

SUPREME COURT OF INDIA

U.P. Parents Association

Vs.

S.K. Bhargava.

C.A.No.6746 of 1999

(B.P.Singh and Arun Kumar JJ.)

22.02.2005

JUDGMENT

B.P. Singh, J.

1. These three appeals have been preferred by the, the U.P. Parents Association and others, State of Uttar Pradesh and by the Management of the City Montessori School, Lucknow impugning the judgment and order of the High Court of Allahabad, Lucknow Bench dated 26th May, 1998 in Writ Petition No. 112(MB) of 1980 whereby the acquisition in question relating to land measuring about 23,000 sq.ft. was quashed by the High Court.

2. The facts of the case are that a notification under Section 4 of the Land Acquisition 4 of the *Land Acquisition Act, 1894* (hereinafter referred to as 'the Act') was issued by the State Government proposing to acquire the land in question for the benefit of the City Montessori school. The said notification was followed by a notification under Section 6 of the Act. The notifications were challenged on the ground that the acquisition should not be made in favour of and for the benefit of a private school, and in any event, the procedure under Chapter VII of the Act ought to be followed. It was stated that the writ petition had been filed by Shri S.K. Bhargava, alleged tenant of a portion of the land in question to circumvent the decree of eviction passed against the school which was the tenant of the entire land. The aforesaid contentions of the respondents herein were upheld by the High Court and the acquisition was quashed. Against the impugned order of the High Court, these three appeals have been preferred.

3. While these appeals were pending in this Court, the Government proposed to act under Section 48 of the Act and to de-notify the land from acquisition. This Court granted time to the State of Uttar Pradesh to do so by its order dated 21st September, 2004, which reads as follows:

"It was stated to us that the State Government was proposing to de-notify the area occupied by the Respondents from out of the total land acquired. Even though decision has been taken, till date the de-notification has not taken place. We grant one

final opportunity and adjourn these Appeals for three months to enable the Government to de-notify the area occupied by the Respondents. In the event if it is not de-notified by the next date, the Chief Secretary to remain present in this Court personally."

Thereafter, the State of Uttar Pradesh has issued notification dated 5th November, 2004 and has sought to de-notify the land in question measuring 6000 sq.ft. in exercise of power conferred under Section 48(1) of the Land Acquisition Act, 1894 as amended in 1984.

4. The effect of the aforesaid notification is that 6000 sq.ft. of land which formed part of the land and which was in possession of the respondent S.K. Bhargava, who claimed to be a tenant in respect thereof, stands released from acquisition. So far as the remaining land is concerned, the respondents have no objection to this Court affirming the notifications acquiring the aforesaid land in question and setting aside the impugned judgment and order of the High Court to that extent.

5. It was submitted on behalf of the appellants that there are good grounds to set aside the judgment of the High Court because the facts of the case disclose that the owner of the land accepted compensation in respect of the land in question and, therefore, respondent S.K. Bhargava had no locus to challenge the acquisition, he being only a tenant claiming a right under the owner of the land. At best he could have claimed apportionment of compensation under the provisions of the Act.

6. It is not necessary for us to go into this contention and other contentions urged in support of the plea that the acquisition was valid, since the respondents concede that acquisition in respect of the acquired land, except land measuring about 6000 sq.ft. which has been released in exercise of power under Section 48(1) of the Act, may be upheld.

7. Accordingly, we partly allow these appeals and set aside the judgment and order of the High Court quashing the acquisition in so far as it relates to the land measuring about 17000 sq.ft. of which possession was taken by the Government, and which does not include that part of the land measuring about 6000 sq.ft. which is the subject matter of the notification issued under Section 48(1) of the Act.

8. We have not expressed any opinion on the validity of the notification issued under Section 48 of the Act and this order will not prevent any interested person from challenging that notification, if so advised.

9. Thus, these appeals are partly allowed and the impugned judgment and order in so far as it relates to the lands measuring about 17000 sq.ft., is set aside.

10. No orders on contempt petitions.