

# ALLAHABAD HIGH COURT

Baldeo Singh

Vs.

State of U. P

Civil Misc. Writ. No. 20 of 1963

(Jagdish Sahai, J.)

15.04.1964

## ORDER

### **Jagdish Sahai, J.**

1. This writ petition which has been filed on behalf of Baldeo Singh, Mamraj Singh and Smt. Triveni is directed against the land acquisition proceedings pending in respect of a plot of land which is covered by Leeches and mango trees and forms an orchard. The notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act) was published in the U.P. Gazette dated November 17, 1962. In this notification there is also a reference to a direction made by the State Government applying the provisions of Section 17(1) of the Act and rendering the provisions of Section 5-A of the Act inapplicable. That part of the notification reads :-

"The Governor being of the opinion that the provisions of Sub-Section (1) of Section 17 of the said Act are applicable to the said Section to direct that the provisions of Section 5-A of the Act shall not apply."

The composite notification under Sections 4 and 17, mentioned above, is dated October 22, 1962. This was followed by a notification dated November 17, 1962, under Section 6 of the Act which was published in the State Gazette dated November 24, 1962. In the composite notification under Section 4 read with Section 17(1) of the Act referred to above, the purpose for which land is acquired has been stated as follows :-

"Required by Headquarters Bengal Engineering Group and Centre for opening a

Children's school". In the notification under Section 6 of the Act, the same purpose is mentioned. Mr. V.K.S. Chaudhary, the learned counsel for the petitioners, has challenged the validity of the composite notification under Sections 4 and 17 as also under Section 6 of the Act on the following five grounds :-

1. That the notification under Section 17(4) is invalid in so far as the land in dispute is an orchard which cannot be comprehended either by the expression 'waste land' or by the expression arable land with the result the proceeding under Section 17 of the Act cannot be taken in respect of this plot.
2. That the provisions of Section 17(4) of the Act are invalid on the ground of being violative, firstly of Article 14 and secondly of Article 19 of the Constitution. It is also contended that there has been an excessive delegation of essential legislative functions in favour of the appropriate Government in so far as they have been given a power to set at naught the provisions of Section 5-A of the Act.
3. That the combined notification under Sections 4 and 17 of the Act is invalid.
4. That the impugned notification under Section 6 is invalid on the ground that it was issued the same day on which the notification under Section 4 was published in the State Gazette.
5. That there has been a clear fraud on the statute or colourable exercise of power by the State Government in so far that they have pretended to acquire the land for "Headquarters Bengal Engineer Group and Centre for opening a Children's school," in order to bye-pass the provisions of Sections 38, 39, 40 and 41 of the Act.

No other submission has been made before me. I will take the submissions seriatim.

2. Mr. Chaudhary contends that Section 17(1) provides that only in case of a waste or arable land can the powers under that Section be exercised. He reads waste to mean 'barren' and arable as capable of cultivation but not under actual cultivation. It is not necessary to dilate on the point because the argument is fully met by Sub-Section (3) of Section 17 which reads :-

"In every case under either of the preceding Sub-Sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage

sustained by them-caused by such sudden dispossession and not accepted in Section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for me land under the provisions herein contained."

This Sub-Section clearly contemplates a notification, in respect of the land covered by trees and crops also. It is, therefore, obvious that the Legislature: never used the words 'waste' and 'arable land in the sense in which Mr. Chaudhry is seeking to read them. If the idea was that only barren and uncovered land was to be acquired, any provision for paying compensation in respect of the trees and crops would be meaningless and redundant and redundancy and meaninglessness cannot be attributed to the Legislature easily. Apart from it, the word 'waste' does not mean barren nor does the word 'arable' connote capable of cultivation but not under actual cultivation. Arable only means cultivable which means either cultivated or capable or being cultivated. Therefore, neither do the meaning of the words 'waste' or 'arable' nor the context in which they have been used support the submission of Mr. Chaudhry. In fact, both of them militate against the submission made by him. I, therefore, overrule the first submission of the learned counsel.

3. So far as the second submission of the learned counsel is concerned, it is difficult to see how Section 17(1) can be held to be violative of Article 14. The only submission that Mr. Chaudhry made in this respect was that it is so because the State Government has been given power to decide the matter subjectively and has been provided with no principles on the basis of which to exercise the power. In my judgment, the submission is not correct. The words used are not 'in the opinion of the Government but in cases of urgency' with the result that the policy of law and legal principles have been provided for by the Legislature. The statute having provided the policy of law and the legal principles having been enacted by the Legislature itself, it cannot be said that there has been any delegation of essential Legislative functions. The question of urgency has got to be decided objectively and has not been left to the subjective satisfaction of the appropriate Government. It is, therefore, clear that Section 17 of the Act is not violative of Article 14 of the Constitution. The applicability of Article 19 is drawn by submitting that the right to own and enjoy property has been affected. The submission is fully met by the circumstance that the right to own property is subject to the laws made by the State. Clause 5 of Article 19 reads :-

"Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the

operation of any existing law in so far as it imposes, or prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said, sub-clauses either in the interests of the general public or for the protection of the interests of any scheduled tribe."

The Act was an existing law on the date when the Constitution was enforced. It cannot also be argued that the provisions of Section 17 are unreasonable. The result, therefore, is that the case would fall under Clause 5 of Article 19 of the Constitution of India, and the right given under Clause (f) to acquire and dispose of property would be subject to the laws made by the State. There is, therefore, no substance in the complaint of the learned counsel that Section 17 of the Act is in violation of Article 19 of the Constitution. I am unable to see any substance in the connected submission of the learned counsel also. It is contended that there has been delegation of Legislative functions in giving the Government the power to make the provisions of Section 5-A of the Act inapplicable to cases where the purpose of acquisition is urgent. In other words the submission is that by virtue of Section 17 of the Act the appropriate Government has been given the power to repeal or render ineffective the provisions of Section 5-A of the Act. I am unable to agree. The Legislature could not have done anything more than to enact a rule of policy by providing that only in cases of urgency shall the power under Section 17(4) of the Act be exercised. It had by the very nature of things to leave to some authority to decide as and when 'cases of land acquisition arose as to whether or not acquisition in those cases was urgent. This power the Legislature could not have exercised itself. In *Banarsi Das v. State of M.P.*<sup>1</sup> the question arose whether the Legislature could delegate to the State Government the power to decide as to on which person or class of persons and at what rates a tax should be levied. The argument advanced before the Supreme Court was that the delegation of such a power amounted to a delegation of an essential Legislative function. The Supreme Court repelled the submission in the following words :-

"It is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like."

It is again a mistake to think that power to make the provisions of Section 5-A of the Act inapplicable in cases of urgency flows from executive and not from the

Legislature. In fact, it flows from Section 17 of the Act which has been framed not by the executive but by the Legislature. The view that I am taking finds support from *Harishankar Bhagla v. State of M.P.*<sup>2</sup>

4. The third submission of the learned counsel is to the effect that a combined notification under Sections 4 and 17 of the Act is invalid. I do not see how and why Mr. Chaudhary contends that the right conferred by Section 5-A of the Act is very valuable right in favour of a citizen, and the right should be taken away only after a notification under Section 4 has been issued. No doubt the right is valuable. But if the right can be taken away nothing depends upon at what stage it is taken away. I do not see why it should make any difference if the right is taken away after the publication of the notification under Section 4 and not before. Once the right can be taken away there should be no legal difficulty in its being taken away at the same time as the notification under Section 4 of the Act is published. In *Somawanti v. State of Punjab*,<sup>3</sup> it was held by the Supreme Court that a combined notification under Sections 4 and 6 is not invalid. If a combined notification under Sections 4 and 6 is not invalid it is difficult to see how and why a combined notification under Sections 4 and 17 would be invalid. There is nothing in Section 4 or Section 17 which requires the publication of a notification under Section 17 only after the publication of a notification under Section 4 of the Act. Besides, even if it be assumed, though there is no reason to assume it, that the simultaneous publication of a notification under Sections 4 and 17 of the Act is technically incorrect, it would not render the notification under Section 17 of the Act to be invalid. It is well settled that if an authority has jurisdiction to do an act, mere irregularity in doing it would not vitiate the act. Mr. Choudhury has placed reliance upon a decision of this Court in *Ram Pratap Nagain Singh v. Land Acquisition Officer, Deoria*,<sup>4</sup> In this case the statutory provisions have not been considered and the learned Judges who decided the case have only followed the unreported decision in the case of *Laxmi Narain v. State of U.P.*,<sup>5</sup> All that they have stated is as follows :-

"The second ground on which this petition must be allowed is based on the principle laid down by a Division Bench of this Court in Special Appeal No. 26 of 1957, Decided at Lucknow on 19-12-1959 (All). In the present case, as in that case, the notification under Section 4 also included in it the declaration under Section 17(4) that the State Government was satisfied that the provisions of Sub-Section (1) of Section 17 were applicable to the land to be acquired."

After quoting a passage from Laxmi Narain's case. Spl. Appeal No. 26 of 1957, D/-19-12-1959 (All) the learned Judges again observed :-

"In the present case before us the order for issuing the notification under Section 4 was made on 25th November, 1958, and simultaneously an order was passed under Section 17(4) also. Both these orders were published simultaneously in one single notification in the U.P. Gazette dated 6th December, 1958. This clearly shows that the order under Section 17(4) was passed before the notification under Section 4(1) was published, and on the view expressed by the Division Bench that order would be void....."

In my opinion, in view of the decision of the Supreme Court in Somawanti's case, AIR 1963 Supreme Court 151 where their Lordships of the Supreme Court held that a composite notification under Sections 4 and 6 was not invalid, the decision in Laxmi Narain's case, S. A. No. 26 of 1957, D/-19-12-1959 (All) or in that of Ram Pratap's case Civil Misc. Writ No. 1237 of 1959, D/-21-9-1961 (All) cannot be considered to be good law. For the reasons mentioned above, I overrule this submission of the learned counsel also.

5. I am unable to agree with the fourth submission of the learned counsel also that the notification under Section 6 of the Act is invalid because it bears the same date on which the notification under Section 4 of the Act was published. I have already said earlier in this judgment that the notification under Section 4 is D/d. 22-10-1962 and was published in the State Gazette, D/d. 17-11-1962. The notification under Section 8 is D/-17-11-1962 and was published in the State Gazette, D/d. 24-11-1962. It would appear from the dates given above that the notification under Section 6 was issued about 25 or 26 days after the notification under Section 4 was issued. It was also published seven days after the notification under Section 6 was issued. Merely because the notification under Section 6 was issued on the same date on which the notification under Section 4 was published would not make it illegal. In any case, in AIR 1963 Supreme Court 151 (Supra) the Supreme Court held that a composite notification under Sections 4 and 6 of the Act was not invalid. That being the position, the fourth submission of the learned counsel also fails.

6. The only other submission that remains to be considered is whether in this case the power has been exercised by the State Government colourably. The submission of the learned counsel for the petitioner is based upon a misconception of the correct facts of the case. The land is being acquired for Bengal Engineering Group so that a children's school can be opened there. The acquisition is, therefore, being made for the Headquarters of the Bengal Engineering Group, a Government unit. It cannot, therefore be denied that the acquisition is for a public purpose. It is wholly immaterial as to what purpose would the Bengal Engineering Group put the land after it has been acquired at their instance.

7. Mr. Chaudhry contends that if the land was acquired for the society which would open the children's school, the provisions of Sections 58, 39 and 40 of the Act would have applied and in order to avoid those provisions, a fraud on the statute was committed and it was given out that the land was being acquired by the Government i.e., by Headquarters of Bengal Engineering Group Centre. There is no justification for making that submission. The land is being acquired for the Headquarters of Bengal Engineering Group so that, in order to educate the children of the Military personnel they might have a children's school opened. The fifth submission, in my opinion, is also without substance.

8. The result is that the petition is devoid of all merits. It is accordingly dismissed but there shall be no order as to costs.

Petition dismissed.

Cases Referred.

1. AIR 1958 SC 909
2. AIR 1954 SC 465
3. AIR 1963 SC 151
4. Civil Misc. Writ No. 1237 of 1959 decided on 21-9-1961 (All)
5. Special Appeal No. 26 of 1957 -Decided at Lucknow on 19-12-1959 (All)