

**SUPREME COURT OF INDIA**

Garg Woollen Pvt.Ltd.

Vs.

State of U.P

C.A.No.5712 of 2002

(G.S.Singhvi and Fakkir Mohamed Ibrahim Kalifulla, JJ.)

19.07.2012

**JUDGMENT**

**G.S.Singhvi, J.**

1. This appeal is directed against order dated 09.09.1997 by which the Division Bench of the Allahabad High Court dismissed the writ petition filed by the appellant for quashing the acquisition of its land.

2. The appellant purchased the land comprised in Khasra No.262 of village Central Hope Town, Tehsil and District Dehradun by registered sale deed dated 19.10.1984 for setting up an industrial unit. Its name was mutated in the revenue records on 25.01.1985.

3. The Government of Uttar Pradesh issued notification dated 8.5.1985 under Section 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 (for short, 'the Act') for the acquisition of over 250 acres land including the land purchased by the appellant for planned development of industrial area in District Dehradun through the agency of Uttar Pradesh State Industrial Development Corporation (UPSIDC). The declaration under Section 6 was issued on 09.05.1985. Special Land Acquisition Collector, Dehradun passed award dated 22.11.1986. He took cognizance of the fact that industries were existing on some portions of Khasra Nos. 235 to 238 and 262 of which possession had not been taken and observed: On the date of possession on dated 17.3.86, the factories Everest Gas Cylinders Pvt.Ltd. and Garg Wollen Pvt. Ltd. were found constructed and in the initial stage of production and located on Khasra Numbers 235, 236, 237, 238 and 262 area respectively 0.56 acre, 0.63 acre, 0.38 acre, 0.65 acre and 3.65 acres; that on the land of Khasra No.262, one tin covered room was found constructed for the Textile Mill of Babu Lal Jain. Since, the time and constructions of the construction of these factories was a matter of dispute on 17.3.86, an area of 5.47 acre was reduced from the total area of 251.38 acres and possession was taken on the

reduced area of 245-91 acres and was handed over to the acquiring body. Notices were also issued to the factory owners but they failed to report as to when and in what circumstances, their factories were constructed. It appears that the aforesaid factories were constructed after the issue of Section 4 notification and in that eventuality, the compensation for the construction does not become payable. Because, the construction of the factories would have been done after proper sanction and after taking loans etc.; and more so since heavy machinery has already been installed and the production is in preliminary stage; and since in these proceedings the acquiring body has also the same purpose of developing industrial plots and leasing the same for establishing industrial units, it has been discussed with the acquiring body, such acquired land shall be leased to the owners of the constructed factories, absorb the factories in its regulated area and shall decide the dispute of standing factories by mutual arrangement at its own level. Therefore, after leaving aside the constructed areas, the compensation for the land of the areas 0.56, 0.63, 0.33, 0.25 and 3.65, i.e. total 5.47 acres from Khasra No.235, 236, 237, 238 and 262 respectively, whose possession have not been handed over to the acquiring department yet, will be payable to the land-owners.(as contained in the paper book)The appellant challenged the acquisition proceedings in Writ Petition No.2500/1988. In paragraphs 4 to 6 and 12 to 17 of the writ petition, the appellant averred as under:

“4. That for constructing the said factory and installing machines therein the petitioner had taken a loan of Rs. 21.70 lakhs from U.P. Financial Corporation. The petitioner started the construction of the aforesaid building in the year 1984 with the help of the aforesaid loan.

5. That the Superintending Engineer, Dehradun sanctioned an electrical power connection of 70 horse power to the petitioner on 29.3.1985.

6. That by 26.1.1985 the petitioner had incurred expenses to the tune of Rs. 2,29,888/- as is clear from the report of the Chartered Accountant dated 30-1-1985 a true copy whereof is being filed herewith as Annexure-III. That the aforesaid acquisition proceedings are in colourable exercise of power and wholly illegal as is clear from the facts stated hereinafter. That there was no urgency in the matter. There was nothing to show that acquisition for the alleged planned development of Industrial area in District Dehradun was of such an urgent nature that proceedings under section 5-A of the Act should have been dispensed with. It may be stated that the proceedings under Section 5-A are themselves summary in nature. Merely giving 30 days' time to file objection to the proposed acquisition would in any case have not interfered with the proposed planned development of industrial area. There was nothing to justify exclusion of inquiry under Section 5-A of the Act. That there was no material to

justify existence of any urgency for acquisition of the petitioner's land. The opinion of the Governor about the existence of urgency mentioned in the impugned notifications is based on non-existing materials and consequently the application of Sections 17(1) and 17(4) of the Act to the case is illegal. That, while issuing the impugned notifications the State Government has not at all considered that the petitioner was also using the land for an industrial project which was prestigious for Dehradun, that the petitioner's factory had already been constructed, that the petitioner had been advanced a loan of Rs. 21.70 lakhs by the U.P. Financial Corporation, that the petitioner had incurred an expenditure of more than Rs.3.8 lakhs by August 1985 on the construction of the factory etc. That the petitioner has reasons to believe that had the State Government been apprised of the aforesaid facts by the land acquisition authorities or had it taken the same into consideration, it would never have applied the provisions of Section 17(4) of the Act and would not have dispensed with the inquiry under section 5-A of the Act. That the Petitioner's factory over plots no.262 (area 1.92 acre)cannot disturb the alleged purpose of planned development of industrial area even if this plot was excluded from acquisition. Moreover, large patches open land are still lying vacant in the neighborhood and are available to the U.P. State Industrial Development Corporation. These patches are contiguous to the land sought to be acquired. Had the petitioner been given opportunity to file objection under section 5~A of the Act,it would have brought oil the aforesaid facts along with other facts to the notice of the State Government .”

4. In the counter affidavit filed on behalf of the respondents, it was not disputed that the appellant had established an industrial unit on the land purchased by it. However, the invoking of urgency clause was justified in the following words:

5. Planned Development Scheme in the backward hilly area is urgently needed to be implemented according to the Government policy. In view of the urgency for the development in the backward hill area, the Govt. considered it necessary that the proceedings under Section 5-A of the Land Acquisition Act may be dispensed with so that the land may be acquired without delay and the development according to the planned scheme may be implemented in the area. The Deputy General Manager of the U.P. State Industrial Development Corporation Ltd. Kanpur submitted the application in the proforma prescribed for acquisition of land at village Central Hope Town Pargana Pachpadan District Dehradun for planned development of Industrial area through U.P. State Industrial Development Corporation Ltd. on 23.10.84. The proposed acquisition was requested to be made immediately without any delay, otherwise there would be delay in setting up the Industries for the planned development of the backward hill area in the State.”

“The Deputy General Manager, U.P. State Industrial Development Corporation, Kanpur prepared the scheme for setting up industries in the backward hill area of Dehradun for the planned development according to the policy of the State Government. The Deputy General Manager of the Corporation submitted the requisition application to the State Government through the Collector for immediate steps so that land be acquired and industries according to the planned development in the backward hill may be set up soon without any delay. He had forwarded necessary records and details of the plan to the Government through the Collector. The Collector endorsed the plea of urgency of the implementation of the planned Development Scheme which was duly considered by the State Govt. and the State Govt. was of the opinion that the backward hill area of Dehradun should be developed in planned way without delay according to the Government policy and it was directed under Sections 17(1) and 17(4) of the Land Acquisition Act to dispense with the proceedings under Section 5-A of the Land Acquisition Act. The Government decided about the urgency on material evidence on record. The allegations contrary in the paragraph under reply are baseless and imaginary which are denied.

6. The Division Bench of the High Court did not consider the appellant's challenge to the invoking of urgency clause and dismissed the writ petition only on the ground that the appellant had made an incorrect statement about the construction of the factory prior to the issue of notification under Section 4(1) and had made an attempt to mislead the Court.

7. At this stage, we may mention that this and the connected appeal being C.A. No. 5713 of 2002 - Everest Gas Cylinders Pvt. Ltd. v. State of U.P. and others were disposed of on 15.04.2009 by taking cognizance of the statement made by learned counsel for UPSIDC that the Corporation is willing to give the acquired land to the appellants on lease at the specified rates and statement of the appellants' counsel that the offer made by the Corporation was acceptable to their clients. However, in view of some controversy relating to the price mentioned in the affidavit filed on behalf of UPSIDC, the order disposing of the appeals was recalled on 15.07.2011. On the same day, interlocutory application filed by M/s. Tirupati LPG Industries Limited for its impalement as party-respondent was allowed.

8. We have heard learned counsel for the parties and perused the record.

9. The question whether urgency clause embodied in Section 17 can be invoked for the acquisition of land for planned industrial development was recently considered in Radhy Shyam (Dead) through *L.Rs. and others v. State of U.P. and others*<sup>1</sup>. In that case, the Government of Uttar Pradesh had acquired 205.0288 hectares land of village Makaura, Pargana Dankaur, Tehsil and District Gautam Budh Nagar for planned industrial

development of the District. Radhy Shyam and others challenged the acquisition on the ground that there was no justification to invoke the urgency provisions and to dispense with the application of Section 5A because planned industrial development of the district was not something which could not wait for few months' time within which inquiry under Section 5A could have been held. Their writ petition was dismissed by the High Court by observing that the averments contained therein were not sufficient to call upon the respondents to place before the Court material to justify the exercise of power under Section 17(1) and 17(4) of the Act. This Court examined the scheme of the Act, referred to various judicial precedents including the judgments in *Narayan Govind Gavate vs. State of Maharashtra*<sup>2</sup>*Munshi Singh vs. Union of India*<sup>3</sup>*State of Punjab vs. Gurdial Singh*<sup>4</sup>*Union of India vs. Mukesh Hans*<sup>5</sup>*Hindustan Petroleum Corporation Ltd. vs. Darius Shapur Chenai*<sup>6</sup>and *Anand Singh vs. State of U.P*<sup>7</sup>and laid down the following propositions:

“(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner’s consent provided that such assertion is on account of public exigency and for public good. -*Dwarkadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd*<sup>8</sup>*Chiranjit Lal Chowdhuri v. Union of India*<sup>9</sup>and *Jilubhai Nanbhai Khachar v. State of Gujarat*<sup>10</sup>.

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly - *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana*<sup>11</sup>*State of Maharashtra v. B.E. Billimoria*<sup>12</sup>and *Dev Sharan v. State of U.P*<sup>13</sup>.

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one’s property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State

to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word “may” in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Section 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Sections 5-A (1) and (2) is not at all warranted in such matters.

ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Sections 17(1) and/or 17(4) with suspicion and carefully scrutinize the relevant record before adjudicating upon the legality of such acquisition.

10. In our view, proposition Nos.(v) to (ix) of the judgment in Radhy Shyam's case are squarely attracted in the present case and the acquisition of the appellant's land is liable to be quashed because the respondents have not produced any material to show that the State Government had formed a bonafide opinion on the issue of invoking of the provisions contained in Section 17(1) and 17(4) of the Act. Learned counsel for the respondents could not show as to how this case is different from the case of Radhy Shyam in which the acquisition made for planned industrial development of Gautam Budh Nagar was quashed on the ground that the acquisition of land for industrial purpose does not justify invoking of the urgency provisions.

11. In the result, the appeal is allowed, the impugned order is set aside and the acquisition of the appellant's land is quashed. It is, however, made clear that this Court has not expressed any opinion on the rights of the imp led respondent and if any other litigation is pending, then the same shall be adjudicated by the competent Court without being influenced by the observations contained in this order.

*Judgment Referred*

*1(2011) 5 SCC 0553*

*2(1977) 1 SCC 0133*

*3(1973) 2 SCC 0337*

*4(1980) 2 SCC 0471*

*5(2004) 8 SCC 0014*

*6(2005) 7 SCC 0627*

*7(2010) 11 SCC 0242*

*8 AIR 1954 SC 0119*

*9AIR 1951 SC 0041*

*10(1995) Supp. 1 SCC 0596*

*11(2003) 5 SCC 0622*

*12(2003) 7 SCC 0336*

*13(2011) 4 SCC 0769*