# Dev Sharan & Ors vs State Of U.P.& Ors on 7 March, 2011

## Equivalent citations: 2011 AIR SCW 1778, 2011 (4) SCC 769, 2011 (3) ALL LJ 193, 2011 (2) AIR KANT HCR 518, AIR 2011 SC (CIVIL) 809, (2011) 4 MAH LJ 545, (2011) 2 LANDLR 235, (2011) 2 ICC 508, (2011) 1 CLR 769 (SC), (2011) 3 KCCR 1848, (2011) 2 ALL WC 1697, (2012) 113 CUT LT 600, (2011) 3 MPLJ 468, (2011) 2 ALLMR 932 (SC), (2011) 3 SCALE 369, (2011) 2 CALLT 83, (2011) 3 CIVLJ 633, (2011) 5 MAD LW 940

## Bench: Asok Kumar Ganguly, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2011

(Arising out of Special Leave Petition (C) No.8939/10

Dev Sharan & Ors. ...Appellant(s)

- Versus -

State of U.P. & Ors. ...Respondent(s)

With

CIVIL APPEAL NO. OF 2011

(Arising out of Special Leave Petition (C) No.10993/10

Babu Ram Dixit ...Appellant(s)

- Versus -

State of U.P. & Ors. ...Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

2. These appeals have been preferred from the judgment and order of the High Court dated 25.11.2009 in Writ Petitions (Civil) No.46457/2009.

3. The appellants challenge the acquisition of their agricultural lands by the State of Uttar Pradesh for the construction of the district jail of Shahjahanpur. The appellants themselves are bhumidar with transferable rights and are residents of village Murchha, tehsil Puwayan in the district of Shahjahanpur, Uttar Pradesh.

4. The State of Uttar Pradesh vide its office memorandum dated 25.10.2004 constituted a committee under the Chairmanship of the Hon'ble Minister of Revenue to suggest its recommendations for transfer of prisons situated in the congested areas of various districts. After conducting its second and final meeting on 10th January, 2005, the said committee recommended to the State Government the shifting of the district jails from congested areas to outside the city limits within the district. As per the schedule, this shifting was to be done in two phases:

st phase

1. District Jail, Shahjahanpur;

2. District Jail, Azamgarh;

3. District Jail, Jaunpur; and

4. District Jail, Moradabad.

nd phase

1. District Jail, Badaun;

2. District Jail, Varanasi;

3. District Jail, Barielly; and

4. District Jail, Muzaffarnagar.

5. The existing district jail of Shahjahanpur, constructed in 1870, was one of the oldest and required shifting to a new premises.

The Government case is that the district jail is located in a densely populated area of the city and is overcrowded, housing as many as 1869 prisoners, while having a capacity of only 511.

6. Thereafter, the State Government constituted a committee under the Chairmanship of Chief Secretary, Government of U.P. vide office memorandum dated 12.9.2007 to evaluate and consider the shifting of prisons identified to be shifted in the first phase. Prisons in the districts of Lucknow, Moradabad were added to the list. This committee was also to evaluate and recommend the means for modernisation of existing old prisons. In its meeting dated 10.10.2007 the committee recommended that a Detailed Project Report (DPR) be prepared by the Rajkiya Nirman Nigam, and that acquisition of lands for shifting of the prisons be done on a priority basis.

7. These recommendations were accepted by the State Government vide the approval of the cabinet dated 7.12.2007. Following this decision, the Director General of Prisons (Administration and Reforms), Uttar Pradesh, vide letter dated 04.06.2008, requested the District Magistrate, Shahjahanpur to send all the relevant records to the State Government for publication of notification under Sections 4(1) and 17 of the Land Acquisition Act, 1894 (hereinafter `the Act'). The land suggested for such acquisition by the Divisional Land Utility Committee was one admeasuring 25.89 hectares (63.93 acres) in village Morchha, tehsil Puwayan in the district of Shahjahanpur.

8. Thereafter, the District Magistrate, Shahjahanpur forwarded the proposal to the Commissioner and Director, Directorate of Land Acquisition (Revenue Board, Uttar Pradesh), for the issuance of notifications under Sections 4(1) and 17 of the Act, which in turn approved of it and further forwarded the recommendation to the State Government, vide letter dated 2.07.2008.

9. Thus, the State Government issued notifications under Sections 4(1) and 17 on 21.08.2008. However, the provisions of Section 5A inquiry were dispensed with. The State Government explained that this was done in view of the pressing urgency in the matter of construction of the jails.

10. Being aggrieved by the aforesaid notifications, the appellants moved a writ petition before the High Court under Article 226 of the Constitution of India.

The High Court in its decision dated 25.11.2009 refused to interfere with the selection of the site for the construction of the jail premises on the ground that it was not required to do so unless it found the selection of the site was wholly arbitrary. The High Court also approved the invoking of emergency provisions under Section 17 of the Act as per the guidelines given in Essco Fabs Private Limited and another vs. State of Haryana and another (2009) 2 SCC 377. Having thus stated, the High Court dismissed the writ petition.

11. Before this Court the appellants broadly raised the following arguments:

> 1. Whether or not the State Government was justified in acquiring the said pieces of fertile agricultural land, when there were alternative sites of unfertile banjar land available?
>
> 2. Whether or not the State Government was justified in dispensing with the inquiry which is mandated to be conducted under Section 5A of the Act, especially when one year elapsed between the notifications under Section 4 and the one under Section
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> 6. They further stated that the High Court had erred insofar as it upheld the factum of urgency in the absence of a categorical finding, an enquiry under Section 5A would have been detrimental to public interest.

12. It was urged that it was clear from the counter of the respondent that the contemplation of a new prison was under

> consideration of the State Government for several years. Committee was formed, matter was discussed at a leisurely pace at various levels and there is no material fact to justify the abridgement of the appellants' right of raising an objection to acquisition and of a hearing under Section 5A of the Act.

13. This Court finds a lot of substance in the contentions of the appellants.

14. In connection with land acquisition proceeding whenever the provision of Section 17 and its various sub-sections including Section 17(4) is used in the name of taking urgent or emergent action and the right of hearing of the land holder under Section 5A is dispensed with, the Court is called upon to consider a few fundamentals in the exercise of such powers.

15. Admittedly, the Land Acquisition Act, a pre-Constitutional legislation of colonial vintage is a drastic law, being expropriatory in nature as it confers on the State a power which affects person's property right. Even though right to property is no longer fundamental and was never a natural right, and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory.

This Court is considering these questions, especially, in the context of some recent trends in land acquisition. This Court is of the opinion that the concept of public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare State.

16. The concept of public purpose cannot remain static for all time to come. The concept, even though sought to be defined under Section 3(f) of the Act, is not capable of any precise definition. The said definition, having suffered several amendments, has assumed the character of an inclusive one. It must be accepted that in construing public purpose, a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people especially of the common people defeats the very concept of public purpose. Even though the concept of public purpose was introduced by pre-

Constitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under Fundamental Rights and also the Directive Principles.

17. In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any pre-constitutional law cannot in any way take away or abridge rights conferred under Part-III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of public purpose in acquisition of land must be judged on the touchstone of this expanded view of Part-III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.

18. Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17 with the consequential dispensation of right of hearing under Section 5A of the said Act. The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice. While examining these questions of public importance, the Courts, especially the Higher Courts, cannot afford to act as mere umpires. In this context we reiterate the principle laid down by this Court in Authorised Officer, Thanjavur and another vs. S. Naganatha Ayyar and others reported in (1979) 3 SCC 466, wherein this Court held:

> ".....It is true that Judges are constitutional invigilators and statutory interpreters; but they are also responsive and responsible to Part IV of the Constitution being one of the trinity of the nation's appointed instrumentalities in the transformation of the socio- economic order. The judiciary, in its sphere, shares the revolutionary purpose of the constitutional order, and when called upon to decode social legislation must be animated by a goal-oriented approach. This is part of the dynamics of statutory interpretation in the developing countries so that courts are not converted into rescue

> shelters for those who seek to defeat agrarian justice by cute transactions of many manifestations now so familiar in the country and illustrated by the several cases under appeal. This caveat has become necessary because the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme."

19. In other words public purpose must be viewed through the prism of Constitutional values as stated above.

20. The aforesaid principles in our jurisprudence compel this Court to construe any expropriartory legislation like the Land Acquisition Act very strictly.

21. The judicial pronouncements on this aspect are numerous, only a few of them may be noted here.

22. In DLF Qutab Enclave Complex Educational Charitable Trust vs. State of Haryana and Ors. - (2003) 5 SCC 622, this Court construed the statute on Town Planning Law and held "Expropriatory statute, as is well known, must be strictly construed." (See para 41 page 635).

23. The same principle has been reiterated subsequently by a three-Judge Bench of this Court in State of Maharashtra and Anr. vs. B.E. Billimoria and Ors. - (2003) 7 SCC 336 in the context of ceiling law. (See para 22 at page 347 of the report).

24. These principles again found support in the decision of this Court in Chairman, Indore Vikas Pradhikaran vs. Pure Industrial Coke and Chemicals Ltd. and Ors. - (2007) 8 SCC 705, wherein this Court construed the status of a person's right to property after deletion of Article 19(1)(f) from Part III. By referring to various international covenants, namely, the Declaration of Human and Civic Rights, this Court held that even though right to property has ceased to be a fundamental right but it would however be given an express recognition as a legal right and also as a human right .

25. While discussing the ambit and extent of property right, this Court reiterated that expropriatory legislation must be given strict construction. (See para 53 to 57 at pages 731 to 732 of the report)

26. In the background of the aforesaid discussion, this Court proceeds to examine the scope of a person's right under Section 5A of the Act.

27. Initially, Section 5A was not there in the Land Acquisition Act, 1894 but the same was inserted long ago by the Land Acquisition (Amendment) Act, 1923 vide Section 3 of Act 38 of 1923.

28. The history behind insertion of Section 5A, in the Act of 1894 seems to be a decision of the Division Bench of Calcutta High Court in J.E.D. Ezra vs. The Secretary of State for India and ors reported in 7 C. W. N. 249. In that case, the properties of Ezra were sought to be acquired under the pre amended provision of the Act for expansion of the offices of the Bank of Bengal. In challenging the said acquisition, it was argued that the person whose property is going to be taken away should be allowed a hearing on the principles of natural justice. However the judges found that there was

no such provision in the Act. (see p. 269)

29. In order to remedy this shortcoming in the Act of 1894, an amendment by way of incorporation of Section 5A was introduced on 11th July, 1923. The Statement of Objects and Reasons for the said Amendment is as follows:

> "The Land Acquisition Act I of 1894 does not provide that persons having an interest in land which it is proposed to acquire, shall have the right of objecting to such acquisition; nor is Government bound to enquire into and consider any objections that may reach them. The object of this Bill is to provide that a Local Government shall not declare, under section 6 of the Act, that any land is needed for a public purpose unless time has been allowed after the notification under section 4 for persons interested in the land to put in objections and for such objections to be considered by the Local Government."

(Gazette of India, Pt. V, dated 14th July, 1923, page 260)

30. The said amendment was assented to by the Governor General on 5th August, 1923 and came into force on 1st January, 1924.

31. The importance and scheme of Section 5A was construed by this Court in several cases.

As early as in 1964, this Court in Nandeshwar Prasad and Ors. vs. U.P. Government and Ors. Etc. - AIR 1964 SC 1217 speaking through Justice K.N. Wanchoo (as His Lordship then was) held "...The right to file objections under Section 5A is a substantial right when a person's property is being threatened with acquisition and we cannot accept that that right can be taken away as if by a side-wind....." In that case the Court was considering the importance of rights under Section 5A vis-`-vis Section 17(1) and Section 17(1)(A) of the Act. (See para 13 at page 1222 of the report).

32. The same view has been reiterated by another three-Judge Bench decision of this Court in Munshi Singh and Ors. vs. Union of India - (1973) 2 SCC 337. In para 7 of the report this Court held that Section 5A embodies a very just and wholesome principle of giving proper and reasonable opportunity to a land loser of persuading the authorities that his property should not be acquired. This Court made it clear that declaration under Section 6 has to be made only after the appropriate Government is satisfied on a consideration of the report made by the Collector under Section 5A. The Court, however, made it clear that only in a case of real urgency the provision of Section 5A can be dispensed with (See para 7 page 342 of the report).

33. In Hindustan Petroleum Corporation Limited vs. Darius Shahpur Chennai and ors., (2005) 7 SCC 627, this Court held that the right which is conferred under Section 5A has to be read considering the provisions of Article 300-A of the Constitution and, so construed, the right under Section 5A should be interpreted as being akin to a Fundamental Right. This Court held that the same being the legal position, the procedures which have been laid down for depriving a person of the said right must be strictly complied with.

34. In a recent judgment of this Court in Essco Fabs (supra), (2009) 2 SCC 377, this Court, after considering previous judgments as also the provisions of Section 17 of the Act held:

> "41. Whereas sub-section (1) of Section 17 deals with cases of "urgency", sub-section (2) of the said section covers cases of "sudden change in the channel of any navigable river or other unforeseen emergency". But even in such cases i.e. cases of "urgency" or "unforeseen emergency", enquiry contemplated by Section 5-A cannot ipso facto be dispensed with which is clear from sub-section (4) of Section 17 of the Act."

35. This Court, therefore, held that once a case is covered under sub-section (1) or (2) of Section 17, sub-section (4) of Section 17 would not necessarily apply.

> "54. In our opinion, therefore, the contention of learned counsel for the respondent authorities is not well founded and cannot be upheld that once a case is covered by sub- sections (1) or (2) of Section 17 of the Act, sub-section (4) of Section 17 would necessarily apply and there is no question of holding inquiry or hearing objections under Section 5-A of the Act. Acceptance of such contention or upholding of this argument will make sub- section (4) of Section 17 totally otiose, redundant and nugatory."

36. This Court also held that in view of the ratio in Union of India vs. Mukesh Hans, (2004) 8 SCC 14, sub-section (4) of Section 17 cannot be pressed into service by officers who are negligent and lethargic in initiating acquisition proceedings.

37. The question is whether in the admitted facts of this case, invoking the urgency clause under Section 17 (4) is justified.

In the writ petition before the High Court, the petitioners have given the details of the land holding, and it has also been stated that the entire holding of petitioners 2, 5, 7, 9, 10, 11 and 13 have been acquired, and as a result of such acquisition, the petitioners have become landless. From the various facts disclosed in the said affidavit it appears that the matter was initiated by the Government's letter dated 4th of June, 2008 for issuance of Section 4(1) and Section 17 notifications. A meeting for selection of the suitable site for construction was held on 27th June, 2008, and the proposal for such acquisition and construction was sent to the Director, Land Acquisition on 2nd of July, 2008. This was in turn forwarded to the State Government by the Director on 22nd of July, 2008. After due consideration of the forwarded proposal and documents, the State Government issued the Section 4 notification, along with Section 17 notification on 21st of August, 2008. These notifications were published in local newspapers on 24th of September, 2008.

Thereafter, over a period of 9 months, the State Government deposited 10% of compensation payable to the landowners, along with 10% of acquisition expenses and 70% of cost of acquisition was deposited, and the proposal for issuance of Section 6 declaration was sent to the Director, Land Acquisition on 19th of June, 2009. The Director in turn forwarded all these to the State Government on 17th July, 2009, and the State Government finally issued the Section 6 declaration on 10th of

August, 2009. This declaration was published in the local dailies on 17th of August, 2009.

38. Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration, in the local newspapers is of 11 months and 23 days, i.e. almost one year. This slow pace at which the government machinery had functioned in processing the acquisition, clearly evinces that there was no urgency for acquiring the land so as to warrant invoking Section 17 (4) of the Act.

39. In paragraph 15 of the writ petition, it has been clearly stated that there was a time gap of more than 11 months between Section 4 and Section 6 notifications, which demonstrates that there was no urgency in the State action which could deny the petitioners their right under Section 5A. In the counter which was filed in this case by the State before the High Court, it was not disputed that the time gap between Section 4 notification read with Section 17, and Section 6 notification was about 11 months.

40. The construction of jail is certainly in public interest and for such construction land may be acquired. But such acquisition can be made only by strictly following the mandate of the said Act. In the facts of this case, such acquisition cannot be made by invoking emergency provisions of Section

17. If so advised, Government can initiate acquisition proceeding by following the provision of Section 5A of the Act and in accordance with law.

41. For the reasons aforesaid, we hold that the State Government was not justified, in the facts of this case, to invoke the emergency provision of Section 17(4) of the Act. The valuable right of the appellants under Section 5A of the Act cannot flattened and steamrolled on the `ipsi dixit' of the executive authority. The impugned notifications under Sections 4 and 6 of the Act in so far as they relate to the appellants' land are quashed. The possession of the appellants in respect of their land cannot be interfered with except in accordance with law.

42. The appeals are allowed. No order as to costs.

.....J. (G.S. SINGHVI) .....J. New Delhi (ASOK KUMAR GANGULY) March 07, 2011