

Munshi Singh and Others

Vs

Union of India

Civil Appeals Nos. 2356/68, 1139, 1140, 1475, 1476, 1785/71 and 1888/70

(A. N. Grover, D. G. Palekar, K. S. Hedge JJ)

23.08.1972

JUDGMENT

GROVER, J. -

1. These appeals from the decision of the Allahabad High Court involve a common point and shall stand disposed of by this judgment.

2. It is necessary to state the facts only in C.A. 1888 of 1970. The U.P. (Regulation of Building Operations) Act, 1958 received the assent of the President on October 8, 1958. On December 10, 1958 a notification was issued by the U.P. Government declaring Ghaziabad a regulated area under Section 3 of the aforesaid Act. In February 1959 the Controlling Authority under Section 4 of the Regulation Act was constituted. On July 16, 1960 a notification was issued under Section 4 of the Land Acquisition Act by the State Government declaring its intention to acquire land measuring about 34,000 acres in fifty village of Ghaziabad for planned development of the area. On December 23, 1961 a notification was issued under Section 6 and 17 of the Acquisition Act in respect of an area of 19.75 acres. This was followed by successive piecemeal notification in various dates in 1962 and 1963. On February 9, 1962 another notification was issued under Section 4 of the Acquisition Act modifying the earlier notification dated July 16, 1960. By this notification the proposed area from 34,000 acres was reduced to 6158 acres. On July 4, 1962 the appellants made an application to the Special Land Acquisition Officer Ghaziabad for supplying a copy of the scheme of the planned development for which notification under Section 4 had been issued to enable them to make representations at the hearing of the objections filed under Section 5-A of the Acquisition Act. It was mentioned inter alia in that application that the Government had not published the scheme of the planned development and without a copy of the scheme for which the notification had been published "no forceful arguments could be submitted". The Special Land Acquisition Officer made the following order on that application :

"The scheme of the planned development is not necessary for a notification under Section 4 of the Act, as such, no such scheme of the planned development is available in this office."

On September 4, 1962 the State Government sanctioned the Master Plan of Ghaziabad under the Regulation Act. On September 27, 1962 a writ petition was filed by the appellants in the High Court challenging the validity of the aforesaid notifications Several other writ petitions were also filed by other petitioners. On December 10, 1965 a batch of 39 writ petitions including the appellant's petition were allowed by the High Court and the notifications under Section 6 of the Acquisition Act were quashed on the ground of invalidity of piecemeal notifications. Another batch of writ

petitions was similarly allowed quashing the notifications under Section 6 of the Acquisition Act on the same ground. On February 9, 1966 this Court decided in State of Madhya Pradesh v. Vishnu Prasad Sharma ((1966) 3 SCR 557 : AIR 1966 SC 1593 : (1966) 2 SCJ 231.), that piecemeal and successive notifications under Section 6 of the Acquisition Act was not permissible. On February 20, 1967 the President of India promulgated the Land Acquisition (Amendment and Validation) Ordinance No. 1 of 1967. The validity of this Ordinance apart from the legality of the notifications issued was challenged in the High Court by the appellants in February 1967. In April 1967 an Act was passed on the same lines as the Ordinance. The provisions of the Act were also challenged before the High Court by necessary amendment in the writ petitions filed by the appellants. This Court in Udai Ram Sharma v. Union of India ((1968) 3 SCR 41 : AIR 1968 SC 1138 : (1969) 1 MLJ (SC) 51.), upheld the validity of the Acquisition Amending Act of 1967. On March 26, 1968 the High Court dismissed the writ petition of the appellants. In view of the judgment of this Court the High Court repelled the contentions of the appellants impugning the validity of the Acquisition Amendment Act, 1967. Another point which was agitated before the High Court was that the notification under Section 4 was too vague and afforded no adequate basis for the lodging of objection under Section 5-A of the Acquisition Act. Certain other points were raised which need not be mentioned. The High Court observed that all these points had been urged in the writ petition No. 55 of 1963 which had been heard along with many other writ petitions by the Division Bench which, by its judgment dated December 24, 1965, had negatived them. For the reasons mentioned in that judgment these contentions were also repelled.

3. Dr. L. M. Singhvi sought to raise a number of points before us but ultimately he confined his arguments mainly to one question. Reference has been made to the notification, dated July 16, 1960 issued under Section 4 as also to subsequent notification dated February 9, 1962 amending the earlier notification. The earlier notification to the extent it is material is as follows :

"In pursuance of the provisions of sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act No. 1 of 1894), the Governor of U.P. is pleased to notify for general information that the land mentioned in the schedule is likely to be needed for a public purpose.

2. Under Section 5-A of the said Act, any person interested in the land may within thirty days after the issue of this notification, make an objection to the acquisition of the land for any land in the locality in writing to the Collector, Meerut.

.....
.....

For What purpose : For planned development of the area.

Note. - A plan of the land may be inspected in the office of Collector, Meerut."

In the writ petition a specific plea was taken in paras 35(b) and 36 that no proper, reasonable or effective opportunity was available to the appellants to file any objections under Section 5-A of the Acquisition Act inasmuch as the notification gave no indication that different pieces of land would be acquired for different authorities in different circumstances and for different purposes. According to para 36 the appellants did not get any effective or reasonable opportunity of objecting under Section 5-A of the Acquisition Act inasmuch as the purpose shown was extremely vague and there was no definite scheme before the State Government at the material time to show how the land

would be developed and to what use it would be put. Para 33 of the petition may also be noticed. It is stated therein that different notifications published under Section 6 of the Acquisition Act from time to time clearly indicated that the State Government did not have any specific scheme of development at the time the notification under Section 4 was published, nor had it any idea as to whether the land would be utilized by it or would be utilized for the purposes of U.P. State Industrial Corporation or the Improvement Trust, Ghaziabad. In the return which was filed Para 9 contained the reply to para 33 and this is what was stated :

"That the allegations made in paragraph 33 of the petition are denied. The scheme for the planned development of the area was there when the notification under Section 4 of the Land Acquisition Act was issued although the scheme at that stage had not been finalised in the details."

No reply is to be found in the return to paragraphs 35(b) and 36 of the writ petition. We may also refer to paragraph 14 of the petition in which the order of the Special Land Acquisition Officer was reproduced in respect of the application filed by the appellants for supplying the copy of the scheme of the planned development. It is noteworthy that in the return nothing was said about this order.

4. Dr. Singhvi has based his argument on the above significant facts. According to him the words in the notification namely, "for planned development of the area" gave no indication whatsoever as to the precise purpose for which the land was required. Planned development could be of various kinds. It could be for residential, industrial or some similar purpose. Moreover for development of a particular area the Government may acquire the land itself and develop it or it may control the development of that area by making a scheme or a Master Plan. It is urged that the scheme of the Acquisition Act shows that public purpose for which the land is needed or is likely to be needed should be stated with sufficient particularity and in such a manner that a land owner should be able to file an objection under Section 5-A. The whole object of Section 5-A would be defeated if the public purpose is stated vaguely and without any indication of the nature of the purpose for which the land is being or is intended to be acquired.

5. It is necessary to examine the scheme of the Acquisition Act. This Act was enacted to amend the law for the acquisition of land for public purpose and for companies. The expression "public purpose" is defined by Section 3(f). By the Land Acquisition (U.P. Amendment) Act 1954. Section 3 was amended and for clause (f) in the Central Act the following clause was substituted :

"(f) the expression 'public purpose' includes provision for or in connection with -

(i)

(ii) the laying out of village sites, townships or the extension, planned development or improvement of existing village sites or townships;

(iii)"

Section 4(1) provides for a notification to be issued and public notice of the same to be given whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose. Sub-section (2) is in these terms :

"4(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen, -

to enter upon and survey and take levels of any land in such locality;

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

Provided that....."

Sub-sections (1) and (2) of Section 5-A being material for purposes of the present appeal may be set out in extenso :

"(1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary either make a report in respect of the land which has been notified under Section 4, sub-section (1) or make different reports in respect of different parcels of such land to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objection shall be final."

Section 6(1) says, inter alia that when the appropriate Government is satisfied, after considering the report made under Section 5-A(2) that any particular land is needed for a public purpose or for a company a declaration shall be made to that effect by the authority mentioned therein. According to sub-section (3) such a declaration shall be conclusive evidence that the land is needed for a public purpose or for a company as the case may be. After the declaration under Section 6 the Collector has to take orders for acquisition under Section 7. Section 8 provides for land to be marked out, measured and planned and Section 9 of notices to persons interested. Section 11 deals with inquiry into measurements, value and claims and the award by the Collector. It is not necessary to refer to any other provision.

6. It is apparent from sub-section (2) that the public purpose which has to be stated in sub-section (1) of Section 4 has to be particularised because unless that is done the various matters which are mentioned in sub-section (2) cannot be carried out; for instance, the officer concerned or his servants and workmen cannot do any act necessary to ascertain whether it is suitable for the purpose for which it is being acquired. If the public purpose stated in Section 4(1) is planned development of the area without anything more it is extremely difficult to comprehend how all the matters set out in

sub-section (2) can be carried out by the officer specially authorised in this behalf and by his servants and workmen.

7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. We may refer to the observation of this court in *Nandeshwar Prasad v. The State of U.P.* ((1964) 3 SCR 425 : AIR 1964 SC 1217 : (1965) 1 SCJ 90.), that the right to file objections under Section 5-A is a substantial right when a person's property is being threatened with acquisition and that right cannot be taken away as if by a side wind. Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A : [See Section 17(4) of the Acquisition Act].

8. As already noticed, in the notifications under Section 4 all that was stated was that the land was required for "planned development of the area". There was no indication whatsoever whether the development was to be of residential and building sites or of commercial and industrial plots nor was it possible for any one interested in the land sought to be acquired to find out what kind of planned development was under contemplation, i.e., whether the land would be acquired and the development made by the Government or whether the owners of properties would be required to develop a particular area in a specified way. If the Master Plan which came to be sanctioned on September 4, 1962 had been available for inspection by the person interested in filing objections or even if the knowledge of its existence on the part of the appellants had been satisfactorily proved the position may have been different. In that situation the appellants could not claim that they were unable to file objections owing to the lack of any indication in the notification under Section 4 of the nature of development for which the area was being requisitioned. On behalf of State it has been pointed out that the appellants had themselves filed a copy of the Master Plan which was sanctioned on September 4, 1962 and that it was a matter of common knowledge that the Master Plan was under preparation. The details relating to the Master Plan and the Plan itself had been published in the local newspapers and the appellants could have easily discovered what the proposed scheme was with regard to the development of the area in which they were interested. In view of the peculiar circumstances of these cases we gave an opportunity to the State to apply for amending of its return, since nothing had been said about these matters therein and to produce additional evidence in support of its allegations. Such a petition was filed and certain documents were sought to be placed on the record. After a careful consideration of the petition for amendment and the evidence sought to be adduced we dismissed the prayer for amendment as well as for production of additional evidence as we were not satisfied that the documents sought to be produced were either relevant or were required to enable this Court to pronounce judgment.

9. Learned counsel for the State next contended that the proposed acquisition was in pursuance of the activity under the Regulation Act. Moreover planned development is one of the public purposes as defined in Section 3(f) as amended by the U.P. Amending Act, 1954. Mere mention of such a public purpose was sufficient to satisfy the requirements of law. Reliance has been placed on a

decision of this Court in *Arnold Rodricks v. State of Maharashtra* ((1966) 3 SCR 885 : AIR 1966 SC 1788 : (1967) 1 SCA 384.), in which in the notification under Section 4 it was stated that the land was needed "for a public purpose, viz., for development and utilisation of the said lands as an industrial and residential area". It was said that the purpose specified was a public purpose within the Acquisition Act. The points which arose for determination in that case were entirely different. At any rate, the public purpose was stated with sufficient particularity, namely, for development and utilisation of the land as an industrial and residential area. Once it was stated that the land will be utilised for the aforesaid purpose the persons interested could certainly object effectively. But the mere words, as are to be found in the notifications here "planned development of the area" were wholly insufficient and conveyed no idea as to the specific purpose for which the lands were to be utilised. It must be remembered that the Acquisition Act is silent as to the nature of objections that could be raised. In some of the States executive instructions have been issued or rules have been framed which indicate the classes of objections which are contemplated. In Madras the classes of objections that the Collector's inquiry should specifically deal with are the following -

(a) that the purpose for which the land is acquired is not a public purpose;

(b) that the land notified is not the best adapted to the purpose intended or that its area is greater than is actually required for the purpose, and

(c) that the acquisition of the land or any land in the locality is not desirable or expedient.

In *Babu Barkya Thakur v. The State of Bombay* ((1961) 1 SCR 128 : AIR 1960 SC 1203 : (1961) 2 SCJ 392.), it was stated in the notification under Section 4(1) that the land was likely to be needed for purposes of a company which was named. A challenge was made against the validity of that notification on the ground that it was not stated that the land was required for a public purpose. It was laid down that where the land was required for a company the requirement of the law would be sufficiently met if the appropriate Government was satisfied on a report under Section 5-A(2) or by an inquiry under Section 40 that the purpose of the acquisition was the same as contemplated by Section 40 of the Act. This Court said that the purpose of the notification under Section 4 was to carry out a preliminary investigation with a view to find out after the necessary survey and taking of levels and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purposes for which it was sought to be acquired. It was only under Section 6 that a firm declaration had to be made by the Government that land with proper description and area was needed for a public purpose or a company. Hence it was not correct to say that any defect in the notification under Section 4 was fatal to the validity of the proceedings particularly when the acquisition was for a company. We are unable to accede to the suggestion on behalf of the State that the observations made in this decision can be of any avail to it in the present cases. The question which we are called upon to decide is of an entirely different nature. It relates to the notification under Section 4 in the light of Section 5-A with a view to giving full effect to that section and not simply wiping it out. We need only point out that the Acquisition Act did not originally provide for filing or hearing of objections to the proposed acquisition. It was only by the Amending Act 38 of 1923 which came into force on January 1, 1924 that Section 5-A was inserted in the Acquisition Act. Up to that time the view was that the wishes of the owners of the land were wholly

irrelevant but after the insertion of Section 5-A the position has completely changed and it cannot be said that the owner's wishes are not relevant and that he does not need an opportunity to file his objections. To take such a view would render Section 5-A otios. If it has any purpose and if it has to be given its full effect the person interested in the land proposed to be acquired must have an opportunity to submit his objections and that he can only if the notification under Section 4(1) while mentioning the public purpose gives some definite indication or particulars of the said purpose which would enable the persons concerned to object effectively if so desired. In the absence of such specific or particular purpose being stated the objector cannot file any proper or cogent objections under Section 5-A which he has a right to do under that provision. We would accordingly hold that owing to the vagueness and indefiniteness of the public purpose stated in the notifications under Section 4(1) and in the absence of any proof that the appellants were either aware of or were shown the scheme or the Master Plan in respect of the planned development of the area in question the appellants were wholly unable to object effectively and exercise their right under Section 5-A of the Acquisition Act.

10. For the reasons given above these appeals must succeed and are hereby allowed. The entire acquisition proceedings in respect of the lands of the appellants in all the appeals are hereby quashed. In matters of this nature we would have taken due notice of laches on the part of the appellants while granting the above relief but we are satisfied that so far as the present appellants are concerned they have not been guilty of laches, delay or acquiescence at any stage. The appellants shall be entitled to costs in this Court. C.M. Petition No. 6852 of 1971 is disposed of by observing that it will be open to the party to file a suit for damages, if any, if so advised.

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