
(1990) 05 AHC CK 0028
In the Allahabad High Court
Case No : C.M.W.P. No's. 3314 and 5541

Vinod Kumar and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 22-05-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1984 — Section 4, 4(1), 5

Citation : AIR 1990 All 219 : (1990) RD 34 : (1990) 2 UPLBEC 866

Hon'ble Judges : S.D. Agarwala, J;G.K. Mathur, J

Bench : Division Bench

Advocate : V.K. Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.D.Agarwala, J.—These are two petitions filed under Article 226 of the Constitution of India challenging the notification under Sec. 4(1) of the Land Acquisition Act (hereinafter referred to as the Act) dated 28/30th August, 1989. In both these petitions, the facts are similar and the same question of law is involved and, as such, both these petitions are being decided by a common judgment. The parties are also agreed that Writ Petition No. 3314 of 1990, Vinod Kumar v. State of U. P., may be taken as the leading case.

2. In Writ No. 3314 of 1990, the petitioners are the owners of plots Nos. 66,67,89 and 90, situate in village Gulistanpur, tahsil Dadri, district Ghaziabad. In Writ No. 5541 of 1990, the petitioners are the owners of plots Nos. 34, 35, 36, 37, 45, 48, 49, 63, 64 and 65, situate in the same village. The petitioners have also challenged the notification issued under S. 4 of the Act in respect of these plots only.

3. Writ Petition No. 3314 of 1990 was filed on 12th February 1990. Sri Sandip Mukerji accepted notice on behalf of the U. P. State Industrial Development Corporation, respondents Nos. 2 and 3, (hereinafter referred to as the

U.P.S.I.D.C.). Learned Standing Counsel as well as Sri Sandip Mukerje were granted time to file a counter-affidavit each and the petition was directed to be listed on 20th March, 1990. It was also made clear that, if necessary, the petition itself shall be disposed of on that date. On 20th March, 1990, no counter-affidavit was filed on behalf of the respondents. The learned Standing Counsel as well as the counsel for the U.P.S.I.D.C. were again granted three weeks' time to file a counter-affidavit and the petition was directed to be listed for admission on 30th April, 1990. In the meantime, in view of the urgency of the matter, an application was made for summoning of the record of the Land Acquisition Officer relating to the land in question so that the matter could be heard on 30th April, 1990. On this application, an order was passed directing the learned Standing Counsel to file a counter-affidavit within the time granted by this Court. It was further directed that the learned Standing Counsel shall produce the file of the Land Acquisition Officer relating to the land in question on 30th April, 1990. On 30th April, 1990, in spite of the time granted by this Court, no counter-affidavit was filed on behalf of any of the respondents. Consequently, on 30th April, 1990, another order was passed granting one more opportunity to the respondents to file the counter-affidavit and the petition was directed to be listed for hearing, as agreed to by the learned Counsel for the parties, on 11th May, 1990.

4. Similarly, in the other Writ Petition No. 5541 of 1990, time was granted for filing a counter-affidavit and the said petition was also to be taken up along with Writ No. 3314 of 1990.

No counter-affidavit has been filed on behalf of the State nor the record has been produced before us at the time of final hearing. Counter-affidavits have been filed on behalf of the U.P.S.I.D.C. to which rejoinder affidavits have also been filed.

5. We have heard the learned Counsel for the petitioners in both these petitions, learned Standing Counsel and Sri Sandip Mukerji, learned Counsel for the U.P.S.I.D.C.

6. The case of the petitioners is that the U.P.S.I.D.C. got acquired a big area of thousand of acres for establishing an industrial area in village Gulistanpur in 1981-82. It was again proposed by the U.P.S.I.D.C. to acquire additional land for industrial development. Before sending their proposal for acquisition, a High Powered Team of U.P.S.I.D.C. came to village Gulistanpur and inspected the adjacent site to the site already acquired in 1981-82, The petitioners, thereafter, who were the tenure-holders of the plots, mentioned above, personally met the authorities and filed objections to the effect that a large number of pucca constructions were already existing on their plots which consisted of two offices, 20 quarters and a running brick-kiln. The objection was to the effect that the land, which belonged to the petitioners, be not acquired.

7. On 30th May, 1985, a notification was issued under Sec. 4(1) of the Act. In the said notification, all the plots belonging to the petitioners were left out of the

notification as the petitioners' objection were accepted except plots Nos. 44 and 45. The petitioners' further case is that in pursuance of the notification dated 30th May, 1985, objections were invited under S. 5(I)(a) of the Act and the petitioners filed objections in regard to plots Nos. 44 and 45. After the petitioners were heard, another notification was issued under Sec. 4 of the Act on 31st March, 1986, and, thereafter, the area of plot No. 44 was corrected as 8 Biswas, which was sought to be acquired and plot No. 45 was deleted from acquisition. Thereafter, by virtue of the notification, about 498.375 acres of land was acquired after the notification was issued under S. 6 of the Act on 11th September, 1986. The ultimate effect was that the plots of the petitioners, which had buildings and brick-kiln, were exempted from acquisition after considering the objections filed by the petitioners.

8. After 1986, as mentioned above, again a notification dated 28th August, 1989, has been issued under S. 4(1) of the Act which has been published in the Official Gazette dated 30th August, 1989. By means of this notification, it is proposed to acquire the plots, mentioned in the notification which includes the plots of the petitioners. In this notification, S. 17(4) of the Act has been made applicable thereby directing that no enquiry under S. 5A of the Act shall be made. By means of this notification, two sets of plots were sought to be acquired; one was the set of 31.0313 acres (approximately 31 acres) and the other was 183.7812 acres (approximately 183 acres). There is no challenge so far as the second set of plots is concerned whose area is approximately 184 acres. The challenge is only in regard to the first set of plots whose total area is approximately 31 acres, but the petitioners have challenged the notification in regard to their plots only.

9. Learned Counsel for the petitioners has urged that the dispensation of the enquiry under Sec. 5A of the Act was wholly unjustified. There was no urgency at all and, consequently, the impugned notification issued by the State Government is liable to be set aside, as it has resulted in irreparable injury to the petitioners. It has been further urged that once the petitioners' plots had not been acquired, as their objections had been allowed, their plots could not have been made the subject-matter of acquisition without affording them an opportunity of being heard. It has also been urged that the notification is liable to be quashed on the ground that the mandatory requirement for giving of public notice has not been followed. It has also been urged that the land already acquired having remained unutilised, the action in acquiring the petitioners' land is, on the face of it, a colourable exercise of power. The petitioners have also urged other questions challenging the notification.

10. It is not necessary for us to go into all the contentions which have been raised on behalf of the petitioners, as we are of the opinion that the petition is liable to be allowed on the ground that the State Government has acted arbitrarily in dispensing with the enquiry under S. 5A of the Act in the facts and circumstances of this case.

11. In *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*,

the Hon''ble Supreme Court had an occasion to consider as to in what circumstances the summary enquiry under S. 5A of the Act can be dispensed with. It was held by the Supreme Court that it was open to the Court to examine as to whether the condition precedent for exercise of the power under S. 17(4) of the Act had been fulfilled or not. It further held that the officer or the authority concerned has to apply its mind on the question as to whether there is any urgency of such a nature that even the summary proceedings under Sec. 5A of the Act should be eliminated. It is not the just existence of the urgency, but the need to dispense with the enquiry under S. 5A of the Act has to be considered. This view taken by the Hon''ble Supreme Court was, subsequently, considered again by the Hon''ble Supreme Court in State of U.P. Vs. Smt. Pista Devi and Others, . In this case, after referring to the case of Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, , the Supreme Court took the view that the question whether there is any urgency or not and the question as to whether the enquiry under S. 5A of the Act can be eliminated or not depends upon the facts and circumstances of each case.

12. In Jai Gurudev Dharam Pracharak Sangh and Others Vs. State of U.P. and Others, a Division Bench of this Court had an occasion to interpret the provisions of S. 5A read with S. 17(4) of the Act. Hon. R. M. Sahai, J. delivering the judgment of the Court, relying upon the decision of the Hon''ble Supreme Court in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, , opined as under Jai Gurudev Dharam Pracharak Sangh and Others Vs. State of U.P. and Others, :

"Dispensing of procedure under Sec. 17 is no doubt in the discretion of the State Government. But on what material the opinion was formed and Government exercised this power can be examined by this Court to ascertain if the exercise of power was not arbitrary. But Rule of Law being edifice of our society action of public authority has to be in accordance with law. Legislature has no doubt empowered the executive to dispense with filing of objection if it was of opinion that the land was needed urgently. But use of word "urgently" itself furnishes guidelines for exercise of the power. Urgency according to dictionary means "immediate", "very important", that which requires immediate attention. From its meaning it is apparent that its applicability has to vary. What may be very important in one set of circumstances may not be so in another. For instance, delay in construction of road or canal as compared to allotment of land for Cinema or shopping complex may be more important and may require immediate attention. Acquiring of land for industrial development in a State or city is not only laudable objective but imperative for economic and social development. But the normal procedure of giving an individual his right to file objection should not be taken away merely because a decision has been taken to industrially develop a city. Invoking of urgency provision must precede existence of circumstances which require the State Government to take immediate action. If exercise of power under Sec. 17 is upheld only because a master plan had been prepared for a town or city even though there was no movement and nothing had been done

even on neighbouring land acquired earlier, it would amount to conferring blanket power on executive to dispense with cherished right of filing objection."

We entirely agree with the decision given by this Court in this case.

13. A similar view has been taken by another Division Bench of this Court in *Ajadul Bux and Others Vs. State of U.P. and Others*, of which one of us was a member as also in *Smt. Maheshwari Devi v. State of U. P.* 1987 All CJ 370 : 1988 All LJ 309 in which the judgment was delivered by Hon"ble K. J. Shetty, C.J. (as he then was).

14. In our opinion, it is well settled now that the valuable right given to a landowner to object against the acquisition under S. 5A of the Act can be taken away only in a genuine case of urgency. The power to issue a direction under S. 17(4) of the Act must be exercised only in a genuine case of urgency where it will not be in public interest to invite and consider objections under Sec. 5A of the Act. If there is no urgency and The making of a declaration under Sec. 17(4) of the Act was merely a colourable exercise of power then the said exercise of power is liable to be struck down. We have, consequently, to examine as to whether in the facts and circumstances of this case, the power of invoking S. 17(4) of the Act has been exercised by the State Government in accordance with law or it is wholly arbitrary.

15. In the impugned notification under Sec. 4 of the Land Acquisition Act, the purpose for which the land is sought to be acquired is "planned industrial development". Section 17(1-A) has been inserted in S. 17 after sub-section (1) by the Land Acquisition (U. P. Amendment) Act XXII of 1954, which reads as under:

"17(1-A). The power to take possession under sub-section (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."

16. The effect of the abovementioned amendment is that possession can be taken under sub-section (1) of S. 17 of the Land Acquisition Act even in a case of land other than waste or arable land where the land is sought to be acquired in connection with sanitary improvement of any kind or planned development, but by this amendment, it does not confer the right on the State Government to take possession under sub-section (1) of S. 17 of the Land Acquisition Act even in a case where there is no urgency. Planned development can be in the nature of a crash programme for which land is urgently required or it may be merely a case of development in the normal circumstances.

17. In the present case, no material has been placed by the State Government before us to show as to how this power under S. 17(4) of the Act has been exercised and what were the circumstances which made it necessary for the State Government to exercise this power. No counter-affidavit has been filed and

neither any record has been produced.

18. In the instant case, the impugned notification was issued on 28th August 1989. The notification under S. 6 of the Act had not been issued till 12th February 1990, when the leading petition was filed and more than five months had expired since the date of the notification under Sec. 4 of the Act. Under S. 6 of the Act, the notification has not been issued, in fact, till now. This itself prima facie establishes that there was no existence of urgency. This fact coupled with other facts hereinafter considered have a material bearing on the question of urgency.

19. In paragraph 13 of the petition, it has been categorically stated that the land which had been acquired in 1987, comprising of 498.375 acres is still lying unutilised though more than three years have lapsed. This fact has not been denied by the State. This fact has been vaguely denied even in the counter-affidavit filed on behalf of the U.P.S.I.D.C. It has only been stated that all the plots have been allotted to the interested entrepreneurs. If land already acquired is lying unutilised, this clearly, in our opinion, negatives the case of urgency, the said land was also acquired for planned industrial development.

20. In paragraph 35 of the petition, it has again been categorically stated that between the land earlier acquired and the land now sought to be acquired, much area is still lying and no proposal for acquisition of the said land has been sent and that the said huge area of land is lying unused. There is no denial of this fact, either on the part of the State Government or on the part of the U.P.S.I.D.C. In paragraphs 46 and 47 of the petition, it has been alleged that banjar land is available nearby the land already acquired. This fact has not been denied in the counter-affidavit of U.P.S.I.D.C.

21. If opportunity would have been afforded to the petitioner, these facts would have been brought to the notice of the authorities. It is also not disputed that the petitioner had been given an opportunity u/s 5A of the Act when notification was issued in 1985 u/s 4 of the Act. In view of the facts and circumstances of this case, we are clearly of the opinion that on record, there is no material to show that the present was a genuine case of urgency where the summary inquiry under Sec. 5A should have been eliminated. In our opinion, the action of the State Government is wholly arbitrary and the application of Section 17(4) to the notification u/s 4(1) of the Act in the instant case is only an arbitrary exercise of power without application of mind. Interests of justice demands that the petitioners should have been given an opportunity u/s 5A of the Act to be heard before their valuable land was acquired which had been earlier decided by the State Government not to be acquired after they had been afforded an opportunity of being heard. In view of the above, we are of the opinion that both the petitions are liable to be allowed.

22. In the result, both the petitions are allowed and the notification dt. 28th August, 1989, is quashed only in respect of the plots of the petitioners. In the

circumstances of the case, the parties are directed to bear their own costs.

23. Petitions allowed.