Bhagat Singh

Vs

State of U. P. and Others

Rajiv Jain and Another

Vs

State of U. P. and Another

Dr Usha Sirohi (Smt)

Vs

State of U. P. and Another

Ranjit Singh Chauhan and Others

Vs

State of U. P. and Others

Lalita Bhonsley (Smt) and Others

Vs

State of U. P. and Others

Civil Appeal Nos. 6226 to 6235 of 1998

(S. B. Majmudar, M. Jagannadha Rao JJ)

08.12.1998

JUDGMENT

M. JAGANNADHA RAO. J. -

1. Leave granted.

2. These appeals all arise out of the common judgment of the Allahabad High Court dated 24-4-1997. By that judgment the writ petition filed by the appellants questioning the validity of land acquisition proceedings were all dismissed.

3. The following are the facts common to all the matters. On 25-9-1991, the District Magistrate, Agra sent proposals to the U.P. Government for acquisition of 10.175 hectares of land in Village Bainpur, U.P. for construction of a market yard for fruits and vegetables. Various plots of land were included in the notification. The Section 4(1) notification was issued under the Land Acquisition

Act, 1894 (hereinunder called the Act) on 5-10-1993 for acquisition of 7.334 hectares. The notification stated that the provisions of Section 5-A were being dispensed with in view of the urgency of the matter and this was being done in exercise of powers under Section 17(4) of the Act. the notification insofar as it related to urgency and dispensing with the Section 5-A inquiry read as follows :

> "Being of the opinion that the provisions of sub-section (1) of Section 17 of the said Act are applicable to the said land inasmuch as the said land is urgently required for the construction of fruit and vegetable market yard District Agra and that in view of the pressing urgency, it is an well necessary to eliminate delay likely to be caused by an inquiry under Section 5-A of the said Act, the Government is further pleased to direct under sub-section (4) of Section 17 of the said Act that the provisions of Section 5-A of the Act shall not apply.

For what purpose required. - For the construction of fruit and vegetable market yard in District Agra.

Note A. - Site plan of the land may be inspected in the Office of the Collector, Agra."

4. Thereafter, the Section 6 declaration was issued on 6-10-1994 acquiring the land for the above market under a planned development scheme and the notification directed the Collector to take possession of the land in 15 days under Section 9(1) of the Act.

5. It was this acquisition that was question in the batch of writ petitions in the High Court. The writ petition raised general issues, namely, that there was no such urgency which required dispensing with the inquiry under section 5-A of the Act and that the land of the petitioners which was sought to be acquired was marked in the Master Plan for Agra for the use of "light industries" and later belt" and it was therefore not permissible to acquire the same for locating the fruit and vegetable market yard for that amount to violating the Master Plan. Some special points were raised in some of the writ petitions.

6. The High Court of Allahabad in an elaborate judgment rejected the above contentions and referred to reasons given by the respondents in their respective counter-affidavits as sufficient for dispensing with the Section 5-A inquiry. The High Court also held, following the rulings of this Court and of the Allahabad High Court, that even if the user for a market yard not one of the permissible uses of the land as per the Master Plan, still once the land acquired, the Market Committee could take steps to have the Master Plan suitably amended. The High Court also rejected the special points raised in some of the writ petitions.

7. In these appeals, we have heard the arguments of Shri Raju Ramachandran, learned Senior Counsel appearing in the civil appeals arising out of SLPs Nos. 14921-22 of 1997, Shri R. K. Khanna in appeals arising out of SLPs Nos. 14513 and 14848 of 1997 and Mr Vinay Kumar Garg in the appeals arising out of SLPs Nos. 17203-17207 of 1997 and in Contempt Petition No. 381 of 1998. For the respondents, the Mandi Market was represented by Senior Advocate, Shri O. P. Rana and State of U.P. was represented by Ms Niti Dikshit.

8. Learned counsel for the appellant Shri Raju Ramachandran urged that there was no such urgency as required dispensing with the inquiry under the Act, that the acquired land was reserved for "light industries" (later amended as green belt) in the Master Plan and, therefore, it was not permissible to

acquire the land for fruit and vegetable market yard, and in any event, the appellant must be permitted to make a representation to the Government for withdrawal of the acquisition so far as his client's land was concerned. Some special points based on the location of the plots or present user were also raised. These submissions were countered by the learned Senior Counsel for the Market Committee and counsel appearing for the State. We shall first deal with these general points which are common to all the appeals.

9. On the question of urgency, the following facts and contentions emerge from the counter-affidavits. The establishment of a market yard is not merely one of mere urgency but one which makes it necessary to dispense with the inquiry under Section 5-A. The existing market yard is situated in a very congested locality having no scope for expansion and the place where the market is now located is not sufficient to cater to the growing needs of its constituents. There is no adequate space for free movement and parking of trucks/bullock-carts etc. nor for providing necessary shelter for those who come to the market. The existing market is also devoid of any amenities necessary for hundreds of people who visit the market every day or for the bullocks which are being used to draw the carts. During the rainy season, it becomes well-nigh impossible to find out suitable shelters for the farmers and producers of vegetables. It has become necessary to provide amenities and also construct roads in a planned manner.

10. In our view, the subject satisfaction for dispensing with the inquiry under Section 5-A is based on sufficient material and cannot be faulted. The photographs as to the filthy state of the present mandi with garbage and stray cattle and pigs show that the place is so loathsome that it will be precarious and perhaps hazardous to store vegetable or foodgrains in the existing market. We are, therefore, of the view that the urgency clause was rightly invoked by the Government. There are also enough precedents in connection with acquisitions of land for markets where Section 5-A has been dispensed with and such action was upheld.

11. In connection with a similar acquisition for a market yard, when the Section 5-A inquiry was dispensed with on the ground of urgency, the Allahabad High Court in Satyendra Prasad Jain v. State of U.P. (1987 AWC 382) observed :

> "The question herein is whether the State was justified in dispensing the requirements of enquiry contemplated under Section 5-A. It cold be taken judicial notice of that in regard to agricultural produce there were no proper market facilities. There were innumerable charges, levies and exactions which the agriculturists were required to pay without having any say in the proper utilisation of the amount paid by them. The Government of India and the various committees and commissions appointed to study the condition of agricultural markets in the country had stressed the need to provide proper market yard for the sale and purchase of agricultural produce. The Planning Commission also stressed long ago in this regard. The Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 has been enacted to provide for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of market therefore, in Uttar Pradesh. The proposed construction of market and market yard by the Mandi Samiti is, therefore, a step forward to ameliorate the conditions of producers with due representation to them in the Mandi Samitis for the fair settlement of disputes relating to their transactions. It is long-felt need which is said to have been included in the Planned Development Scheme."

It was further stated (p. 384) as follows :

> "[I]t cannot be said that there is no urgency in the matter of acquiring the land in question."

12. The same question arose again in Kailashwati v. State of U.P. (AIR 1978 All 181 : (1977) 3 All LR 665). That was a case where land was acquired for the purpose of a market yard to be constructed by the Krishi Utpadan Mandi Samiti, Meerut. The inquiry under Section 5-A was dispensed with. The same was upheld and it was held that there was immediate urgency as there was acute scarcity of godowns and warehouses where foodgrains purchased by the Government had to be stocked. In our opinion, the above judgment if also in point. When in such circumstances, market yards are proposed to be established, it is, in our view, permissible to invoke the provisions of Section 17(4) and dispense with the Section 5-A inquiry.

13. The decisions of this Court in Hari Singh v. State of U.P. ((1984) 2 SCC 624) where acquisition was made for a market yard and Union of India v. Praveen Gupta ((1997) 9 SCC 78 : JT (1996) 9 SC 624) where the acquisition was for a timber yard show that the establishment of markets has been treated as one of grave urgency to remove congestion. The dispensing with the Section 5-A inquiry was upheld in these cases.

14. An additional points was made before us by the respondents that in M. C. Mehta v. Union of India (WP (C) No. 13381 of 1984) this Court had directed inspection in regard to pollution in Agra and submission of reports by the Central Pollution Control Board other senior officials of the Municipal Corporation and that a team of officials inspected Agra city on 29-11-1996 and made various observations in the second Report dated 20-11-1996 and one of the observations related to the shifting of this very mandi in Agra and read as follows : (see p. 6 of the Report)

> "The officials from the Mandi Samiti stated that the vegetable market, which is responsible for generating a huge quantity of garbage, is being shifted. The shifting is likely to be done by June 1997."

15. Thereafter this Court issued directions on 3-12-1996 that the authorities must take steps to remedy the ills which have come to light from the abovesaid Report.

16. No doubt, learned Senior Counsel for the appellants is right in his submission that these are events of 1996 and cannot have any retrospective bearing on the events of 1993 when the Section 5-A inquiry was dispensed with. It is true that these facts may not retrospectively justify the above action but, in our view, they reveal a state of environmental degradation in Agra city which was continuing from several years before 1996. Further, learned counsel for the respondents submitted that, in any event, the directions issued by this Court in the above public interest case on 3-12-1996 will certainly come in the way of this Court in the present proceedings in holding that the Section 5-A inquiry should have been conducted or that such an inquiry should be now conducted. It is also submitted for the respondents that these facts are being relied upon to show that, at any rate, this Court should not interfere in its jurisdiction under Article 136 of the Constitution of India. We find sufficient force in these contentions of the respondents.

17. It was then urged for the appellant that there was a delay of a full one year between the Section 4(1) notification and the Section 6 declaration and this showed the lethargy of the Government and this would reveal that the Government would not have lost anything if only a hearing under Section 5-A was given to the owners so that they could place their grievances before the Government. In this connection, we may state that the respondents have explained the delay as having been caused

inasmuch as various steps were required to be taken to finalise the proceedings. It was necessary to issue newspaper publications and also make local publication of the substance of the Section 4(1) notification. There was also delay on account of following other administrative procedures. In view of the above explanation, we are not prepared to hold that the latter delay between the Section 4(1) notification and the Section 6 declaration has any great impact on the subjective satisfaction arrived at when orders dispensing with the Section 5-A inquiry were passed earlier.

18. For the aforesaid reasons, we agree with the High Court that the respondents were amply justified in dispensing with the inquiry under Section 5-A by exercising powers under Section 17(4) of the Act.

19. The next question relates to the contention of the appellants that under the Master Plan for Agra city, the land of the appellants which is proposed for acquisition is in an area where the permitted use is for "light industries" and, therefore, it will not be permissible to use the acquired land for purposes of a market yard. It is pointed out that in fact later on, the permitted use was modified and the land is now shown as "green belt". On the other hand, it is submitted for the respondents that if the land is proved to have been acquired for a valid purpose, then the beneficiary of the land acquisition can later on move the authority concerned for change of land use.

20. An analogous issue arose in the case of Aflatoon v. Lt. Governor of Delhi ((1975) 4 SCC 285). In that case, a notification was issued under Section 4(1) of the act for acquisition of a vast extent of land for the planned development of Delhi. The said acquisition was questioned. One of the contentions was that for such a purpose, development action had to be taken only under the Delhi Development Act, 1957 and that too by the Chief Commissioner of Delhi under that Act and not by the Central Government under the Land Acquisition Act, 1984. It was there argued that inasmuch as there was no Master Plan nor Zonal Plan in existence on the date of notification, the acquisition was bad. This Court rejected objection raised by the owners and observed, after referring to Sections 12 and 15 of the Delhi Development Act, 1957, as follows : (SCC pp. 194-95, para 23)

> "23. The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi except in accordance with the provisions of the Delhi Development Act after that Act came into force but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready (see the decision in Patna Improvement Trust v. Lakshmi Devi (AIR 1963 SC 1077 : 1963 Supp (2) SCR 812). In other words, the fact that actual development is permissible in an area other than a development area with the approval or sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under Act. Section 12 is concerned only with the planned development. It has nothing to do with acquisition of property; acquisition generally precedes development."

This Court observed : (SCC p. 295, para 23)

> "For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the necessary approval of the local authority."

21. The above decision of this Court was followed by the Allahabad High Court in Kendriya Even Mura Sahkari Avas Samithi Ltd. v. State if U.P. (1988 UPLBEC 645). It was held in that case that the Government could acquire any property under the Act and later develop the same after obtaining the necessary approval of the local authority concerned under the Development Act. It was stated : (at p. 651)

> "Amendment of the Master Plan is permissible with the approval of the State Government under Section 13 of the U.P. Urban Planning and Development Act, 1973 and in the present case, the Master Plan showing the area in question as green belt was modified with the approval of the State Government which approval no doubt was accorded subsequent to the issue of notification under Sections 4 and 6. However, as observed by their Lordships of the Supreme Court, the mere fact that till the date of the issue of the notification under Section 4 the necessary approval of the Government had not been obtained cannot preclude the Government from acquiring the land for planned development under the Land Acquisition Act. Acquisition generally precedes development and consequently the land in question could be acquired in anticipation of the approval of the State Government for the change of the land use of the Master Plan prepared by the Development Authority."

22. As pointed out in the above judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the Master Plan or Zonal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one permitted by the Master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. On the principle state in Aflatoon case (1975)4 SCC 285) it is clear that acquisition for a public purpose and obtaining permission from the competent authority under the Development Act concerned for changed of land use are different from one another and the former is not dependent upon the latter.

23. For the aforesaid reasons this contention of the appellants is rejected.

24. It was then argued that as done in the case of Om Prakash v. State of U.P. ((1998) 6 SCC 1) appellants be permitted to move the competent authority under the Land Acquisition Act for withdrawal of these plots of land from acquisition under Section 48 of the Act. This request is opposed by the respondents. In our opinion, the procedure adopted in Om Prakash ((1998) 6 SCC 1) cannot be treated as a precedent in all land acquisition cases where the Section 5-A inquiry is dispensed with. The procedure adopted in that case is based upon the special circumstances obtaining there. In the case before us, there are no such circumstances which warrant a similar procedure to be followed. In that case, the land was acquired in a village in U.P. under a notification of 5-1-1991 for the purpose of industrial development. The appellants contended before this Court that the land was abadi land as per a report submitted by an officer of the Department as late as on 11-3-1996, that the land was being used in 1996 for residential purposes and that the policy of the State Government was not to acquire residential property for industrial use. This Court noticed that

by 1998, the Government of U.P. had acquired 496 acres for the purpose of industrial development in the village. The appellants were owners of a small extent of 50 acres. In those circumstances, this Court while declining to quash the action of the Government in dispensing with the inquiry under Section 5-A, thought it fit to permit the appellants therein to move the authority concerned by way of a representation for withdrawal of the land acquisition proceedings. This Court directed the authorities to consider whether there was any abadi at the time when Section 4(1) notification was issued, whether such abadi was a legally permissible abadi, whether the abadi continued to exist on the date of representation, whether such abadi was covered by any order of the Government in force at the time when either the Section 4(1) notification or the Section 6 declaration were made, and whether such abadi continued to be there as on the date of representation. No such facts exist in the present case before us. We accordingly hold that no case is made out for permitting the appellants to submit a representation for withdrawal of the land acquisition proceedings under Section 48 of the Act.

25. We shall now deal with certain supplementary points raised in the individual cases.

26. In civil appeal arising out of SLPs (C) Nos. 14921-14922 of 1997, it was argued by the learned Senior Counsel, Shri Raju Ramachandran that as seen from the map of the Master Plan, it was clear that some other property is earmarked for the mandi and that instead of using that area, the Market Committee had sought the acquisition of the appellants' land. It was also pointed out that a 5-12-1995/6-12-1995, the Director of the mandi had addressed a letter to the Joint Secretary, Agricultural Department, Government of U.P. that on Plot No. 1324, the appellant had been running a bakery and inasmuch as the compensation to be paid for acquisition thereof was likely to be higher, the land might be released from acquisition. Learned senior counsel also relied upon a similar letter dated 18-7-1996 by the same Director of the mandi to the Government. We find from the counter-affidavit of the respondent in para 3(viii) that the State Government has since not accepted the advice of the Mandi Director. In the light of the Government's rejection and in view of what we have stated earlier, we cannot permit the appellant to now go before the Government seeking exercise of power under Section 48. We are not, therefore, inclined to direct the Government to consider withdrawal of Plot No. 1324 from land acquisition. The above appeals are, therefore, liable to be dismissed.

27. In the civil appeals arising out of SLPs (C) Nos. 14512, 14513 and 14848 of 1997, learned counsel for the appellant, Shri R. K. Khanna argued that the plots of his clients were on the extreme western side of the land sought to be acquired and were in fact separated by a road which runs from north to south, that the market is now proposed on the eastern side of the road to large extent and that there was no immediate need for this land and hence, Section 5-A ought not to have been dispensed with so far as his client's plots were concerned. He pointed out that the proposed construction of the market was in two phases, each phase divided into four sub-phases and that each sub-phase would take considerable time and therefore, his client's land which was away from the main area in the eastern side of the north-south road, should have been excluded and that if Section 5-A were held, it would have certainly been excluded. He also contended that in the remaining land, i.e., excluding his client's lands, all the facilities which were necessary for a market had been provided and hence his client's lands were not necessary for acquisition. He argued further that on the other side of the proposed market, there were admittedly vacant lands available and those lands were not included in the acquisition because the owners thereof were highly influential.

28. It has to be stated that the appellant has not alleged mala fides against the respondents. It is not for this Court to decide whether these plots are necessary or not for the proposed market. Learned counsel for the State, Ms Niti Dikshit argued, - with reference to the plan, - that the plots of these

appellants were necessary inasmuch as the market had to be approached from this side where the appellants' property was located. The vacant land on the other side not being adjacent to be the proposed market, could not be required. The Government was able to get some land in land ceiling proceedings and from the Gaon Sabha and therefore with the monies available and earmarked for the market, it was considered that more land should be acquired keeping in view the future plans for the development of the market. It is now planned that in the first phase, there will be four sub-phases in the following manner for 24 shops : 24 shops, 40 shops and 4 auction halls. Nearly Rs. 2 crores were set apart for development of Ac 18.00 initially.

29. We are of the view that the above facts do show that development of the market is in various phases and the future development of the market in a growing town like Agra was kept in mind while acquiring this area. It is not for this Court to say that there was no need to acquire the appellants' lands for the market and that the remaining land was sufficient. If such a contention were to be accepted, each of the owners could equally advance such an argument making the scheme wholly workable. These appeals are therefore liable to be dismissed.

30. In the appeals arising out of SLPs (C) Nos. 17203-17207, it was argued by the learned counsel for the appellants that the appellants had obtained a status quo order on 22-9-1997 and in spite of that, a boundary wall wall was constructed in such a manner that the appellant was unable to enter his plot or take any trucks into the said land. In fact, on these allegations, the appellant has filed the contempt case which is also now before us.

31. The respondents have pointed out that admittedly no construction was made by the respondents in the appellants' plot. The wall was built by the respondents in their own property in respect of which the status quo order would not apply. The wall was actually put up in August 1998 to prevent encroachment and to safeguard the respondents' property. It is pointed out that there is enough space between the said wall and the gate of the appellants' property for egress and ingress and the appellant was not precluded from reaching his property. It is also pointed out that the 2 rooms constructed by the appellant in his property are vacant, none is living there and no business is being conducted there. On the merits, the appellants' case is no different from the case of the appellants in other cases. We are of the view that these appeals also deserve to be dismissed.

32. The learned counsel in the remaining case adopted the general arguments in the above cases. For the reasons already given, these appeals also deserve to be dismissed.

33. In the result, all the appeals are dismissed. In the circumstances, there will be no order as to costs.