

SUPREME COURT OF INDIA

M/s.Sheikhar Hotels Gulmohar Enclave

Vs.

State of Uttar Pradesh

(A.K. Mathur and Altamas Kabir JJ.)

12.05.2008

JUDGMENT

A.K. Mathur, J.

1. Leave granted.

2. This appeal is directed against the order dated 6.12.2006 passed by the Division Bench of the Allahabad High Court whereby the High Court affirmed the notification dated 15.6.2006 issued under Section 4 (1) read with Section 17 (1) and 17(4) of the *Land Acquisition Act* (hereinafter referred to as 'the Act') and the notification dated 19.10.2006 issued under Section 6 of the Act. A preliminary objection was raised before the High Court on behalf of the respondent- Bulandshahr-Khurja Development Authority, Bulandshahr that the writ petition was not maintainable at the instance of the appellants and secondly it was contended that the writ petition was bereft of basic pleadings with regard to the challenge of dispensing with Section 5-A of the Act.

3. The first question which was agitated before the High Court was that dispensing with requirement of Section 5-A of the Act was arbitrary. The Division Bench of the High Court after referring to couple of decisions of this Court took the view that the urgency shown for invoking Section 5-A was justified as it was necessary to remove the traffic congestion. It was also found that there was no co-relation between the argument and the pleadings contained in the writ petition. The High Court found that there was no infirmity in the impugned notifications. Hence this appeal on grant of special leaves.

4. We have heard learned counsel for the parties and perused the record. Before we address to the main issue it will be relevant to mention a few facts. Respondent No.3- Bulandshahr Khurja Development Authority, Bulandshahr (hereinafter to be referred to as the Development Authority) in its 25th Board meeting held on 3.5.2002 decided to establish at the present site, "Transport Nagar" abutting to the National Highway No.91. Under the regional plan of the National Capital Regional Planning Board (hereinafter to be referred to as the Board) National Highway No.91 is proposed to be made a four lane road. Out of the plots described in the paper-book, plot Nos. 424, 424-M, 430, 443, 449M and 492 are not under acquisition under notification dated 10.7.2006. Plot No.428-M was purchased by M/s.

Allied Construction under sale deed dated 5.12.2003, plot No.429 was purchased by Krishan Kumar son of Shankar Lal vide sale deed dated 18.9.2003, plot No.442 was purchased by Smt. Asha under sale deed dated 18.9.2003. Plot No.430 was purchased by Vipul Kaushik and Vinay Kaushik both minors. Plot No.449 was purchased by Chandrasekhar, Naresh Kumar and Kishan Kumar under sale deed dated 18.9.2002 and plot No.450 was purchased by the same vendees under two sale deeds dated 18.9.2003 and 12.2.2004. Same was the case with regard to Plot No.478. It was contended that all these plots were purchased after the resolution was passed by the Board to set up the Transport Nagar. None of the plots were recorded either in the name of M/s.Sheikhar Hotels or Shri Chandrasekhar Sharma, the appellants herein. Therefore, a preliminary objection was raised on behalf of the respondents before the High Court that the writ petition was not maintainable at the instance of the writ petitioner-appellants, who not being the owners of the plot, cannot file the objection under Section 5-A of the Act. It was also pointed out that the U.P. Urban Planning and Development Act, 1973 (hereinafter to be referred to as 'the Development Act') had come into force on 12.6.1973 with the object of development of certain areas. A Master Plan was prepared under the Development Act and after the same was published and objections and suggestions were invited. Thereafter, the Master Plan was finalized. In the said Master Plan this area was ear-marked for the Transport Nagar. At present the State Road Transport Bus Terminal is situated in the thickly populated area and there is really traffic congestion. The Master Plan contemplated acquisition of total area of 501.58 hectares of land for the integrated plan for the purpose of alleviation of all the traffic problems inter alia by constructing the Transport Nagar new Bus Stand at Delhi-Khureja and Shikarpur Roads and widening of the roads. For the purpose of establishing Transport Nagar the National Capital Regional Planning Board (hereinafter to be referred to as the Board) sanctioned a loan of Rs.20.65 crores the Development Authority for construction. But because of the litigation it could not proceed further and the Board is incurring heavy interest. It was contended that compensation to the tune of Rs.17.42 crores have already been spent. It was also pointed out that the Parliament has enacted the National Capital Region Planning Board Act (Act 11 of 1985) which came into force on 9.2.1985. The aim of this Act is for providing common plan for National Capital Region, which includes the District Bulandshahr of State of Uttar Pradesh. This Act of 1985 was passed by resolutions of the States of Haryana, Rajasthan and Uttar Pradesh under Article 256 of the Constitution. Therefore, in order to have the development of the said region of the Capital Region a Corporate Body has been constituted with the Union Minister for Urban Development as the Chairperson and the Chief Ministers of Haryana, Rajasthan and Uttar Pradesh and Lt. Governor of Delhi as its members. Therefore, for the development of the National Capital Region such project has been undertaken and this Planning Body has already sanctioned the aforesaid amount. In pursuance of this exercise the aforesaid notification was issued dispensing with the requirement of Section 5- A of the Act for filing of objection as there was an urgent need of decongesting the traffic problem and to make the smooth traffic flow in the National Capital Region area also. Therefore, Section 5-A of the Act was dispensed with. Learned senior counsel for the appellants submitted that dispensation of Section 5-A of the Act in the present situation was not proper and there was no proper application of mind. In support of that learned senior counsel invited our attention to a decision of this Court in *Union of India & Ors. v. Mukesh Hans*¹. As against this, learned senior counsel for the respondents invited

our attention to a decision of this Court in *Rajasthan Housing Board & Ors. v. Shri Kishan & Ors.*² and another decision in *Union of India & Ors. v. Praveen Gupta & Ors.*³. There is no gainsaying in the fact that this right to file objection under Section 5-A is a valuable right and the Governments are not given a free hand to dispense with Section 5-A. Section 5-A is only a safeguard against the arbitrary exercise of the power by the State. But one should also not lose sight of the fact that invocation of such a provision is also sometimes imperative as in order to meet the urgency of the situation it needs to be invoked in public interest. It depends upon cases to case. Sometimes it may not be necessary at all and the State functionaries may sometime out of over jealousy may invoke this provision which would seriously jeopardize the interest of the people. Therefore, it depends upon case to case where in a given situation Section 5-A has been correctly invoked and the authorities were satisfied in an objective manner. In the present case, there are no two opinions that because of the globalization of economy Indian economy is progressing with fast speed, therefore in order to keep pace with the speed, invocation of Section 5-A has become imperative. Traffic congestion is a common experience of one and all and it is very difficult to negotiate with the traffic congestion in Delhi and National Capital region. Therefore, in the present situation, it cannot be said that the invocation of Section 5-A was for ulterior purpose or was arbitrary exercise of the power. Since the Master Plan has already been prepared and it has been approved by the Planning Board and they have sanctioned a sum of Rs.20.65 crores for the development of this Transport Nagar and widening of the National High No.91 into four lanes. Therefore, the proposal was approved by the Board and it got the sanction from the National Capital Region Planning Board and ultimately the Government invoked the power under Section 17(4) read with Section 5-A of the Act dispensing with the objections. In the light of these facts it cannot be said that invoking of power was in any way improper exercise. There is need for decongestion of the traffic and it is really the dire need of the hour and earliest it is implemented, better for the people at large. In this connection learned senior counsel for the appellants invited our attention to the decision of this Court in *Union of India & Ors (supra)* have held that Section 5-A is not an empty formality but it is a substantive right which can be taken away only for good and valid reason and within the limitations prescribed under Section 17 (4) of the Act. But in the present case the notification was struck down on the facts that no material was placed on record and secondly, it was also held that discontinuance of festival for want of land and any hindrance in using the land was not there. It was also pointed out that earlier an attempt was made to acquire the land for the very same purpose for holding such festival and it was allowed to lapse by efflux of time and consequently the Court found that there was no reference in the file to the need of invoking Section 17(4) and therefore, in a given situation. Their Lordships held that invocation of Section 17 (4) of the Act was vitiated by non-application of mind by the authorities. Therefore, this case was decided on the question of fact. As against this, learned senior counsel for the respondents submitted that traffic congestion has been recognized by this Court in *Union of India & Ors. v. Praveen Gupta & Ors. (supra)* as urgent need. In this case, land was acquired in order to shift the timber business from the walled city of Old Delhi as it had become the source of traffic congestion. Therefore, it was required to be urgently shifted from the existing place to relieve the congestion by acquiring the concerned land for the public purpose, namely, for establishment of timber depot. In that context, their Lordships held as follows:

“Since the acquisition is for shifting of timber business from the walled city to the outskirts of the city, shifting itself is for urgent purpose, viz., to relieve the traffic congestion in the walled city. Under those circumstances, the exercise of power under Section 17(4) cannot be said to be unwarranted in this case. ”

Similarly, in Rajasthan Hosing Board & Ors. (supra) the question was with regard to acquisition of waste and arable land for housing purpose. It was observed that Government's satisfaction regarding, being subjective, when there is material upon which it could have been formed fairly, court would not interfere nor would it examine the material as an appellate authority to see existence of urgency. The proposed acquisition for urban housing for weaker section and middle income group of people by Housing Board where there is a great scarcity of house was held to be good purpose for invoking Section 17 (4) dispensing with the objection under Section 5-A. Therefore, such invocation of Section 5-A was upheld by this Court.”

5. Now, reverting to the facts of this case also as pointed out above, this acquisition was made under the Master Plan prepared under the U.P. Urban Planning and Development Act and the same got approval of the National Capital Region Planning Board and loan was sanctioned by the Board and out of which Rs.17.42 crores have already been spent. In this given case, we are of opinion that invocation of Section 17(4) read with Section 5-A of the Act was well warranted and we see no reason to interfere with the order passed by the Division Bench of the High Court. Consequently, the appeal is dismissed with no order as to costs.

¹[(2004) 8 SCC 14]

²[(1993) 2 SCC 84]

³[(1997) 9 SCC 78]