

JUDGMENT

State of Uttarakhand & Ors.

Vs.

Rajiv Berry & Ors.

C.A.No.6900 of 2009

(Ranjan Gogoi and Prafulla C.Pant,JJ.,)

09.08.2016

JUDGMENT

Ranjan Gogoi,J.,

1. The Civil Appeals arise out of two separate orders passed by the High Court of Uttarakhand in the matter of acquisition of land for the purpose of expansion of the Uttaranchal Secretariat. While Civil Appeal No.6901 of 2009 arises out of the judgment and order dated 23rd December, 2005 of the High Court dismissing the challenge to the acquisition made by the appellant land-owner on grounds to be noticed herein below, Civil Appeal No.6900 of 2009 arises out of another judgment and order dated 1st March, 2007 by which the impugned acquisition has been interfered with by the High Court.

2. A brief conspectus of the relevant facts may now be set out. By notification dated 4th May, 2004 issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the L.A. Act") the land mentioned in the schedule thereto was notified for acquisition for the purpose of expansion of secretariat on both sides (North/South) of the existing secretariat in Dehradun. By means of the aforesaid notification the urgency clause under Section 17(1) of the L.A. Act was invoked and furthermore enquiry under Section 5A of the L.A. Act was dispensed with in exercise of power under Section 17(4) of the L.A. Act. The acquisition was subjected to a challenge before the High Court of Uttarakhand in Writ Petition No.469 of 2004 which was disposed of by the order of High Court dated 30th October, 2004 in the following term:

"In these three writ petitions, particularly in writ petition No.469 of 2004 (M/B) 874 of 2004 (M/B) the notification under Section 4 of the Land Acquisition Act has been challenged. So also challenge is to the notification under Section 17(4) of the Land Acquisition Act by applying the urgency clause. In writ Petition No.840 of 2004 (M/B) there is a common challenge to the notification which provides for the acquisition of the land for extension of the Secretariat as also for the expansion of

the road. These notifications are different. Mr. Sudhanshu Dhulia, Senior Advocate, in his usual fairness has shown readiness to hear the petitioners or as the case may be the persons interested. Instead of going ahead with the urgency clause and more particularly dispensing with the enquiry under Section 5-A. In view of the statement made, Mr. Naithani, Senior Advocate appearing on behalf of the petitioners withdraws the writ petitions, so far as challenge to the notification dated 5.5.2004 is concerned. In view of the urgency felt, we feel that it will be better for us to fix the programme. Public notice shall, therefore, be given within seven days from today inviting the objections. The concerned Land Acquisition Officer, who is to hear the objection, shall hear them within fifteen days. All the objections shall be filed before the Land Acquisition and the Land Acquisition Officer shall dispose of the matter one way or the other after giving full opportunity of hearing, etc. by December, 2004 or as the case may be earlier thereto. With this, we dispose of the Writ Petition No.469 of 2004."

3. Consequent to the aforesaid order of the Court all the land-owners who were affected by the acquisition notification submitted their objections which were heard by the Special Land Acquisition Officer/Collector. Insofar as the appellant in Civil Appeal No.6901 of 2009 is concerned, it appears that the aforesaid appellant had filed his objections after the expiry of the time stipulated by the High Court in the aforesaid order dated 30th October, 2004. Despite the same his objections were considered on merits and as the same pertained to the quantum of compensation to be awarded the same were left open for consideration at an appropriate stage. The writ petition filed by the appellant land-owners was dismissed by the High Court.

4. Insofar as the other land-owners are concerned, the objections under Section 5A of the L.A. Act appear to have been rejected on merit. Thereafter on 14 th March, 2005 the declaration under Section 6 of the L.A. Act was issued. Notice to handover possession was issued to the land-owners on 10th March, 2006 and report of service of the said notice(s) was submitted to the concerned authority on 16th March, 2006. Thereafter the possession of the land was taken on 17th March, 2006. The said possession was taken in exercise of powers under Section 17(1) of the L.A. Act which provision had already been invoked by the Notification dated 5 th May, 2004 under Section 4 of the Act. Compensation, as required under Section 17(3A) i.e. 80% was, however, deposited in Court on 18th April, 2006. No award could be passed as in the meantime Writ Petition No.196 of 2006 (out of which Civil Appeal No.6900/2009 has arisen) was instituted and interim orders were passed therein. The said writ petition, as already mentioned, was allowed by the impugned judgment and order dated 1st March, 2007 by which the acquisition in question was set aside by the High Court. It is in these circumstances that the State of Uttarakhand has filed Civil Appeal No.6900 of 2009 challenging the judgment and order of the High Court. Civil Appeal No.6901 of 2009, as already noticed, has been filed by an individual land-owner by which his challenge to the same acquisition was negated by the High Court by its judgment and order dated 23rd December, 2005 in Writ Petition No.393 of 2005 on the grounds mentioned herein above.

5. We have heard the learned counsels for the parties. CIVIL APPEAL NO. 6900 OF 2009 -

6. A perusal of the order of the High Court would go to show that the principal basis on which the High Court thought it proper to strike down the acquisition in question is that the records and material laid before it by the State did not disclose due and satisfactory consideration, by the State Government, of the report of the Collector submitted after holding of the enquiry under Section 5A of the L.A. Act. Such consideration by the State Government being a mandatory requirement under Section 6, before publication of the declaration contemplated thereunder, the High Court found fault with the notification/declaration issued under Section 6 of the L.A. Act. The High Court further held that with the striking down of the Section 6 declaration/notification it will become impossible to meet another statutory requirement, namely, publication of the Section 6 declaration/notification within a period of one year of the publication of the notification under Section 4 of the L.A. Hence the notification under Section 4 was also interfered with/set aside by the High Court.

7. To demonstrate that the basis of the High Court's order in striking down the acquisition is apparently wrong and unacceptable Ms. Rachana Srivastava, learned counsel for the appellant State in Civil Appeal No.6900 of 2009 who is the respondent in Civil Appeal No.6901 of 2009, has placed before the Court the record in original pertaining to the decision taken by the State Government on the report of the Collector submitted after completion of the enquiry under Section 5A of the L.A. Act. In fact the said record was specifically called for by this Court by its order dated 27th July, 2016,

8. Shri M.L. Varma, learned Senior Counsel for the respondent in C.A.No.6900 of 2009 and Dr. Abhishek Atrey, learned counsel for the appellant in Civil Appeal No.6901 of 2009 have very elaborately taken the Court through the orders of the High Court and the materials laid before the High Court in the course of the adjudication of the writ proceeding in question. It is contended that the Office Memorandum dated 15th April, 2006 under the signature of the Secretary, Public Works Department, Government of Uttarakhand, which was issued in connection with the instant subject matter, goes to show that the consideration and approval of the Government under Section 6 of the L.A. Act was rendered on the said date i.e. 15th April, 2006 which is well after the date of the notification/declaration under Section 6 of the L.A. Act. The said fact, according to the learned counsels, has been admitted in the counter affidavit of the State before the High Court.

9. It is further contended by the learned counsels for the land-owners that for the first time before this Court some records had been placed by means of an I.A. (I.A. No.6) to show that it is on 14th March, 2005 that the approval of the Government to the report of the Collector was accorded. However in the said record the Authority who had taken the decision is not mentioned. The said defect is sought to be rectified by placing the same document showing the name of the Departmental Secretary by means of another I. A. (I.A. No.8). According to the learned counsel, the said facts should not inspire the confidence of the Court in veracity of the record produced. Furthermore, according to the learned counsel, the fact that alleged approval to the report of the collector and the Section 6 notification is of the same day i.e. 14th March, 2005 is another significant fact that the Court must consider in adjudging the acceptability of the stand taken.

10. It has also been submitted by the learned counsels that Shri Sandhu was not duly authorized to consider the report of the Collector and to approve the same. Under Section 6 of the L.A. Act the report was required to be considered and satisfaction arrived at by the State Government. There is no mention that the consideration of the report and the approval thereto by Shri Sandhu was in the name of the Governor as required under Article 166 of the Constitution of India.

11. Additionally, it has been contended on behalf of the land owners that the urgency clause invoked in the notification under Section 4 of the L.A. Act having been subsequently waived and the objections of the land-owners having been heard, the State could not have, once again, reverted to invoke the provisions of Section 17(1) of the L.A. Act. Possession of the land prior to the passing of the Award could not have been taken and that too by payment of 80% of the estimated compensation at a point of time subsequent to the taking over of possession. In this regard, it has also been contended that taking over of possession of the land on 17th March, 2016 was without adequate notice and furthermore that the possession taken over was only symbolic/paper possession. It has also been contended on behalf of the land-owners that the land is lying unutilized till date and, in fact, in a recent meeting of the Government convened by the Chief Secretary of the State it was expressed that the impugned acquisition need not be proceeded with any further.

12. We have perused the records in original placed before us by the appellant-State. The note-sheets contained in I.A. Nos.6-7 and I.A. Nos.8-9 are translated copies of the relevant portions of the decision making process contained in the said Original Records. Having perused the said records we find no difficulty in accepting the same and in holding that the contents thereof reflect a true and correct account of the manner in which the decision had been arrived at. The decision to approve the report of the Collector was taken on 14th March, 2005 by one Shri S.S.Sandhu who was, at that time, the Departmental Secretary (P.W.D. Secretary). The detailed note-sheet would go to show a consideration of the grounds urged by the land-owners and the reasons for the rejection of the said objections raised. The decision making process involved a multi-tier process culminating in the final decision of Shri Sandhu, the Departmental Secretary. If the above is what is disclosed by a consideration of the records in-original, we do not see how any fault can be found in the manner in which the decision has been arrived. Looking into the reasons cited we do not find any infirmity in the merits of the decision either. The fact that the final order in the file was passed by the Departmental Secretary on 14th March, 2005 on which very date the declaration/notification under Section 6 of the L.A. Act was also issued cannot lead the Court to any adverse conclusion so as to invalidate either the decision taken or the notification issued. Insofar as the jurisdiction of the Departmental Secretary to take the decision in question is concerned, all that is required to be noticed is that under the Rules of executive business it cannot be denied that Shri Sandhu as the Departmental Secretary (P.W.D.) would be competent to take a decision on behalf of the State. When a decision is taken in the file, the same obviously would not be in the name of the Governor. However, in the formal notification dated 14th March, 2005 the above decision is expressed to be taken in the name of the Governor of the State. In such a situation, the Court will find no fault with the notification/declaration dated

14th March, 2005 on the ground that it is contrary to or inconsistent with the provisions of Article 166 of the Constitution of India.

13. The above facts coupled with the text of the Notification dated 15th April, 2006 would make it clear that the said Notification does not detract from the above position as has been sought to be contended on behalf of the land-owners. The contents of the State's affidavit before the High Court, in the light of what is disclosed by the original records, would not be determinative of the issue.

14. There can be no doubt that the statute under which the acquisition was made is an expropriatory legislation and, therefore, must be strictly construed. This has been the consistent view of this Court. Illustratively we may refer to *Essco Fabs Private Limited and another vs. State of Haryana and another*¹. In the instant case in the Notification dated 5th May, 2004 under Section 4 of the L.A. Act the provisions of Sections 17(1) and 17(4) were invoked. Objections of the land-owners under Section 5A were dispensed with. The said position was subsequently altered and objections were allowed to be filed and all such objections were considered by the Collector. Thereafter the report of the Collector was duly considered by the State Government and the Notification under Section 6 was issued. The objections of the land-owners in this regard have not been found acceptable by us for reasons indicated above.

15. In the light of the above, the alternative/additional contention advanced on behalf of the land-owners may now be considered. It is urged that the provisions of Section 17(4) of the L.A. Act having been initially invoked but subsequently abandoned and objections having been allowed to be filed, the State cannot turn back and take possession of the land under Section 17(1) of the Act.

16. Sections 17(1) and Section 17(2) vest power and jurisdiction in the State to take possession of the land even prior to the passing of the award. Section 17(4) enables the State to take such possession even by dispensing with the requirement of the opportunity contemplated under Section 5A of the Act. Sections 17(1) and 17(2) on the one hand and Section 17(4) operates in two different fields. It is extent of urgency or emergency that would determine the application of the respective clauses/sub-sections of Section 17 of the L.A. Act. In other words, even though the urgency clause under Section 17(1) and Section 17(2) may be invoked in a given case, the opportunity of filing objections under Section 5A of the L.A. Act need not be dispensed with and can still be afforded. However, if the provisions of Section 17(4) are invoked, the State would be empowered to dispense with the requirement of affording opportunity under Section 5A and take possession prior to making of the award. The dispensation of the opportunity contemplated by Section 5A by invoking Section 17(4) is not an invariable consequence of the invocation of Sections 17(1) or (2). This is what has been held in *Nageshwar Prasad and others vs. U.P. Government and others etc.*²; *Union of India and others vs. Mukesh Han*³ and *Essco Fabs Private Limited and another vs. State of Haryana and another* (supra).

17. What has happened in the present case is that even though the State had departed from its initial stand of invoking Section 17(4) of the Act and had given to the land-owners the opportunity contemplated by Section 5A, it had taken possession of the land prior to the passing of the award by invoking the provisions of Section 17(1) of the L.A. Act. It has already been elucidated in details why it was permissible for the state to do so.

18. While there can be no manner of doubt that in the present case compensation under Section 17(3A) was paid (on 18th April, 2006) after the date of taking over of possession (on 17th March, 2006), time and again, it has been held by this Court that the said fact by itself would not invalidate the acquisition. Reference to *Tika Ram and others vs. State of Uttar Pradesh and others*⁴ will suffice. Several earlier decisions of this Court on the above issue have been referred to in paragraph 95 of the report in Tika Ram (supra), details of which need not be repeated herein.

19. So far as the taking over of possession without notice is concerned, we do not find the said ground to be substantiated by the records placed before the Court in I.A. No.17. Notice to handover possession was issued on 10 th March, 2006 and report of service of such notice(s) was submitted to the concerned authority on 16 th March, 2006. Thereafter, possession was taken on 17th March, 2006. From the Possession Certificates, which are also on record, we do not find the contention of the land-owners that taking over of such possession was symbolic to be substantiated in any manner. Consequently, the reliance placed on the decision of this Court in *Raghubir Singh Sehrawat vs. State of Haryana*⁵ and others is not of any consequence.

20. For the aforesaid reasons, we cannot agree with the conclusion of the High Court that the impugned acquisition suffers from any fundamental flaw or illegality which would require the same to be struck down as has been done by the High Court in Writ Petition No.196 of 2006 (impugned in Civil Appeal No.6900/2009). Consequently, we allow the appeal filed by the State, namely, Civil Appeal No.6900 of 2009 and set aside the order of the High Court dated 1st March, 2007 passed in Writ Petition No.196 of 2006. The natural corollary of above would be to dismiss Civil Appeal No.6901 of 2009 which we hereby do.

21. As we have expressed no opinion on the entitlement of the any of the parties to apportionment of the compensation no order will be called for in this regard except that compensation for the acquisition will now be determined in accordance with the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

22. The appeals as also all the pending applications including the contempt petition are disposed of in the above terms.

Judgment Referred.

¹(2009) 2 SCC 0377

²AIR 1964 SC 1217

³(2004) 8 SCC 0014

⁴(2009) 10 SCC 0689

⁵(2012) 1 SCC 0792