

General Govt. Servants Co-Operative ... vs Wahab Uddin & Ors. Etc. Etc on 2 March, 1981

Equivalent citations: 1981 AIR 866, 1981 SCR (3) 46, AIR 1981 SUPREME COURT 866, 1981 ALL. L. J. 299, 1981 BBCJ 98, 1981 BLT (REP) 243 (SC), 1981 UJ (SC) 301, 1981 (2) SCC 352, (1981) 7 ALL LR 200, (1981) LANDLR 259

Author: Baharul Islam

Bench: Baharul Islam, R.S. Pathak, O. Chinnappa Reddy

PETITIONER:

GENERAL GOVT. SERVANTS CO-OPERATIVE HOUSING SOCIETY LTD.,AGR

Vs.

RESPONDENT:

WAHAB UDDIN & ORS. ETC. ETC.

DATE OF JUDGMENT02/03/1981

BENCH:

ISLAM, BAHARUL (J)

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ISLAM, BAHARUL (J)

PATHAK, R.S.

REDDY, O. CHINNAPPA (J)

CITATION:

1981 AIR 866 1981 SCR (3) 46

1981 SCC (2) 352 1981 SCALE (1)630

CITATOR INFO :

D 1985 SC 736 (20)

ACT:

Land Acquisition Act-Sections 4, 5A and 6-Land acquired for a company-Part VII of the Act, if attracted-Requirement of rule 4 of Land Acquisition (Companies) Rules 1963-If mandatory-"Person interested"-Meaning of.

HEADNOTE:

The land in dispute originally belonged to a person who had migrated to Pakistan. After acquiring the lessee rights in the land under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 the Central Government sold these rights by auction. The first

respondent purchased a plot of land and a sale certificate was issued to him. The respondent, however could not get possession of the land as a result of litigation resorted to by the person in possession of the land. In the meantime the State Government filed a suit against the Custodian of Evacuee Property and the auction purchasers for possession; but the suit and later appeal were dismissed.

Before the respondent obtained possession of the land a notification under section 4 of the Land Acquisition Act was issued seeking to acquire the land for construction of residential houses for the members of the appellant society. Having had no knowledge of the notification the respondent did not file any objection under section 5A. After the issue of notification under section 6 of the Act proceedings relating to determination of compensation for the lands were started. A notice was served on the respondent under section 9(3) of the Act calling upon him to prefer his claim for compensation.

Allowing the respondent's petition impugning the action of the Government the High Court held that the State Government could acquire the land only after complying with the provisions of Chapter VII of the Act and the Land Acquisition (Companies) Rules, 1963 and this not having been done there was a breach of the principle of natural justice and that secondly the respondent was a "person interested" within the meaning of section 3(b) of the Act.

On the question whether the respondent was a 'person interested' and whether the notification issued under section 6 was valid.

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HELD: The expression "person interested" is defined in section 3(b) as including all persons claiming an interest in compensation to be made on account of acquisition of land under the Act. That the first respondent had interest in the land in question is warranted by the following circumstances: (i) a sale certificate had been issued to him after he purchased the land in auction sale; (ii) the Collector knew that he had purchased the land for he had himself filed a suit for ejectment against him from the land and that the suit was dismissed and the appeal against that order was also dismissed; (iii) the Collector called upon the respondent to prefer his claim under section 9(3) of the Act which showed that

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the Collector had admitted the first respondent's interest in the land; and (iv) before the High Court the Collector had not denied the respondent's right to compensation. Therefore, the first respondent was a "person interested" within the meaning of section 3(b). [50 F-H]

2. The notification under section 6 is invalid for non-compliance with rule 4 of the Rules. [54 G]

The appellant society is a "company" within the meaning of section 3(e) of the Act. When the land was acquired for

the purpose of a company, Part VII of the Act is attracted and the provisions of that Chapter have to be followed. Rule 4 is mandatory and unless the directions enjoined by this rule are complied with the notification under section 6 would be invalid. Its compliance precedes the notification under section 4 as well as compliance of section 6 of the Act. [51 F-G]

In the instant case on receipt of the notice under section 9(3) the respondent objected to the acquisition on the grounds that the land or lessee rights having been acquired by the Central Government under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 could not be acquired by the State Government, and that the mandatory procedure for acquisition of land for private companies had not been followed. No inquiry report had been submitted by the Collector. The report submitted was under section 5A and not under rule 4. There had therefore been a failure of justice. [54 C-F]

3. The appellant's contention that the first respondent's claim was barred by limitation under sections 45(f) and 180 of the Tenancy Act, has no force because there is no evidence to show that the requirements of the section have been satisfied. That apart, this is a mixed question of fact and law requiring investigation into facts. Since it had not been taken before the High Court but sought to be urged for the first time in this Court, it cannot be allowed to be urged in an appeal by special leave under Article 136 of the Constitution. [50 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2085 of 1978 and 7-8 of 1979.

Appeals by special leave from the Judgment and Order dated 18.5.1977 of the Allahabad High Court in C.M.W. Nos. 5061/73, 5063/73 and 5080/73.

G.C. Lal, D.B. Vohra and O.P. Tewari for the Appellants in all the Appeals.

Probir Mitra for R.1 in CAs. 2085/78, 8/79 and RR 1-2 in CA 7/79.

G.N. Dixit, and Sobha Dikshit for RR. 2 to 4 in CA 2085/78 RR 2-4 in CA 8/79 and RR 3&5 in CA 7/79.

E.C. Aggarwala for R.4 in CA 7/79 and R. 3 in CA 8/79. The Judgment of the Court was delivered by BAHARUL ISLAM, J. The above appeals arise out of land acquisition proceedings and involve similar questions of fact and the same question of law. This common judgment, therefore, will dispose of all the three appeals. It will be sufficient if we refer to the material facts of Civil Appeal No. 2085 of 1978 only.

2. The land involved, belonged to one Imam Khan as an occupancy tenant. Before the partition of India, he migrated to Pakistan, whereafter his rights in the lands were declared evacuee property. Subsequently, in pursuance of a notification issued under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Central Government acquired the lessee rights. As a result of the notification, these rights vested in the Central Government free from all encumbrances. The Central Government thereafter sold these rights by auctions in August/September 1962. The first Respondent purchased a plot of land for a sum of Rs. 21,700. He deposited the entire amount with the Managing Officer, Evacuee Property, Agra. A sale certificate was issued to him on September 12, 1962.

3. It appears that one Ramlal Lamba was in the possession of the land in question. He was asked by the Managing Officer, Evacuee Property, to vacate the land, and deliver possession to the first respondent. Instead of delivering possession of the land to the first respondent Lamba, filed a Writ Petition under Article 226 of the Constitution in the Punjab High Court at Delhi. The Writ Petition was dismissed on 4.12.69. He then filed an appeal which was also dismissed on 2.2.70. He then filed a suit in the Court of the Munsiff Agra, for restraining the Managing Officer, Evacuee Property, from interfering in his possession. Thus the first respondent could not get possession of the land.

4. After the auction sale, the State of U. P. (Respondent No. 2 herein) filed a suit under Section 171 of U. P. Tenancy Act, 1939 (hereinafter 'the Tenancy Act') against the Custodian of the Evacuee Property, and the four auction purchasers including the first respondent, for possession. This suit was dismissed by the Assistant Collector, Ist Class, on 24.3.69 on the ground that it was not maintainable. An appeal was filed. This was also dismissed on 24.10.70. Thus before the petitioner could obtain possession of the land, the Collector of Agra (Respondent No.3 herein) issued a notification under Section 4 of the Land Acquisition Act (hereinafter 'the Act') on March 1, 1970, notifying that the plots in dispute (and several other plots) were intended to be acquired by the State Government for construction of residential houses for the members of the General Servants Co-operative Housing Society Ltd., Agra, the appellant before us. The first respondent did not have any knowledge or information of the said notification under Section 4 of the Act and so he did not, as he could not, file any objection under section 5A of the Act. The notification under section 4 was followed by a notification under section 6 of the Act on May 4, 1973. After the said notifications, proceedings relating to determination of compensation for the lands were started. In that connection the first Respondent was served with a notice under section 9(3) of the Act, calling upon him to prefer his claim for compensation. Thereupon the first Respondent filed objections, but before the objections were disposed of he filed a writ petition before the High Court of Allahabad. The High Court allowed the writ petition and struck down the notification dated 5th May 1973, under Section 6 of the Act. The High Court held that as the acquisition was made by the State Government for the benefit of a Co-operative Society, it could do so only after complying with the provisions of Chapter VII of the Act, and the Land Acquisition (Companies) Rules, 1963 (hereinafter called 'the rules'), but as the State Government did not do so, there was a breach of the principle of natural justice. Repelling the argument of the appellant to the contrary, the High Court also held that the first respondent was a 'person interested' within the meaning of section 3 (b) of the Act.

5. Respondents No. 2, 3 and 4 who are co-respondents appearing through Mr. Dikshit before us have supported the case of the appellant.

6. The first question for determination is whether the first respondent is not a 'person interested' within the meaning of section 3(b) of the L.A. Act and as such he had no locus standi to file the writ petition before the High Court, as contended by the appellant.

Section 3 (b) of the Act is in the following terms (material portions only):

"3. In this Act, unless there is something repugnant in the subject or context:-

(a).....

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

and a person shall be deemed to be interested in land if he is interested in an easement affecting the land."

In support of the argument the appellant refers to section 45 (f) and section 180 of the Tenancy Act, 1939. Clause (f) of section 45 provides that the interest of the tenant shall be extinguished where the tenant has been deprived of possession and his right to recover possession is barred by limitation. The limitation provided is for a period of twelve years, for a suit for ejectment of a person occupying the land without title and for damages-if the land is contiguous to any other land lawfully occupied by such other person-(a) if such person has, at the commencement of the Tenancy Act, occupied the land for more than six years, the period runs from the time the land holders first knew of the unauthorised occupation. In any other case the period of limitation is six years. This point which has been urged for the first time before us is a mixed question of fact and law. It does not appear to have been taken before the High Court. A mixed question of law and fact needing investigation into facts cannot be allowed to be urged for the first time in an appeal by special leave under Art. 136 of the Constitution.

It is true that admittedly the first respondent was out of possession at the relevant time but there is no evidence before us to show whether or not the land in question was contiguous to any other land occupied by the person who is in possession and that his possession had been lawful. We are therefore not in a position to accept the submission of the appellant that the first respondent's claim was barred by limitation. On the contrary there is ample evidence before us to show that the first respondent had interest in the land in question. We come to this conclusion from the following circumstances:

(I) A sale certificate had been issued to the first respondent after the purchase of the land in auction sale held in 1962; (2) the Collector, Agra, knew that the first respondent had purchased the land in auction, for he had himself filed a suit for ejectment from the land in question under section 171 of the Tenancy Act against the

first respondent, and that the suit was dismissed by the Assistant Collector Ist Class, on 24th March, 1969; the appeal preferred against the said order had also been dismissed by the Commissioner on the 27th of October, 1970; (3) the Collector issued notice under section 9 (3) of the Act calling upon the first respondent to prefer his claim, if any for compensation of the land acquired. (This amounts to an admission of the first respondent's interest in the land by the Collector) and (4) that in the counter affidavit filed by the Collector, in reply to the affidavit filed by the first respondent before the High Court the claim of the petitioner to get compensation for the rights acquired by the Government was not denied by the appellant. We therefore agree with the High Court that the first respondent was a 'person interested' within the meaning of clause (b) of section 3 of the Act.

7. The next point urged before us by the appellants is that the first respondent in fact filed objection which was inquired into and he was given an opportunity of being heard. The High Court, therefore, it is contended, was not right in holding that there was a breach of the principle of natural justice. In our opinion, the real question, as urged by the first respondent, is not whether there has been any violation of any principle of natural justice but whether Rule 4 of the Rules has been complied with by the Collector. Sub-section (1) of Section 4 of the Act provides that whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose a notification to that effect shall be published in the official gazette and that he shall also cause a public notice of the substance of the notification to be given at convenient places in the said locality.

Section 5A of the Act provides that any person interested in any land which has been notified under sub-section (1) of section 4, as being needed or likely to be needed for a public purpose or for a Company may, within thirty days (twenty-one days according to the U.P. amendment) after the issue of the notification object to the acquisition of the land or of any land in the locality as the case may be. Under section 3 (e), the expression 'Company', inter alia, includes a society registered under the Societies Registration Act, 1860 and a registered society within the meaning of the Co-operative Societies Act, 1912 or any other law relating to co-operative society for the time being in force in any State. The appellant-The General Govt. Servants Co-operative Housing Society Ltd., Agra, is a Company. The appellant has not contended to the contrary. It is also not disputed that when land is acquired for the purpose of a company, Part VII of the Act is attracted and the provisions of that chapter have to be followed.

Rule 4 of the Rules which is material and falls for our interpretation runs thus:

"4. Appropriate Government to be satisfied with regard to certain matters before initiating acquisition proceedings.- (1) Whenever a Company makes an application to the appro-

priate Government for acquisition of any land, that Government shall direct the Collector to submit a report to it on the following matters, namely:-

(i) that the Company has made its best endeavour to find out lands in the locality suitable for the purpose of the acquisition;

(ii) that the Company has made all reasonable efforts to get such lands by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the Company is in a position to utilise land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land, that no alternative suitable site can be found so as to avoid acquisition of that land.

(2) The Collector shall, after giving the Company a reasonable opportunity to make any representation in this behalf, hold an enquiry into the matters referred to in sub-rule (1) and while holding such enquiry he shall,-

(i) in any case where the land proposed to be acquired is agricultural land, consult the Senior Agricultural Officer of the district whether or not such land is good agricultural land ;

(ii) determine, having regard to the provisions of sections 23 and 24 of the Act, the approximate amount of compensation likely to be payable in respect of the land which in the opinion of the Collector, should be acquired for the Company ; and

(iii) ascertain whether the Company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation :-For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or above average productivity and includes a garden or grove land. (3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report to the appropriate Government and a copy of the same shall be forwarded by that Government to the Committee. (4) No declaration shall be made by the appropriate Government under section 6 of the Act unless-

(i) the appropriate Government has consulted the Committee and has considered the report submitted under this rule and the report, if any submitted under section 5A of the Act; and

(ii) the agreement under section 41 of the Act has been executed by the Company.' Sub-rule (1) requires the Government to direct the Collector to submit a report to it on the matters enumerated in clauses (i) to (vi) of the sub-rule (1) which is for the benefit of the Company. The purpose is to avoid acquisition of land not suitable for a Company. Clause (ii) of sub-rule (1) requires that the Company has to make all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable prices and that such efforts have failed. The purpose of clause (ii) seems to be to avoid unnecessary land acquisition proceedings and payment of exorbitant prices. The purpose of clauses (iii),

(iv) and (v) is obvious. The purpose of clause (vi) is to avoid acquisition of good agricultural land, when other alternative land is available for the purpose. Subrule 2 of rule 4 requires the Collector to give reasonable opportunity to the Company so that the Collector may hold an inquiry into the matters referred in sub-rule (1). The Collector has to comply with Clauses (i), (ii) and (iii) of sub-rule 2 during the course of the inquiry under sub-rule (1). The Collector under sub-rule 3 then has to send a copy of his report of the inquiry to the appropriate Government and a copy of the report has to be forwarded by the Government to the Land Acquisition Committee constituted under Rule 3 for the purpose of advising the Government in relation to acquisition of land under Part VII of the Act, the duty of the Committee being to advise the Government on all matters relating to or arising out of acquisition of land under Part VII of the Act (Sub-rule (5) of Rule 3). No declaration shall be made by the appropriate Government under section 6 of the Act unless the Committee has been consulted by the Government and has considered the report submitted by the Collector under section 5A of the Act. In addition, under clause (ii) of sub-rule (4) of rule 4, the Company has to execute an agreement under section 41 of the Act. The above consideration shows that rule 4 is mandatory; its compliance is no idle formality, unless the directions enjoined by rule 4 are complied with, the notification under section 6 will be invalid. A consideration of rule 4 also shows that its compliance precedes the notification under section 4 as well as compliance of section 6 of the Act.

8. In the instant case, as stated earlier, the first respondent on receipt of the notice under section 9(3) of the Act submitted a representation. After the representation, a brief written note of the arguments was also supplied (Annexure 6). The first respondent's objections, inter alia against the acquisition of the land were: (1) that the land being that of the Government cannot be legally acquired ; (2) that the land or lessee rights having been once acquired by the Central Government under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, it cannot be acquired by the State Government ; and (3) that the proceedings for the acquisition of the land for the appellant were illegal as the mandatory procedure for acquisition of land for private companies has not been followed. It was also stated in the representation that no efforts to purchase the rights of the first respondent by negotiation were made. The inquiry report submitted by Collector does not show that he applied his mind to the provisions of rule 4 as stated above, or to the objections of the first respondent. In fact there was no report under rule 4. The report that was submitted was one under section 5A of the Act. We have examined this aspect of the matter to see that although the enquiry was belated and not in accordance with law, there has been no failure of justice. In our opinion there has been failure of justice. Agreeing with the finding of the High Court, although for different reasons, we hold that the notification under section 6 is invalid for non-compliance of rule 4 of the Rules. As a result we dismiss the appeals with costs.

P.B.R.

Appeals dismissed.