

Narendrajit Singh and Another

Vs

The State of U. P. and Another

Civil Appeal Nos. 1192-1193 of 1967

(S.M. Sikri, G.K. Mitter JJ)

21.11.1969

JUDGMENT

MITTER, J. -

1. These two appeals by certificate from a common judgment of the High Court of Allahabad arise out of certain land acquisition proceedings in the District of Rampur.

2. The facts relevant for the disposal of the appeals are as follows. On October 15, 1960 the Government of Uttar Pradesh issued a notification purporting to be one under Section 4(1) of the Land Acquisition Act, 1894 to the effect that "the land mentioned in the schedule is needed for a public purpose". The notification further showed that "the Governor being of opinion that the provisions of sub-section (1) of Section 17 of the said Act are applicable to the land, is further pleased under sub-section (4) of the said section to direct that the provisions of Section 5-A of the Act shall not apply."

The schedule to the notification reads as follows :

#SCHEDULE District Pargana Mauza Approximate For what purpose required area. For the rehabilitation of displaced families from East Pakistan, under the Ministry of Rehabilitation, Government of India.##

Note. - The plan of the land may be inspected in the office of the Collector, Rampur."

3. This was followed by a notification under Section 6(1) of the Act, dated October 28, 1960. This notification shows that the Governor was pleased to declare under Section 6 of the Act that he was satisfied that the land mentioned in the schedule was needed for a public purpose and under Section 7 of the Act to direct the Collector of Rampur to take order for the acquisition of the land.

4. The case being one of urgency the Governor was further pleased under sub-section (1) of Section 17 of the Act to direct the Collector of Rampur, though no award under Section 11 has been made, on the expiration of the notice mentioned in sub-section (1) of Section 9, to take possession of the land, being waste or arable land mentioned in the schedule for a public purpose.

# SCHEDULE District Pargana Mauza Approximate For what purpose Remarks area.  
required Rampur Bilaspur Gokal 125 acres For the rehabilitation Nagri of East Pakistan dis- placed families, under the Ministry of Re- habitation, Govern- ment of India.##

The Petitioners-appellants before us filed writ petitions in the High Court on December 1, 1960.

The appellant in Appeal No. 1192 of 1967 was the sole petitioner in Writ Petition No. 3274 of 1960 while his father, Ranjit Singh and two others, brothers of the petitioners were the applicants in Writ Petition No. 283 of 1961. The two writ petitions contained common complaints. The case of the petitioners was that it was the Maharaja of Dewas with whom the petitioners had certain litigation who was responsible for singling them out for the purported acquisition of their land for the rehabilitation of displaced families of East Pakistan. The first ground put forward in both the petitions was that the notice under Section 4 of the Act was invalid for non-compliance with the mandatory provisions of the Act rendering the whole proceedings void. The points urged in support of the applications were turned down by the learned Single Judge and a Special Appeal therefrom to a Division Bench met with no better fate. The learned Judge of the Division Bench noted that the exact land which was required by the State Government was not specified in the notification and that the petitioners had raised further objection that the notification under Section 4 was invalid because it had not been published at convenient places in the locality. The Division Bench relied on certain observations of this Court in *Babu Barkya Thakur v. That State of Bombay and Others* (1961 1 SCR 128) to the effect that the notification under Section 4 was for the purpose of carrying on the preliminary investigation with a view to find out after necessary survey and levels, and if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. According to the Division Bench therefore was no substance in the pleas on behalf of the petitioners and their appeals were therefore dismissed.

5. Before us Mr. Gupte wanted to urge several points in support of the appeals. His first contention was that the notification under Section 4 was not in compliance with the Act and therefore it should be struck down and the proceedings held to be illegal. Sub-section (1) of Section 4 of the Act provides as follows :

"Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality."

Sub-section (2) of the section shows that it is only after compliance with the provisions of sub-section (1) that the officers authorised by Government can enter upon the land and carry on the operations mentioned therein. Section 5-A gives persons interested in the land notified under Section 4(1) a right to object to the acquisition. It is only after disposal of the objections that the State Government is empowered when satisfied after considering the report made under Section 5-A that any particular land is needed for a public purpose to make a declaration to that effect and such declaration has to be published in the Official Gazette under sub-section (2). In the normal course after lands have been declared to be needed for a public purpose the appropriate Government may direct the Collector to take orders for the acquisition of the land. Thereafter the Collector may proceed under Section 8 to mark out the land covered by the declaration. Section 9 enjoins upon the Collector to cause public notice to be given at convenient places after compliance with the provisions of Section 8 that the Government intends to take possession of the land and that claims to compensation for interest in such land may be made to him. Section 11 enjoins upon the Collector to hear objections by persons interested after issue of notice under Section 9 to the measurements made under Section 8 and into the value of the land. It is only after compliance with the formalities of this section that the Collector has to make an award as to the true area of the land and the compensation to be allowed for the land as also the appointment of the compensation among all the persons known or believed to be interested in the land. The Collector after making an award may take possession of

the land under the provisions of Section 16.

6. In cases of urgency however this elaborate procedure may be cut short. Under sub-section (1) of Section 17 the Collector under the directions of the Government may be authorised in cases of urgency, on the expiration of 15 days from the publication of the notice mentioned in Section 9, sub-section (1) to take possession of any waste or arable land needed for a public purpose and such land thereupon vests absolutely in the Government. Under sub-section (2) of Section 17 the Collector may immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon take possession of the land if the same be needed owing to any sudden change in the channel of any navigable river or other unforeseen emergency it becomes necessary for any Railway administration to acquire the immediate possession of any land or for incidental purposes. Sub-section (4) of the section provides :

"In the case of any land to which, in the opinion of the appropriation Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4, sub-section (1)."

7. It becomes clear from a perusal of the said sections of the Act that the process of acquisition must start with a notification under Section 4. Even in extremely urgent cases like those mentioned in sub-section (2) of Section 17, the notification under Section 4 is a sine qua non. In some cases the Government may not follow up the notification under sub-section (1) by further proceedings specifically where it finds that the land was unsuited for the purpose for which it is required. But the issue of the notification under sub-section (1) of Section 4 is a condition precedent to the exercise of any further powers under the Act and in our opinion which does not comply with the essential requirement of that provision of law must be held to be bad.

8. Section 4(1) does not require that the identity of the lands which may ultimately be acquired should be specified but it enjoins upon the Government the duty to specify the locality in which the land is needed. In the instant cases the notifications suffer from a very serious defect in that the locality where the lands were needed was not specified. The notification merely showed that lands, mentioned in the schedule were needed. The schedule in its turn though it contained the headings District, Pargana, Mauza and approximate area, gave no particulars of the same and all that was mentioned by way of a note was that the plan of the land might be inspected in the office of the Collector of Rampur. As no details were given, the only indication about the locality of the lands was possibly the District of Rampur inasmuch as the plan of the land was to be found in the office of the Collector of the same district. Certainly the Act did not intend that all the persons owning land in a district should rush to the Collector's office to find out whether his lands were covered by the notification.

9. It was urged before us that the notification was in terms of the section and that the petitioners could not complain inasmuch as the defect was remedied by the notification under Section 6 which was issued within a fortnight after the Section 4 notification. In our view this contention cannot be accepted. Any notification which is the first step towards depriving a man of his property must be strictly construed and courts ought not to tolerate any lapse on the parts of the acquiring authority in the issue of such notification if it be of a serious nature. In the case of Babu Barkya Thakur (supra) it was pointed out by this Court that -

"The proceedings begin with a Government notification under Section 4 that land in any locality is needed or is likely to be needed for any public purpose."

It is well known that a person interested in the land which is affected by any notification under Section 4(1) may immediately object to it and take proceedings in Court against it. In *Smt. Somavanti v. State of Punjab* (1963 2 SCR 774) one of the main questions before this Court was whether a notification under Section 4(1) and one under Section 6(1) could be issued simultaneously. Although the Court took the view that where Section 5-A was not in the way there was no irregularity in publishing the notifications on the same day, yet it observed that :

"Notification under sub-section (1) of Section 4 is a condition precedent to the making of a notification under sub-section (1) of Section 6."

10. In our view the defect in a notification under Section 4(1) cannot be cured by giving full particulars in the notification under Section 6(1). In this case it is apparent that even before the issue of the first notification Government had made up its mind to acquire the lands of the petitioners inasmuch as there was no enquiry in between the two notifications and no valid reason has been put forward to explain why the details specified in the notification under Section 6(1) could not be given in the one under Section 4(1). The fact that the petitioners did not go to Court immediately after the publication of the first notification is not a matter of any moment. The defects were not cured and cannot be glossed over by reason of the fact that the petitioners went to Court after the issue of the notification under Section 6(1).

11. Moreover if it was the intention of the Legislature that in cases of urgency a notification under Section 4(1) was not necessary, a suitable provision should have been made in Section 17 for that purpose. The provisions of that section show that even in cases of extreme urgency like the maintenance of railway traffic by reason of any sudden change in the channel of any navigable river or other unforeseen emergency, the Legislature only thought it fit to by-pass the provisions of Section 5-A but not those of Section 4, sub-section (1).

12. In this view, we did not think it necessary to hear Mr. Gupte on the other points. The appeals will therefore be allowed and the judgment of the High Court set aside. There will be no order as to costs.

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