
(2005) 02 MP CK 0106

In the Madhya Pradesh High Court

Case No : Writ Petition No"s. 839, 855, 856 of 2002

Yogesh Kumar Gupta

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 4, 48(1), 6

Citation : (2005) 1 MPLJ 577

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : A.K. Sethi, for the Appellant; Amit Agrawal, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J.

The petitioner has filed this petition with regard to cancellation/withdrawal of acquisition of the petitioner's land Survey No. 300/4 and 300/7 area 1.720 hectares situated in village Barwani, District Barwani. It is submitted by the petitioner that he was the owner of the aforesaid land and a Notification u/s 4 of the Land Acquisition Act (for short "the Act") was published on 1-12-2001 by the Collector, Barwani applying emergency clause u/s 17 of the Act. It was mentioned in the Notification that the area of the land 102.087 hectares situated in Kasba Barwani was required for rehabilitation under the Sardar Sarovar Project, a public purpose. The Notification was also published in the Official Gazette on 14-10-2001. Another Notification was published on 20-12-2001, declaring that the land is required u/s 6 of the Act. The aforesaid land mentioned above was sought to be acquired belonging to the petitioner and the Land Acquisition Officer, issued a notice to the petitioner on 6-2-2002, mentioning that if the petitioner had any objection, he should file the same. On 20-2-2002, it was informed to the petitioner by the Land Acquisition officer that the land is required for public purpose and the possession is to be taken. Hence, the petitioner was

directed to take compensation of Rs. 15,97,710/- and the petitioner received the cheque and thereafter requested to pay the balance amount. Another notice issued to the petitioner by the Tehsildar Barwani on 6-5-2002 mentioning that the possession of the land to be delivered to the respondents on 15-5-2002. However, another notice was issued to the petitioner by the Tehsildar Barwani on 11-5-2002 mentioning that as per the award dated 2-5-2002, the land of the petitioner including other two persons, which was sought to be acquired was excluded from acquisition by the award passed on 2-5-2002. Hence, he was directed to cancel the land acquisition proceedings and the notice dated 6-5-2002. Against this notice, the petitioner filed the petition before this Court.

The petition of the petitioner was registered as WP No. 839/02. It was dismissed by the learned Single Bench vide order dated 25th September, 2002. Against the said order, the petitioner filed LPA before this Court, which was registered as LPA No. 8/03 and vide order dated 9-7-2003, the above LPA was disposed of, setting aside the order passed by the learned Single Judge in the above matter and the case was remanded back for a decision on merits. That is why, this petition has come up for hearing.

The petitioner submitted in the petition that because no proceedings u/s 48(1) of the Act has been taken by the respondents. Hence, the withdrawal of the land of the petitioner from the acquisition is arbitrary and against the provisions of the Act. It has further been submitted that once the possession has been taken and interim compensation has been paid to the petitioner, the land cannot be withdrawn from the acquisition and the respondent No. 2 has no authority to delete the petitioner's land from the acquisition proceedings. He was required to determine the compensation only.

The respondents have filed the return, it is submitted by the respondents that the confession of the petitioner that the possession was taken by the respondents is not correct. It has clearly been mentioned in the notice dated 6-5-2002 that possession shall be delivered upto 14-5-2002. Hence, it is clear from the notice that the possession was not delivered upto 14-5-2002 and before delivering the possession, subsequent notice dated 10-5-2002 was issued mentioning that the land was not included in the award. Hence, the amount, which was paid to the petitioner be returned back. It is submitted by the respondents that proceedings with regard to denotification of the land in question u/s 48 of the Act were pending and the matter was referred to the Government.

After further enquiry, the Collector found that the land, which was of the petitioner was full of trees. There were 2182 trees standing over the land and after cutting the trees, there would be irreparable loss to the environment and also to the eco system of the area and the respondents had to pay higher amount of compensation to the petitioner. Hence, it was requested by the Collector, Barwani to the Commissioner to exclude the land, area 5,059 hectares belonging to the petitioner and other two persons, who also filed similar petitions, which are registered as W.P. No. 856/02 and 855/02. Thereafter, a spot

inspection was also done by the Additional Collector, Sub Division Officer, Land Acquisition Officer, Assistant Director and Horticulture on 20-4-2002. Thereafter, the land was excluded from the acquisition by the Commissioner in the award passed on 2-5-2002.

A further development has taken place during the pendency of the petition that the proposal which was referred to the Government for de-notification u/s 48 of the land in question belonging to the petitioner, was rejected by the Government and it was returned back with the observation that because the case is pending before the Court, hence it was not possible for the Government to take a decision in the matter.

The learned counsel for the petitioner submitted that the impugned order dated 10-5-2002 Annexure P-9 and exclusion of the land of the petitioner from acquisition in the award passed by the respondent No. 2 the Collector Barwani is arbitrary and illegal. Once the possession was taken by the respondents as per the Kabja Chithhi, they had no power and authority to withdraw from the acquisition. For this purpose, learned counsel for the petitioner relied on the decisions reported in Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, , Satendra Prasad Jain and Others Vs. State of U.P. and Others, , Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others, ; Chandra Bansi Singh and Others Vs. State of Bihar and Others, and (See Sedasushan Kumar Singh and others vs. State of Bihar and others.) Learned counsel for the petitioner submitted that the notice issued by the respondent No. 2 with regard to the cancellation acquisition of the land is arbitrary, illegal and without any reason. He has further submitted that the land of the petitioner is surrounded by the land, which has been acquired by the respondents for rehabilitation purpose and the value of the land would be substantially decreased if the land would be acquired and when the petitioner was already paid the compensation and the possession was taken, they have no power and authority to release the same from the acquisition.

Learned counsel for the respondents denied the fact that the possession of the land was taken by the respondents. It has been submitted by the respondents that before taking the possession, the authorities can withdraw the land from the acquisition and it can be released as per section 48 of the Act. There are valid reasons for not to acquire the land mentioned in Annexure R-I, a report of the Collector. It has specifically been mentioned in the report that the land, which was earlier required for rehabilitation, is not sufficient for rehabilitation of the oustees of the Sardar Sarovar Project because nearabout 2182 trees were standing over the land and if the trees are cut in the process of rehabilitation, there would be irreparable loss to the environment of the area and also the Government, because it had to spend substantial amount due to increase in the value of the land in acquisition proceedings. The Collector submitted his report to the Commissioner for denotifying the land from the acquisition and that proposal was accepted by the Commissioner along with a copy of the spot inspection

report of the area and after the perusal of the said report, the aforesaid land has been left out from the acquisition and the notice has been issued to the petitioner by the Tehsildar. The proposal to the denotification of the land from the acquisition proceedings u/s 48 of the Act, is pending before the Government, the Government for the time being considered the proposal because the petition is pending before the court on the subject-matter. Hence, the petition is premature. He has further submitted that there is no illegality or arbitrariness on the part of the Government in releasing the land from acquisition. Contrary to this, there are valid and cogent reasons in support of the decisions, as mentioned in Annexure R-I.

It is an admitted position of law that u/s 48 of the Act, the Government has power to withdraw from the acquisition of any land, of which possession has not been taken. It is clear from the aforesaid provisions of law that the Government is not bound until the possession of the land is not taken, to compulsorily acquire the land, to whom the notices with regard to acquisition have been issued. The aforesaid section was introduced earlier in section 54 of the Act and the purpose for giving that power to the Government was mentioned and the Select Committee in para 12 of their Report dated 2-2-1893 observed as follows:-

Experience has shown that the only occasions on which powers of withdrawal, would be really useful are when an award has shown that the Government was seriously misled by an underestimate of the value of the land. A case has been reported in which a municipality has been nearly ruined by being compelled to proceed with an acquisition in which the award was inordinately in excess of the original valuation.

This passage has been reported in a judgment passed in the case of Municipal Committee, Nagpur vs. Ratanlal Ganusao Kallar, 1938 NLJ 54 : AIR 1938 Nag. 169. Hon''ble the Supreme Court in the case of Special Land Acquisition Officer, Bombay and Others Vs. Godrej and Boyce, has held as under:-

So long as possession is not taken over, the mere fact of a notification u/s 4 or declaration u/s 6 having been made does not divest the owner of his rights in respect of the land or relieves him of the duty to take care of the land and protect it against encroachments. Again, such a notification does not either confer on the State Government any right to interfere with the ownership or other rights in the land or impose on it any duty to remove encroachments therefrom or in any other way safeguard the interests of the original owner of the land. It is in view of this position, section 48 gives a liberty to the State Government to withdraw from the acquisition at any stage before possession is taken. By such withdrawal no irreparable prejudice is caused to the owner of the land, and if at all he has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be compensated therefor u/s 48(2). Therefore, it does not matter even if there is lapse of considerable time between the original notification and the withdrawal u/s 48.

It also follows that the State can be permitted to exercise its power of withdrawal unilaterally and no requirement that the owner of the land should be given an opportunity of being heard before doing so should be read into the provision.

The aforesaid judgment has been followed in *Amarnath Ashram Trust Society and Another Vs. Governor of U.P. and Others*, and (2001)1 SCC 610, *State Government, Houseless Harijan Employees' Association vs. State of Karnataka and others* where the Supreme Court has held as follows:-

Section 48(1) of the Land Acquisition Act does not in terms exclude the principles of natural justice. However, the section has been construed to exclude the owner's right to be heard before the acquisition is withdrawn. This is because the owners' grievances are redressable u/s 48(2). No irreparable prejudice is caused to the owner of the land and, if at all the owner has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be paid compensation thereof u/s 48(2) of the Act.

From the above principles of law, it is crystal clear that Government can withdraw from the acquisition proceedings of the land, which was sought to be acquired before taking the possession of the land. In the present case as per the respondents, the possession of the land was not taken by the Government. Only a notice was issued to the petitioners for delivery of the possession. The submission of the learned counsel for the petitioner that possession was taken on the basis of *Kabja Chithhi* cannot be relied on because it is specifically mentioned in the notice dated 6-5-2002 that it was obligatory on the part of the petitioner to hand-over the possession up to 14-5-2002 and before delivering the possession, the subsequent notice dated 11-5-2002 was issued by the Tehsildar. The petitioner has filed a receipt with regard to possession, which is sought to be taken, in which it has been mentioned that the said possession was given on 14-5-2002 on imaginary basis, not the actual possession was delivered.

It appears from the above receipts that anyhow the petitioner got the information about the action of the respondents and the receipt was received by him. The possession can only be taken by the authorised officer, who was Tehsildar or the Land Acquisition Officer. Hence, in the above facts and circumstances of the case, it cannot be held that the possession of the land in question was taken by the respondents.

The respondents have submitted cogent reasons for excluding the land of the petitioner from denotification. It is clear from the award that compensation with regard to unirrigated land was paid @ Rs. 70,597/- per acre and for irrigated land @Rs. 72,636/- per acre but in the case of the petitioner and other petitioners, the total amount for 5.059 hectares of land was Rs. 51,14,273/- which is nearabout five times from the compensation, which has been paid to other persons comprising of irrigated and unirrigated lands. In the case of the petitioners, the respondents had to cut nearabout 2182 trees before making the land useful for rehabilitation, that cannot be said to be reasonable for any

purpose.

In the above facts and circumstances of the case, the decision taken by the Collector to denotify the land cannot be said to be arbitrary, illegal or without any reason. It is an admitted position that a landowner has no vested right to direct the Government to acquire the land until and unless the possession has not been taken. The Government has power to withdraw from the acquisition as per section 48 of the Act and the purpose was also to save the Government from payment of excess compensation, as reported in the case of Municipal Committee, Nagpur (*supra*).

In view of the above, I do not find any merit in the petition. However, before parting with the case, I have to observe that the purpose for acquiring the land was for rehabilitation of the oustees of the Sardar Sarovar Project, who were ousted due to the construction of a Dam Sardar Sarovar over the river Narmada for which funds were also allotted. However, from the petition, it is clear that how the funds would be misutilised if the land is permitted to be acquired by the Government. It is not clear that under what circumstances earlier the land was included for the acquisition purposes. In the opinion of this Court, it is obligatory on the part of the Government to conduct a detailed enquiry so in future, the wastage of money of the public and also the funds, which were allocated to the rehabilitation of the oustees can be saved.

With the aforesaid observations, the petition is dismissed. No order as to costs. A copy of this order be sent to the respondent No. 1.