State of U. P

Vs

Smt. Pista Devi and Others

Meerut Development Authority, Meerut

Vs

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Civil Appeal Nos. 1495-1507 and 1509-11 with 1478-90 and 1492-94 of 1986

(E. S. Venkataramiah, V. Khalid JJ)

12.09.1986

JUDGMENT

VENKATARAMIAH, J. -

1. Meerut city which is situated in a densely populated part of the State of Uttar Pradesh is growing very fast. The State Government constituted a Development Authority under the provisions of the U.P. Urban Panning and Development Act, 1973 for the city of Meerut for the purpose of tackling the problems of town planning and urban development resolutely, since it felt that the existing local body and other authorities in spite of their best efforts had not been able to cope up with the problems to the desired extent.

2. The Meerut Development Authority sent a proposal to the Collector of Meerut for acquisition of 662 bighas 10 biswas and 2 biswanis of land (approximately equal to 412 acres) situated at villages Mukarrabpur, Plahera, Paragana-Daurala, Tehsil Sardhana, District Meerut for its housing scheme with the object of providing housing accommodation to the residents of Meerut city. After making necessary enquiries and receipt of the report from the tehsildar of Sardhana, the Collector was fully satisfied about the need for the acquisition of the land. He accordingly wrote letter on December 13, 1979 to the Commissioner and Secretary, Housing and Urban Development, Government of Uttar Pradesh recommending the acquisition of the above extent of land in the villages mentioned above and he also stated that since there was acute shortage of houses in Meerut city, it was necessary that the State Government should invoke Section 17(1) and (4) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). He also submitted a certificate as required by the Rules containing the relevant data on the basis of which the government could take a decision. In that certificate he stated that the acquisition of the land was very necessary for the purposes of the housing scheme. The total value of the land was estimated to be about Rs. 55,01,270.25 paise and the cost of trees and structures was stated to be in the order of about Rs. 1 lakh. The Secretary of the Meerut Development Authority also submitted his certificate in support of the acquisition of the land in question. He stated that the proposed cost of the project was in the order of Rs. 48 crores. He also furnished the number of flats to be constructed and house sites to be allotted. The certificate further stated that the land which was proposed to be acquired was being used for cultivation and that the said land had been proposed to be used for residential purposes under the master plan of

Meerut city. After talking into consideration all the material before it including the certificates of the Collector and the Secretary, Meerut Development Authority, referred to above, the State Government published a notification under sub-section (1) of Section 4 of the Act notifying for general information that the land mentioned in the Schedule was needed for a public purpose, namely, for the construction of residential buildings for the people of Meerut by the Meerut Development Authority under a planned development scheme. The notification further stated that the State Government being of the opinion that the provisions of sub-section (1) of Section 17 of the Act were applicable to the said land inasmuch as it was arable land which was urgently required for the public purpose, referred to above. The notification further directed that Section 5-A of the Act shall not apply to the proposed acquisition. The above notification was published in the U.P. Gazette on July 12, 1980 and it was followed by a declaration under Section 6 of the Act which was issued on May 1, 1981. The possession of the land, which had been notified for acquisition, was taken and handed over to the Meerut Development Authority in July 1982. Thereafter about 17 persons who owned in all about 40 acres of land out of the total of about 412 acres acquired, filed writ petitions in the High Court of Allahabad questioning the notification under Section 4 and declaration under Section 6 of the Act on the ground that the action of the government in invoking Section 17(1) of the Act and dispensing with the inquiry under Section 5-A of the Act was not called for in the circumstances of the case. The High Court after hearing the parties held that the notification dated April 29, 1980 under Section 4 of the Act which contained a direction under Section 17(4) of the Act dispensing with the inquiry under Section 5-A of the Act was an invalid one and, therefore, both the notification under Section 4 and the subsequent declaration made under Section 6 of the Act were liable to be quashed. Accordingly they were quashed.

3. It should be stated here that while only 17 persons owning about 40 acres of land had filed the writ petitions, the High Court set aside the acquisition of the entire extent of about 412 acres. That was the effect of quashing the notification issued under Section 4(1) of the Act and all subsequent proceedings as the relief was not confined to the petitioners only. By the time the judgment of the High Court was pronounced on May 24, 1985, it is stated, that the Meerut Development Authority had spent more than Rs. 4 crores on the development of the land which had been acquired. By then 854 houses had been constructed on the land and 809 plots had been allotted by it to various persons. All the landowners other than the writ petitioners before the High Court had been paid two-thirds of the compensation due to them.

4. Aggrieved by the decision of the High Court, the State of Uttar Pradesh and the Meerut Development Authority have filed the above appeals by special leave.

5. The main ground on which the High Court set aside the impugned notification and the declaration was that the case of urgency put forward by the State Government for dispensing with the compliance with the provisions of Section 5-A of the Act had been belied by the delay of nearly one year that had ensued between the date of the notification under Section 4 and the date of declaration made under Section 6 of the Act. It, however, rejected the contention of the petitioners based on the delay that had preceded the issue of the notification under Section 4 of the Act. The High Court observed that 'if the government were satisfied with the urgency it would have certainly issued declaration under Section 6 of the Act immediately after the issue of the notification under Section 4 of the Act'. It found that the failure to issue declaration under Section 6 of the Act immediately on the part of the State Government was fatal. That there was delay of nearly one year between the publication of the notification under Section 4(1) of the Act containing the direction dispensing with the compliance with Section 5-A of the Act and the date of publication of the declaration issued under Section 6 of the Act is not disputed. It is seen from the record before us that after the

publication of the notification under Section 4(1) of the Act, the Collector after going through it found that there were some errors in the notification which needed to be corrected by issuing a corrigendum. Accordingly, he wrote a letter to the State Government on August 25, 1980 pointing out the errors and requesting the State Government to publish a corrigendum immediately. Both the corrigendum and the declaration under Section 6 of the Act were issued on May 1, 1981. It is on account of some error on the part of the officials who were entrusted with the duty of processing of the case at the level of the Secretariat there was a delay of nearly one year between the publication of the notification under Section 4(1) and the publication of the declaration under Section 6 of the Act. The question for consideration is whether in the circumstances of the case it could be said that on account of the mere delay of nearly one year in the publication of the declaration it could be said that the order made by the State Government dispensing with the compliance with Section 5-A of the Act at the time of the publication of the notification under Section 4(1) of the Act would stand vitiated in the absence of any other material. In this case there is no allegation of any kind of mala fides on the part of either the government or any of the officers, nor do the respondents contend that there was no urgent necessity for providing housing accommodation to a large number of people of Meerut city during the relevant time. The letters and the certificates submitted by the Collector and the Secretary of the Meerut Development Authority to the State Government before the issue of the notification under Section 4(1) of the Act clearly demonstrated that at that time there was a great urgency felt by them regarding the provision of housing accommodation at Meerut. The State Government acted upon the said reports, certificates and other material which were before it. In the circumstances of the case it cannot be said that the decision of the State Government in resorting to Section 17(1) of the Act was unwarranted. The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance with Section 5-A of the Act. Perhaps, at the time to which the decision in Narayan Govind Gavate v. State of Maharashtra [(1977) 1 SCR 763 : (1977) 1 SCC 133 : 1977 SCC (Cri) 49 : AIR 1977 SC 183] related the situation might have been that the schemes relating to development of residential areas in the urban centers were not so urgent and it was not necessary to eliminate the inquiry under Section 5-A of the Act. The acquisition proceedings which had been challenged in that case related to the year 1963. During this period of nearly 23 years since then the population of India has gone up by hundreds of millions and it is no longer possible for the Court to take the view that the schemes of development of residential areas do not 'appear to demand such emergent action as to eliminate summary inquiries under Section 5-A of the Act'. In Kasireddy Papaiah (died) v. Government of A.P. [AIR 1975 AP 269 : (1975) 1 APLJ 70] Chinnappa Reddy, J. speaking for the High Court of Andhra Pradesh dealing with the problem of providing housing accommodation to Harijans has observed thus :

> That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which courts are bound to take judicial notice. History has made it urgent that, among other problems, the problems of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties, unless, of course, it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not

> trying to make any pontific pronouncements. But I am at great pains to point out that provision for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the Land Acquisition Act cannot be said to be improper, in the absence of mala fides, merely because of the delay on the part of some government officials.

6. What was said by the learned Judge in the context of provision of housing accommodation to Harijans is equally true about the problem of providing housing accommodation to all persons in the country today having regard to the enormous growth of population in the country. The observation made in the above decision of the High Court of Andhra Pradesh is quoted with approval by this Court in Deepak Pahwa v. Lt. Governor of Delhi [(1985) 1 SCR 588 : (1984) 4 SCC 308 : AIR 1984 SC 1721] even though in the above decision the Court found that it was not necessary to say anything about the post-notification delay. We are of the view that in the facts and circumstances of this case the post-notification delay of nearly one year is not by itself sufficient to hold that the decision taken by the State Government under Section 17(1) and (4) of the Act at the time of the issue of the notification under Section 4(1) of the Act was either improper or illegal.

7. It is was next contended that in the large extent of land acquired which was about 412 acres there were some buildings here and there and so the acquisition of those parts of the land on which buildings were situated was unjustified since those portions were not either waste or arable lands which could be dealt with under Section 17(1) of the Act. This contention has not been considered by the High Court. We do not, however, find any substance in it. The government was not acquiring any property which was substantially covered by buildings. It acquired about 412 acres of land on the outskirts of Meerut city which was described as arable land by the Collector. It may be true that here and there there were a few super-structures. In a case of this nature where a large extent of land is being acquired for planned development of the urban area it would not be proper to leave the small portions over which some super-structures have been constructed out of the development scheme. In such a situation where there is real urgency it would be difficult to apply Section 5-A of the Act in the case of few bits of land on which some structures are standing and to exempt the rest of the property from its application. Whether the land in question is waste or arable land has to be judged by looking at the general nature and condition of the land. It is not necessary in this case to consider any further the legality or the propriety of the application of Section 17(1) of the Act to such portions of land proposed to be acquired, on which super-structures were standing because of the special provision which is inserted as sub-section (1-A) of Section 17 of the Act by the Land Acquisition (U.P. Amendment) Act (22 of 1954) which reads thus :

> (1-A) The power to take possession under sub-section (1) may also be exercised in the case of land other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development.

8. It is no doubt true that in the notification issued under Section 4 of the Act while exemption the application of Section 5-A of the Act to the proceedings, the State Government had stated that the land in question was arable land and it had not specifically referred to sub-section (1-A) of Section 17 of the Act under which it could take possession of land other than waste and arable land by applying the urgency clause. The mere omission to refer expressly Section 17(1-A) of the Act in the notification cannot be considered to be fatal in this case as long as the government had the power in that sub-section to take lands other than waste and arable lands also by invoking the urgency clause. Whenever power under Section 17(1) is invoked the government automatically becomes entitled to take possession of land other than waste and arable lands by virtue of sub-section (1-A) of Section

17 without further declaration where the acquisition is for sanitary improvement or planned development. In the present case the acquisition is for planned development. We do not, therefore find any substance in the above contention.

9. It is, however, argued by the learned counsel for the respondents that many of the persons from whom lands have been acquired are also persons without houses or shop sites and if they are to be thrown out of their land they would be exposed to serious prejudice. Since the land is being acquired for providing residential accommodation to the people of Meerut those who are being expropriated on account of the acquisition proceedings would also be eligible for some relief at the hands of the Meerut Development Authority. We may at this stage refer to the provision contained in Section 21(2) of the Delhi Development Act, 1957 which reads as follows :

> 21(2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them :
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> Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.

10. Although the said section is not in terms applicable to the present acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question.

11. Having regard to what we have stated above, we are of the view that the judgment of the High Court cannot be sustained and it is liable to be set aside. We accordingly allow these appeals, set aside the judgment of the High Court and dismiss the writ petitions filed by the respondents in the High Court. There is no order as to costs.

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