

## Mowasi vs State Of Uttar Pradesh And Ors. on 17 February, 1953

**Equivalent citations: AIR1953ALL595, AIR 1953 ALLAHABAD 595**

### JUDGMENT

Gurtu, J.

1. This is an application under Article 226 of the Constitution of India. The applicant prays that this Court be pleased to issue a writ in the nature of a writ of 'certiorari' calling for the record of the case and to quash the entire proceedings subsequent to the order dated 27-5-1952 dropping the land acquisition proceedings in respect of the applicant's plots and to direct the opposite parties not to acquire or proceed to acquire the plots belonging to him.

2. The applicant averred that he was the hereditary tenant of certain plots of land specified in para. 2 of the affidavit filed on his behalf which were situate in village Gulaothi, Pargana Agauta, district Bulandshahr and that the D. N. Higher Secondary School, opposite party 2, moved to acquire those plots along with two others.

3. A preliminary Notification was issued in respect of these plots under Section 7 of the Land Acquisition Act in the State gazette dated 9-3-1951. The applicant filed an objection under Section 5A, Land Acquisition Act against the acquisition of the plots belonging to him. The applicant and the school authorities both appeared before Mr. S. D. Chaturvedi, Land Acquisition Officer. On 17-10-1952, Mr. Chaturvedi overruled the applicant's objections. On 20-10-1951, the applicant sent a petition to the Government of Uttar Pradesh in this regard. The State Government, thereupon asked for a report under Section 5A, Land Acquisition Act and, after perusing all the relevant documents for proving the report submitted by the Land Acquisition Officer under Section 5A of that Act, allowed the objections filed by the applicant and decided not to acquire the plots. On 3-5-1952, a G. O. No. A (2) 819/XV 601 (27) 1951 dated 3-5-1952 was issued by the State Government, The G. O. reads as follows :

"With reference to your endorsement No. 628/ VIII-49-50/51 dated 29-12-1951 regarding the acquisition of land for D. N. Higher Secondary School, Gulaothi (Bulandshahr) I am directed to enclose a copy of letter No. 709 dated 31-3-1952 from the Deputy Director Education 1st Region Meerut and to say that the Government agree with his recommendation and have hence decided to drop the acquisition proceedings. I have, therefore, to request you to take necessary step 3 for the acquisition of the alternative land out of plots Nos. 748 to 751 belonging to Shri Faizyab Khan for the school and forward the proposal to Government for the issue of Notification under Section 4(1) of the Act.

2. A cancellation Notification in respect of the land under acquisition is under issue.

3. The Hindustani Records of the case is returned herewith.

No. A (2)-(1)/XV-601 (27) 1951. Copy forwarded for the information to the Deputy Director of Education 1st Region Meerut in reference to his D. O. No. 709 dated 31-3-1952.

By order.

Sd/- B. N. Jha, Joint Secretary."

4. That after the issue of the G. O, mentioned above, Sri S. D. Chaturvedi on 27-5-1952 ordered the proceeding! for the acquisition of the said plots to be dropped and ordered that proceedings for acquisition of plots Nos. 748 to 751 (belonging to Faizyab Khan) may be started afresh if the authorities moved for the acquisition of the latter plots.

5. On 3-6-1952, the Joint Secretary, Education Department issued another G. O. cancelling the earlier one dated 3-5-1952 quoted above and on the basis of that later G. O. the Land Acquisition Officer passed an order on 9-6-1952. That G. O. is No. A (2)/2503/XV-601 (27)-51 dated 3-6-1952 and runs as follows :

"I am directed to say that the Governor has again reconsidered the orders issued in G. O. No. A (2)/1819/XV(27)/51 dated 3-5-1952 regarding the acquisition of land required for D. N. Higher Secondary School Gulaothi, district Bulandshahr and has been pleased to order that the orders issued in the G. O. cited above may be treated as cancelled.

2. The Governor has also been pleased to order that the acquisition of land as recommended by you vide your endorsement 628/VIII dated 28-12-1951 may now be proceeded with. I am, therefore, to ask you kindly to forward a draft of the agreement which the school authorities are required to execute under Section 12, Land Acquisition Act. The agreement should be accompanied by a copy of schedule site plan (in duplicate) and a copy of the Articles of Association of the society.

3. The School authorities may also be asked to remit a sum of Rs. 28/- direct to Government Conveyancer, Uttar Pradesh, Council House, Lucknow being his fee for getting the deed of agreement.

End. No. 880-R/IH-2/N.D. Dated 10-6-1952. Copy forwarded to the Manager, D. N. Higher Secondary School Gulaothi (Buland-shahr) for an immediate compliance.

Sd/- D. N. Chaturvedi, District Inspector of Schools, Bulandshahr.

10/6. "

6. The Land Acquisition Officer passed an order on 9-6-1952 to the effect that in view of the G. O. dated 3-6-1952, the land acquisition proceedings would be revived and the site-plan and draft of the agreement as required by Section 42, Land Acquisition Act be filed and a deposit of Rs. 28/-be made and the case be listed on 25-6-1952.

7. The applicant contends that all proceedings subsequent to the order dated 27-5-1952 are illegal and without jurisdiction. The D. N. Higher Secondary School through its Assistant Manager filed an affidavit in reply. Paragraph 19 of that affidavit states that the orders for cancellation of acquisition proceedings dated 3-5-1952 were obtained surreptitiously by manoeuvring incorrect representation of facts and the mistake having been detected immediately, when the school authorities presented the petition to the Hon'ble Minister of Education, an enquiry was made and the mistake was rectified by the G. O. dated 3-6-1952. It was further said in para. 20 of that affidavit that the order obtained by misrepresentation of facts or surreptitiously was not legally effective.

8. Learned counsel for the applicant contends that the State Government having upheld the applicant's objections under Section 5-A of the Land Acquisition Act and having issued the G. O. dated 3-5-1952, the decision became final and could not be changed and varied. It is also urged that no declaration under Section 6 of the said Act having then been made, the entire proceedings now being taken are illegal and void. It is further urged that the proceedings having once been terminated and dropped, the same could not be revived. Lastly it is submitted that, in any case, the proceedings could not be now revived without a fresh Notification under Section 4 of the Land Acquisition Act.

9. The Land Acquisition Act, by Section 4, provides for a preliminary investigation whenever it appears to the State Government that land in any locality is needed or is likely to be needed for any public purpose. A preliminary Notification to that effect has to be published in the Official Gazette and the Collector has to give public notice of the substance of such Notification. When such a preliminary Notification is published, objections may be filed under Section 5A by any person interested in any land which is so notified. After the Collector has given the objector an opportunity of being heard, he has to submit the case for decision of the State Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the State Government on the objections, if enacted, shall be final. Under Section 6 of the Land Acquisition Act, if the State Government is satisfied, after considering the report, if any, made under Section 5A, Sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration has to be made to that Govt. or some officer duly authorised to so order. After the declaration of the intended acquisition under Section 6 and after the land has been marked, measured and planned in accordance with Section 8, the Collector causes public notice to be given under Section 9 stating that the Government intends to take possession of the land and that claims of compensation to all such land may be made to him. There is then an enquiry under Section 11 into measurements, values and claims, and an award by the Collector. The further provisions of the Act need not be gone into for the purposes of this application.

There is one provision, however, which is relevant and it is contained in Section 48, Land Acquisition Act. Section 48 provides as follows :

"(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

10. It has been urged by the applicant that the decision of the State Government taken under Section 5A is final and is equally binding on the State Government as on the person whose property is sought to be acquired and that once the State Government has come to a decision, it is no longer open to it to review its decision. On the other hand, it is urged that until a formal withdrawal had been made under Section 48, the State Government is still entitled to acquire the land. In respect of which the preliminary investigation was caused to be made under Section 4.

11. Learned counsel for the applicant urges that Section 48 does not come into play until a declaration is made under Section 6 and no declaration can possibly be made under Section 6 after a decision in favour of the person whose property is sought to be acquired has been taken under Section 5A. It is argued that at the stage of Section 4(1), the position only is that it appears to the State Government that land is needed or is likely to be needed for any public purpose and that the preliminary Notification does not entitle the State Government to acquire the land notified under the preliminary Notification. It is then urged that the object of that Notification is merely to enable the State Government to determine whether the representation made in regard to the necessity for acquiring land in a particular locality and whether the representation made that it is required for a public purpose is a correct representation. No right to acquire any land accrues until the preliminary investigation is completed and a declaration is made under Section 6. It is pointed out that the right to do certain acts on the land proposed to be acquired, which is conferred by Section 4, Sub-section (2), is a right limited to the purpose of the preliminary investigation and that Section 5 separately provides for the compensation relative to such entry showing that the entry and the payment of compensation are, in no way, connected with the acquisition which may ultimately take place as a result of the Notification under Section 6 and the notice under Section 9. It is urged, therefore, that Section 48, which refers to the withdrawal from the acquisition, can only refer to a withdrawal after the acquisition proceedings, as such, have commenced under Section 9 and at the earliest under Section 6.

12. There seems to be force in these contentions. The declaration of intended acquisition is made only under Section 6. Up to that point there is only a preliminary investigation. It is only when it is finally determined that the land is needed for a public purpose, and that the compensation-money is chargeable wholly or partly against public revenues or some fund controlled or managed by a local authority or the funds of some company, that a declaration can be made which becomes final and

cannot be questioned. In a sense, therefore, it may be said that once the declaration of an intended acquisition has been made under Section 6, the State Government has taken the first step for acquiring the property and that it is only then that a question of withdrawing from the acquisition can arise. It is possible that Section 6 is thus the first step, though it would appear that the first step is really taken when notice under Section 9 is issued i.e., the notice to treat. In our view, therefore, there would be no necessity for a formal withdrawal as contemplated by Section 48 before the stage of Section 6 at least has been reached.

We have not been informed whether the cancellation Notification referred to in para. 2 of the G. O. dated 3-5-1952 was issued in the Gazette, but it is clear that the G. O. dated 3-5-1952 was acted upon and that, as averred in para. 17 of the applicant's affidavit, the Land Acquisition Officer, Sri S. D. Chaturvedi on 27-5-1952 ordered that the proceedings for the acquisition of the plots in question should be dropped and further ordered that proceedings for the acquisition of plots Nos. 748 to 751 (belonging to Faizab Khan) may be started, if the authorities moved for their acquisition. In our view, therefore, there was also, in effect, a withdrawal even in terms of Section 48 of the Act.

Section 5A does not, in express terms, empower the State Government to cancel its decision. Even assuming that the decision of the State Government, as contained in the G. O. dated 3-5-1952, was obtained under the circumstances alleged in the counter-affidavit of the Assistant Secretary of the D. N. Higher Secondary School, the question still remains whether it could be cancelled at all when the section itself makes the decision final. In our view, the decision once taken under Section 5-A could not be cancelled or altered. After a decision has been taken by the State Government on the objections in favour of the objector, it is no longer possible to make a declaration to the contrary under Section 6 because that would amount to setting aside the decision taken under Section 5-A which the Act makes final. In this case that is particularly so because, in substance, there has also been a withdrawal under Section 48. In our view, it is no longer possible to acquire the applicant's plots without a fresh Notification under Section 4 and proceedings consequential being taken.

13. Our attention was invited to -- 'Brij Nath Sarin v. Uttar Pradesh Govt.', AIR 1953 All 182 (A). That was a case in which pursuant to a Notification there had been a decision under Section 5A upholding the objections made. Subsequently, a fresh Notification under Section 4 of the Act was issued and similar objections to those taken formerly were taken. On this latter occasion, those objections were not upheld. It was argued that the decision having once been taken under Section 5-A, under the previous Notification, it was not open to the State Government to restart acquisition proceedings for the land in question despite a second Notification under Section 4. It was held that this latter contention had no force. This case is different from the present case where no fresh Notification under Section 4 has been issued at all and the proceedings are sought to be continued under the preliminary Notification dated 9-3-1951 under Section 4 in spite of the decision under Section 5-A in favour of the applicant and in spite of the fact that there has been, in effect, a formal withdrawal from the acquisition proceedings also.

14. However, 'AIR 1953 All 182 (A)', in a way, supports the point of view which we have expressed, namely, that a fresh Notification under Section 4 would be necessary. It would thus appear that the applicant is entitled to the reliefs claimed by him.

15. Accordingly, a direction will issue quashing the G. O. No. A(2)/2503/XV-601(27) 51, dated 3-6-1952 and the entire proceedings subsequent to the order dated 27-5-1952, whereby the land acquisition proceedings in respect of the applicant's plots were dropped. We further direct the opposite parties not to acquire or proceed to acquire the plots belonging to the applicant without a fresh Notification being issued under Section 4 of the Land Acquisition Act. In the circumstances of this case, we direct the parties to bear their own costs.