust of challenge by the respective learned Counsel for Petitioners is that acquisition is not for public purpose and the lands, in fact, are being acquired for a company in the guise of acquisition for a public purpose. According to them, the Government has not contributed even a single penny for acquisition and the entire amount of money has been provided by the BLA Limited for the payment of compensation. The learned Counsel have also argued that as the lands are being acquired for a company without complying with the provisions of Part VII of the Act, the acquisition stands vitiated. The learned Government Advocate, in reply, defended the acquisition proceedings by contending that the lands are being acquired for a public purpose essentially to overcome the shortage of power generation and after the declaration having been made u/s 6 of the Act, it becomes conclusive evidence that the lands are needed for public purpose. According to the learned Government Advocate, after the declaration is made u/s 6, this Court cannot go into the question that the lands are needed for other than public purpose i.e. for a company. The learned Senior Counsel, appearing for BLA Limited, has supported the arguments advanced by the learned Government Advocate. In addition, he has also argued that since the BLA Limited has deposited the amount of compensation with the Collector, which is now under the exclusive control of the Collector and managed by Land Acquisition Officer on his behalf, the requirements of second proviso to Section 6(1) of the Act stands satisfied. In support of his argument, the learned Senior Counsel has filed a letter dated 14.8.2010 of the Collector as Annexure MA 1 and placed reliance on the decision of Supreme Court in *Naihati Municipality and others Vs. Chinmoyee Mukherjee and others*,

12. The State Government as well as BLA Limited have admitted that the provisions of Part VII of the Act have not been complied with because the acquisition is not for a company but for a public purpose. They have also not relied upon the provisions of Part VII of the Act. The question, therefore, to be considered is whether the acquisition is for a public purpose or not.

13. There is no denial of the fact by the State Government that the entire cost of acquisition is being borne by the BLA Limited. It is also not the case of State Government that it has contributed even a single penny for the acquisition of Petitioners' lands. The acquisition, therefore, cannot be held for a public purpose. This view is fully supported by the decision of Supreme Court in *Pratibha Nema and Others Vs. State of M.P. and Others*, of which relevant para 22 is quoted below:

22. Thus the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an Industry in private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present State of law, that seems to be the real position.

(Emphasis supplied)

14. The Collector in his letter dated 14.8.2010 Annexure MA 1 has stated that the amount of compensation deposited by the BLA Limited is kept in account PD-28 of the treasury fund which is exclusively under his control and managed by the Land Acquisition Officer on his behalf. It is on the basis of this letter the learned senior counsel for BLA Limited has argued that requirement of second proviso to Section 6(1) of the Act stands satisfied because the amount of compensation is now a "fund controlled or managed by the local authority". This argument cannot be accepted. The term local authority is not defined in the Act. I, therefore, refer to Section 3(31) of the General Clauses Act 1897, which defines local authority as under:

3(31) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

This definition of local authority has been dealt and interpreted in detail by the Supreme Court in *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, . In this case, the Supreme Court has held that a proper and careful scrutiny of the language of Section 3(31) suggests that an authority, in order to be a local Authority, must be of like nature and character as a Municipal Committee, District Board or Body of Port Commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possessing one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. The Supreme Court has went on to add that the authorities must also have separate legal existence as corporate bodies and must not be a mere Governmental agencies but must be legally independent entities. According to the Supreme Court, the authorities must also function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. The Collector and the Land Acquisition Officer apparently do not fall into any of

the above categories and, therefore, they cannot be held to be a local authority.

15. In the case of Naihati Municipality (Supra), relied upon by the senior counsel, acquisition for land was made for the benefit of hawkers by the municipality which had no funds for the acquisition and, therefore, the hawkers' union deposited the cost of acquisition with the municipality. The Government imposed a condition that the said amount will be used only for the purpose of cost of acquisition and the hawkers had no right to withdraw the amount. On these facts, the Supreme Court held that the amount had become part of funds managed or controlled by the local authority i.e. the municipality and the second proviso to Section 6 was satisfied. The facts in the present case are entirely different to which the case of Naihati Municipality has no application.

16. The acquisition of Petitioners' lands cannot also be supported for the purpose of company because of the non-compliance of the provisions of Part VII of the Act which are mandatory (See *Devinder Singh v. State of Punjab* (2008) 1 SCC 728).

17. For these reasons, the acquisition proceedings as well as the declaration made u/s 6 of the Act are invalid. They are, therefore, quashed and the petitions are allowed but without any order as to costs.