

Ramlal Motiramji Tayade

v.

SPL. LAQ Officer & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

Civil Appeal No. 4036 Of 2012 (Special Leave Petition (Civil) No. 32104 Of 2011) With Civil Appeal No. 4039 Of 2012 (Special Leave Petition (Civil) No. 33241 Of 2011) Civil Appeal No. 4040 Of 2012 (Special Leave Petition (Civil) No. 3016 Of 2012) Civil Appeal No. 4041 Of 2012 (Special Leave Petition (Civil) No. 34866 Of 2011) | 27-04-2012

1. Leave granted.

2. For the purpose of implementing the expansion programme undertaken by it, the Maharashtra State Power Generation Company Limited (respondent No.3) sent a requisition to the State Government to acquire land in village Paras, District Akola. Thereupon, the State Government issued notification dated 30.11.2008 under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') proposing to acquire 132 hectares land. The appellants, whose lands were included in the notification filed objections under Section 5A(1) and prayed that in view of the policy framed by the State Government not to acquire fertile land, their land may be left out from the process of acquisition. They also pleaded that there was no justification to acquire their land because large tract of government land was available and the same can be transferred to respondent No.3. It is the appellants' case that without giving them opportunity of hearing, the State Government issued the declaration under Section 6, which was published on 30.5.2009. After one year and six months, notice dated 14.2.2011 was issued in respect of 109 hectares only and land comprised in survey Nos. 1033, 1040, 1043, 1044, 1045, 1054, 1055, 1056 and 1139 left out.

3. The appellants challenged the acquisition of their land by filing separate writ petitions. They pleaded that the acquisition was contrary to the policy framed by the State Government not to acquire fertile land; that the declaration under Section 6 was issued without giving them opportunity of hearing; that government land was available and the same could be allotted to respondent No.3 and that the acquisition was arbitrary and discriminatory. This is borne out from paragraphs 8 to 11 of Writ Petition No. 2256/2011 filed by the appellant in the first case. The same are extracted below:

"8. After the service of the notice under Section 4(1) of the Land Acquisition Act, the petitioner had filed his objection before the Special Land Acquisition Officer, Katepurna and Morna Project, Akola. The petitioner had stated in details, as to how his land and the land at

Paras was not suitable for the project for which it was sought to be acquired. It was also pointed out to the respondent No.1 that the land at Paras is extremely fertile and is having back soil. The petitioner takes two crops during the year. It was also pointed out by him that Government land was also available for the project. The petitioner had also pointed out that due to the acquisition 29 families would be rendered landless fifteen agriculturist would become homeless. It was also stated that the land at Nagzari was fallow and was of low category and 50% of it is a Government land and was available for acquisition. It was pointed out that the land was available for acquisition. It was pointed out that the land which was sought to be acquired was very close to Gaothan of village Paras, and lot of pollution would be caused due to generation plant at Paras. It was also pointed out to the respondent No. 1 that there were procedural lapses in the matter of issuance of the notification under section 4 of the Land Acquisition Act. It was also pointed out that the acquisition was against the public policy.

9. Though the petitioner and other agriculturist of village Paras had raised strong objections to the acquisition of his land, the respondent Nos. 1 and 2, without giving proper opportunity of hearing to the petitioner, issued a notice under Section 6 of the Land Acquisition Act on 30.5.2009. The copy of the notice dated 30.05.2009 is annexed herewith and marked as Annexure-VII. The petitioner is filing the copy of the order sheets of Land Acquisition Case No. 7/47/2006-07- Paras, maintained by the respondent No. 1 as Annexure-VIII. The order sheet dated 28.11.2008 shows that the order sheet is fabricated, as several dates of hearing have been shown as dates of hearing. The order sheets dated 29.12.2008, 30.12.2008, 31.12.2008 and 1.1.2009 are not signed by the respondent No. 1. The order sheets show that it is nowhere stated that hearing was given to the petitioner and others on 29.12.2009 or on any other date. The order sheets are shrouded with suspicion. Thus, it is evident that without giving opportunity of hearing to the petitioner, the impugned notification under Section 6 of the Act was issued by the respondents Nos. 1 and 2.

10. As after the issuance of the notice under Section 6 of the Act, the respondents were considering the proposal as regards acquisition of the land at Nagzari, the petitioner and the other objectors were under a bonafide belief that, the respondents had decided to drop the acquisition proceedings against the petitioner and other agriculturists at Paras. The said belief of the petitioner and others was fortified by the communication issued by the respondent No.2 to the Manager, Govt. Press Civil Lines, Nagpur on 24.12.2010. Along with the said communication, the respondent had sent a notification dated 23.12.2010 for publication in the official Gazette. The copy of the covering letter dated 24.12.2010 is annexed herewith and marked as Annexure-IX. The copy of the notification issued by the respondent No. 2 for acquisition of the land at Nagzari, Varkhed for the project of the respondents Nos. 3 and 4 is annexed herewith and marked as Annexure-X. Due to the aforesaid steps taken by the respondent No. 2, the petitioner and other land owners of village Paras were of the bonafide impression that the land acquisition proceedings for acquisition of land at Paras are going to be dropped. Hence, they did not challenge the notification under Section 4 and 6 of the Land Acquisition Act for about two years. However, on 14th of February, 2011, the respondents Nos. 1 and 2 issued notice under Section 9 of the Land Acquisition Act to the Petitioner and

other objectors/land owners. The copy of the notice dated 14.2.2011 is annexed herewith and marked as Annexure-XI.

11. It is pertinent to note here that, though the notification under section 4 was issued to acquire total 132 hectares of land but the notice under section 9 has been given to acquire only 109 hectares of land by the respondents. The respondents' malafidely excluded the Survey Nos. 1139, 1033, 1044, 1045, 1043, 1039, 1040, 1054, 1055 and 1056 from the acquisition. The respondents excluded the above said survey numbers under pressure in order to give benefit to the particular persons. The owner of survey No. 1039 is the mother of one Collector, the owner of survey No. 1045 is the well known contractor of M.S.P.G.C.L. Ltd. The whole action on the part of the respondents is therefore completely illegal and bad in law."

4. Similar averments were made in the other writ petitions.

5. When the writ petitions were taken up for hearing, learned counsel representing the respondents informed the High Court that the Land Acquisition Officer had passed an award dated 16.6.2011 under Section 11 of the Act. After taking cognizance of their statement, the Division Bench of the High Court dismissed the writ petitions albeit without considering the grounds on which the appellants had challenged the acquisition. This is evident from the following extracts of order 30.6.2011 passed in Writ Petition No.1736/2011:

"Advocate Mr. Bhide for petitioner has strenuously attempted to demonstrate that better lands for expansion of power project are available in the vicinity and according to him Government land itself in sufficient proportion is available. The learned Additional Government Pleader has pointed out that these objections were raised during Section 5A Enquiry and are duly considered and thereafter Notification under Section 6 has been issued.

Advocate Shri Bhide also states that as then M.L.A. Mr. Tayade was interested in acquisition of his own lands, the lands of the petitioner have also been acquired. Mr. Tayade is not party before this Court and as already noted, the relevant facts have been looked into in Section 5A Enquiry. Such objection without joining Mr. Tayade as party cannot be looked into and ceases to have any bearing after Section 5A proceedings. It is apparent that in view of the subsequent developments, the grievance cannot be considered. Petition is, therefore, not entertained. Rejected."

6. We have heard learned counsel for the parties at some length and carefully perused the record including the writ petitions filed by the appellants before the High Court and the detailed counter affidavits filed by the respondents before this Court.

7. Although, the appellants had questioned the acquisition proceedings on several grounds including the violation of Section 5A(2) of the Act and discrimination, none of the grounds has been adverted to, considered and decided by the High Court. In *Radhy Shyam (Dead) Through LRs. and others v. State of Uttar Pradesh and others*, (2011) 5 SCC 553, this Court had considered a somewhat similar issue and made the following observations:

"At the outset, we record our disapproval of the casual manner in which the High Court disposed of the writ petition without even calling upon the respondents to file counter-affidavit and produce the relevant records. A reading of the averments contained in paras 11 and 16 and Grounds A and F of the writ petition, which have been extracted hereinabove coupled with the appellants' assertion that the acquisition of their land was vitiated due to discrimination inasmuch as land belonging to influential persons had been left out from acquisition, but their land was acquired in total disregard of the policy of the State Government to leave out land on which dwelling units had already been constructed, show that they had succeeded in making out a strong case for deeper examination of the issues raised in the writ petition and the High Court committed serious error by summarily non-suiting them."

8. Since the impugned orders have been passed without considering the core questions raised in the writ petitions, we deem it proper to set aside the same and remit the matters to the High Court for fresh adjudication of the writ petitions filed by the appellants.

9. The appeals are accordingly allowed, the impugned orders are set aside and the matters are remitted to the High Court for fresh disposal of the writ petitions. We also request the High Court to make an endeavour to finally dispose of the writ petitions by 17.7.2012.

10. With a view to facilitate comprehensive adjudication of the issues raised in the writ petitions, we direct that the State of Maharashtra and other official respondents shall, within a period of four weeks from today file affidavits in the High Court incorporating therein all the facts which have bearing on the acquisition of the land in question. The documents which may be relevant for deciding the writ petitions shall also be filed along with the affidavits.

11. The interim orders passed by this Court shall remain operative till the disposal of the writ petitions by the High Court.