Radha Raman vs State Of Uttar Pradesh And Ors. on 3 May, 1954

Equivalent citations: AIR1954ALL700, AIR 1954 ALLAHABAD 700

ORDER

Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.

2. The petitioner, Raja Radha Raman, was the owner of two villages, Pakaria Naugawan and Mindia Panai Urf Songarhi, pargana and Tahsil Pilibhit, before the vesting order passed by the State Government. But as portions of these two villages lie within the limits of the Municipal Board of Pilibhit, those portions still continue in the ownership of the petitioner. The plots which are the subject-matter of dispute in the present petition, lie in the portion of village Pakaria Naugawan, which is still in the ownership of the petitioner and others.

In September 1943, a co-operative society was formed by a number of persons and this society is known as the co-operative Housing Society Ltd. Pilibhit. In the beginning the membership was open to all persons of good character, sound mind and above the age of 18 years, residing or carrying on any trade, business or profession in Pilibhit, and who are not members of any other housing society operating in Pilibhit. A few months later, an amendment was made & a further condition was added that only those persons could be members who owned no house or land in Pilibhit. There are about 90 members of this Society, and some of them do own houses in Pilibhit but they had become members before the amendment, and now continue to be members.

This society wanted that the land in dispute should be acquired, and on 19-4-1949 a notification was issued by the U. P. Government under Sections 4 and 5 of the Land Acquisition Act. This notification said that the Governor was pleased to notify for general information that the land, mentioned in the schedule, was needed for a public purpose and that any person interested in it might within 30 days make an objection to the acquisition of the land in writing to the Collector under Section 5-A of the said Act, The purpose of acquisition was mentioned as the construction of residential houses for the members of the co-operative Housing Society Ltd. Pilibhit.

The greater portion of this land belonged to the petitioner and on 18-5-1949 he filed an objection before the Land Acquisition Officer under Section 5-A of the Act. This objection contained a number of grounds, the more important of which were that the land was not being acquired for any public purpose, that the application of the Society was not bona fide, that the members wanted to acquire the land for their own benefit, that many of these members were already awning houses in Pilibhit and that the land was needed by the petitioner for purposes of a Goshala.

3. The Land Acquisition Officer then commenced enquiries under Section 5-A of the Act and submitted his report to the Uttar Pradesh Government in July 1950. The petitioner made a number of representations to the Hon'ble Ministers of Agriculture and Development and to the General Secretary, Co-operative Department, but these proved to be of no avail.

The present petition was filed on 20-8-1951 and at that time the report of the Land Acquisition Officer was under consideration of the Government, but the Government had started taking steps under Section 41 of the Act and had written to the Secretary, Co-operative Society, that he should execute an agreement as contemplated by Sections 39 and 41 of the Act. During the time that the petition had been pending, the agreement contemplated by Section 41 was executed between the said Society and the Government, though no notification under Section 6 of the Act has yet been issued, as this Court at the time of admitting the petition had passed an interim order prohibiting the issue of the notification.

The prayer made in the petition is that a writ of certiorari be issued cailing for the record of the case and quashing all proceedings under Sections 5-A, 39, 40 and 41 of the said Act, and that a writ of prohibition be issued to the Slate of Uttar Pradesh (respondent No. I) directing it not to give its consent under Section 39 of the Act to the aforesaid acquisition, nor to issue a notification under Section 6 of the Act.

4. The contention of the learned counsel for the petitioner is that the State Government has f no jurisdiction to give its consent to the present acquisition under Section 40 of the Act because the construction of these houses could not be said to be "work" within the meaning of the word as used in Section 40 (1) (b), nor can the acquisition be said to be "likely to prove useful to the public." It has been contended that there is a mandatory prohibition contained in Section 40, which prohibits the State Government from giving its consent to an acquisition of land which is not being made for constructing "work" or which is not "likely to prove useful to the public". I shall consider these two points separately.

5. It is argued that the word "work" has been used in Section 40 of the Act with reference to the construction of large industrial or scientific establishments, and the construction of ordinary houses for purposes of residence do not come within the meaning of the word. In support of this argument the learned counsel has referred me to the meaning of the word "work" as given in the Chambers Dictionary (20th Century) and the Webster's Dictionary, Vol. 4.

No useful purpose will be served by quoting the meaning as given in these dictionaries, because the word "work" has a very wide meaning. It is really used in two senses of bestowing labour and that upon which labour has been bestowed. When used in plural, the word certainly means some outstanding or important result of the labour that has been bestowed, and large industrial and scientific establishments are called works; but in the singular the meaning is not confined in the field of construction to only large or important establishments. If a mason has constructed a wall, it is the work of that mason, and if an engineer has constructed a house it is the work of that engineer. The word really gets its colour and complexion from the nature of the work, and when used in singular with reference to constructions it is not confined to only big industrial or scientific

constructions. The learned counsel relied upon two cases in support of his contention, but none of them, in my opinion, is of any real help to him.

6. In the case of--'The Easton Estates Mining Co. v. Western Wagon Co.', (1886) 54 LT 735 (A), the facts were that an engine was seized while it was standing in a shed which the contractor rented from the appellant company and which was connected by a siding with the Railway. The question was whether the engine was rolling stock in 51 "work" and was, therefore, liable to distress for rent. It was held that the word "work" in Section 3 of the Railway Stock Protection Act, 1872, "means any establishment or place used for the purpose of trade or manufacture, which is connected with a line of Railway by siding along which the rolling stock may be propelled."

The word "work" was defined in the Act and Wills J. observed that it was not easy to say exactly what was meant by "a work". He then says:

> "The difficulty arises from the fact of its not being a word known to the law it is a mere word of art not being work in popular use in the sense in which it is used in the Act."

The meaning of the word was then considered with reference to the definition as given in the Act and it was held that a shed was also a work.

7. The other case is of -- 'Brannigan v. Robinson', (1892) 66 LT 647 (B). In this case the meaning of the word "works" as used in the Employer's Liability Act, 1880 was considered. The defendant in this case was a person who was doing the business of clearing sites, that is, pulling down old houses, and on one occasion he had to deal with a wall which was unsafe. He omitted to take proper precautions and the wall fell down upon one of the labourers. It was held that if the insecurity of a wall that was being built up was within the section then the insecurity of a wall which was being pulled down must also be within the section and that the injury was caused by a defect in the "works" connected with the business of the employer.

8. I do not think that these two cases, in any way, help the contention of the learned counsel, and, taking the ordinary popular meaning of the word, a residential house would, in my opinion be included in the word "work".

9. The other point requires a more serious consideration. Previously there were two separate Acts, one known as the "works of Public Utility Company Act, Act 22 of 1863" and the other "Land Acquisition Act, Act 6 of 1867". Subsequently both these Acts were amalgamated into one and the Land Acquisition Act, Ace 10 of 1870 was passed. The present Land Acquisition Act No. 1 of 1894 has replaced this Act of 1870. Great reliance has been placed by the learned counsel for the petitioner on the Works of Public Utility Company Act of 1863, and he has referred me to the preamble and to Sections 1, 2, 15, 34 and 35. The wordings of the preamble and these sections favour the view that under Act 22 of 1863 land could be acquired only for companies which were formed for purposes of carrying on works of public utility. Under that Act, it would be very doubtful if an acquisition of land could be made for purposes of -a company merely for constructing private

houses.

But what I have to see is the wording of the present Act, namely, Act I of 1894. In the preamble of this Act, it is stated that the Act was prepared for the purpose of amending the law for the acquisition of land needed for public purposes and for companies. In Section 3 the expression "company" means a company duly registered and by the amending Act 17 of 1919 it is said to include a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912. The expression "public purpose" is said to include the provision of village-sites in district in which the Provincial Government shall have declared by notification in the official Gazette that it is customary for the Government to make such provision.

10. Section 4 empowers the Government to issue a notification in the official Gazette declaring that the land in any locality is needed or is likely to be needed for any public purpose. This section applies only to cases where land is needed for any public purpose as distinguished from cases where it is needed for a company. Section 5A, however, covers both these cases and empowers any person interested in any land which has been notified under Section 4 to file objections to the acquisition of the land within 30 days after the issue of the notification. The section then provides the procedure which is to be followed by the Collector in dealing with the objections so filed and the procedure does make proceedings before the Collector judicial or quasi-judicial proceedings.

Section 6 provides that subject to the provisions of Part VII of the Act when the State Government is satisfied, after considering the report if any, made under Section 5-A, (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect. This declaration is then to be published in the official Gazette and is made conclusive evidence of the fact that the land is needed for a public purpose or for a company. The next important sections are Sections 38, 39, 40 and 41.

11. Under Section 38 the State Government may authorise any officer of any company desiring to acquire land for its purposes to exercise the powers conferred by Section 4, and Section 4 has to be construed as if for the words "for such purpose" the words "for the purposes of the company" were substituted. Section 39 says that the provisions of Sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any company, unless the previous consent of the State Government has been obtained and the company shall have executed the agreement hereinafter mentioned. The relevant portion of Section 40 is to the effect that such consent shall not be given unless the State Government be satisfied that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

Section 41 says that if after considering the report, the State Government is .....

satisfied that the purpose of the proposed acquisition is the construction of a work and that such work is likely to prove useful to the public, it shall require the company to enter into an agreement, providing amongst other things for conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use the work.

12. The argument of the learned counsel is that the provisions of Sections 6 to 37 of the Act are not to be put in force in order to acquire land for any company unless the previous consent of the Government has been obtained, and the company has also executed an agreement mentioned in Section 41. Section 40 prohibits the Government from giving such consent unless the acquisition is for the construction of some work which is likely to prove useful to the public and the agreement under Section 41 is to contain the terms on which the public shall be entitled to use the work. Therefore it becomes necessary to see whether the acquisition is for some work and that work is likely to prove useful to the public. It is conceded that the work need not be useful to the public at large, but it should be useful to a large class of it. It is argued that the present acquisition is being made for the members of the Co-operative Society only, that it is not useful to any class of public but is useful only to members of the Society, The preamble to the Co-operative Societies Act, 1912, says that the object of the Act is to promote selfhelp among poorer people and, according to Section 4 importance is attached to the promotion of interests of the members of the Society. Reference was also made to the bye-laws of the Society amongst the objects of which are mentioned requirements of the members of the Society and the construction of residential houses or other buildings for the convenience of the members and development of a co-operative colony for the convenience and benefit of the members. On the strength of the preamble to the Co-operative Societies Act and the contents of Section 4 as well as the contents of bye-law No. 3 it is argued tliat the object of the Society is to benefit the members only and not any section of the public at large. Reference was also made to Nicholas on Eminent Domain, volume 2, pages 517, 518, 520 and 537.

13. I have considered the argument with care, but I do not think any of these provisions necessarily lead to the conclusion that the acquisition of land for purposes of this Co-operative Society cannot be "useful to the public".

The general dearth of residential accommodation in the towns and cities of Uttar Pradesh is very well known, and if a Society is found to construct a number of houses and the houses are actually constructed, the construction is likely to ease the situation, as there will be an increase in the total residential accommodation in the town, and rents may also possibly go down. This will benefit not only the members of the Society but also the resident public of the town. It is true, that the bye-laws of the Society as well as the Cooperative Societies Act itself are mainly concerned with the interests of the members of the Society. But if in carrying out those objects a situation is brought out which may also help the other members of the public, the acquisition may, in my opinion be said to be one useful to the public.

Section 4 of the bye-laws of the Society shows that the membership is open to all persons of good character and sound mind, who may be residing or carrying on any trade, business or profession in Pilibhit. Anybody in Pilibhit can, therefore, become a member of the Society and have the advantages of being a member. In America Housing Societies constituted for the purpose of clearing slumps have been held to be doing work which is of "public use". Slump clearance has been held to be a valid reason for the acquisition of land. The present case cannot be said to be a case of clearance of slumps, but in the conditions prevailing in the towns of this State at present, the construction of more residential houses is, in my opinion, an object which is useful to the resident public of the place.

The facts of the present case are similar to the facts of the case in -- 'Thambiran Padayachi v. The State of Madras', AIR 1952 Mad 756 (C). If I may say so with respect the point has been elaborately considered in that judgment, and I do not think any useful purpose will be served by-considering the authorities again in this judgment, which have already been considered in that case. I agree with that decision and also the reasons contained therein. The contention of the learned counsel for the petitioner on this point also does not appeal to me.

14. In the affidavit filed along with the petition it has been stated that a large area of Government land is lying vacant and is better suited for the construction of houses and that the scheme of the present acquisition is not a bona fide one.

A counter-affidavit has been filed in the case, though it was filed after the time allowed by the Court. Still it had been filed before the case came up for hearing and as the rejoinder affidavit was also ready, I accepted both the counter-affidavit and the rejoinder. In the counter-affidavit an effort has been made to show that the scheme is a bona fide one and the acquisition of this land is necessary for the construction of additional houses, that sufficient land has already been left to the petitioner for carrying out his Goshala scheme and that there is a great dearth of residential accommodation in the town of Pilibhit.

A rejoinder affidavit has been filed to controvert these facts and to show that Pilibhit is a town where a number of houses are lying vacant and where there is no dearth of residential accommodation. I am not inclined to accept the allegation of the petitioner that there is no dearth of residential accommodation in Pilibhit or that a number of houses are lying vacant with nobody in the town to reside in them. I am not prepared to hold on the strength of this affidavit that Pilibhit is so very different from other towns in this State and that there is no dearth of residential accommodation in Pilibhit. I, therefore, accept the facts set out in the counter-affidavit on this point.

15. The learned counsel for the respondents raised an additional point in his argument. His contention was that the writ petition was not maintainable before a notification under Section 6 of the Act was published and that this Court could not direct the State Government to refrain from issuing a notification under that section. The learned counsel referred to a case reported in --'Ezra v. Secy, of State', 30 Cal 36 (D), and also to the decision of the Privy Council when the same case went up in appeal which is reported in -- 'Eza v. Secy, of State', 32 Cal 605 (PC) (E)'. Ameer Ali and Stephen JJ. held in this case (at p. 77) that there was no provision anywhere in the Act that the owner of the land should appear before the officer deputed under Section 40, and the only persons that were concerned in the acqui-.sition were the Government and the company for which the acquisition was being made, the Government having been constituted the sole custodian of the public interests and the sole Judge of the fact whether the work was useful to the public. This decision was upheld by the Privy Council.

But after the date of these decisions the Legislature introduced Section 5-A in the Act in 1923. This section now gives a right to file objections to the acquisition within 30 days of the notification made under Section 4, and that objection is to be determined after giving the objector an opportunity of being heard either in person or through a pleader.

16. The position, therefore, has become very different since the introduction of Section 5-A and a reading of that section shows that the function of the Collector is a quasi judicial function. Section 40 of the Act prohibits the State Government from giving its consent to the acquisition unless it is satisfied that such acquisition is needed for the construction of such work and that such work is likely to prove useful to the public. Till the sanction has been given, Section 39 says that the provisions of Sections 6 to 37 shall not be put into force.

This being the state of the law, if the petitioner says that the Government is about to give its consent to the acquisition, and the acquisition is such that it cannot possibly prove useful to the public, I am of the opinion that the Court can prohibit the Government from giving its consent under Section 40 or from issuing a notification under Section 6 of the Act provided it is satisfied that the petitioner on both the points is correct. It has been held in -- 'Brij Nath Sarain. v. Uttar Pradesh Government', AIR 1953 All 183 (P) that a declaration made by a Government under Section 6 of the Act is final and once it has been notified it would be conclusive evidence of the fact that the land was required for a purpose which was useful to the public. Similar is the view expressed in the case of -- 'Heman Santlal v. State of Bombay', AIR, 1951 Bom 121 (G).

17. It thus appears that the decision of the Government cannot be challenged after a notification under Section 6 has been published, and if the petitioner can come to Court at all to challenge the fact that the land was being acquired for a purpose useful to the public, he can do so only before the publication of the notification under Section 6. In my opinion, the petitioner can say that the State Government has decided, to give its consent to an acquisition which cannot' be for public purpose, and if he is able to establish his contention, I can see no reason why the State Government should not be prohibited from giving its consent to the acquisition, specially in view of the clear wordings of Section 40.

The observations of the learned Judges of the Supreme Court in the case of -- 'Province of Bombay v. Khushaldas', AIR 1950 SC 222 (H), go to help the petitioner. Six out of the seven Judges were of the opinion that if the decision of the Government or of the Officer concerned was of a judicial or quasi-judicial nature, and the decision on the question of 'Public purpose' depended upon the objective determination of some facts, the Courts were certainly in a position to consider whether the decision of the Government or of the Officer was a correct one or not. But the majority were of the opinion that in that case the decision of the Government was merely an administrative one and not judicial or quasi judicial decision, and therefore the Courts could not issue a writ of certiorari quashing that decision.

The Hon'ble the Chief Justice actually said in his judgment that the Bombay Ordinance was unlike the Land Acquisition Act and there was no provision in it for issuing a notice, for making enquiries or for the determination of rival contentions. Section 5-A of the Land Acquisition Act, however makes the decision a quasi-judicial one, and therefore open to the review by the Courts. If it is open to review, then the only stage at which it can be reviewed is the stage before the notification has been made under Section 6 of the. Act.

18. A similar situation arose in the case of -- 'The King v. Minister of Health', (1929) 1 KB 619 (I), and it was held that a rule nisi for a writ of prohibition prohibiting the Minister from proceeding further in the matter of the scheme must be made absolute and that the prohibition to him lay at that stage, inasmuch the order of confirmation by the Minister, if made, would have the effect as if it had been enacted in the Act and could not, therefore, be challenged afterwards.

19. The other point urged in this connection was that the decision of the State Government under Section 5-A could not be challenged as the last sentence of Sub-section (2) of the section provides that the decision of the State Government on the objections shall be final. The learned counsel contended that it was for the State Government and the State Government alone to decide the question whether the acquisition was likely to prove useful to the public, and its decision if taken would be final. I do not agree with this contention of the learned counsel either, because the use of this word "final" is not meant to take away the jurisdiction of this Court to issue a writ of certiorari, In Halsbury's Laws of England, Vol. IX, p. 861, at is stated:

> "Certiorari can only be taken away by express negative words. It is not taken away by words which direct that certain matters shall be "finally determined" in the inferior Court, nor by a proviso that "no other Court shall intermeddle" with regard to certain matters as to which jurisdiction is conferred on the inferior Court."

Even before the Constitution came into force, the power to issue a writ of certiorari, could not be meant to have been taken away by the use of this word "final" in Section 5-A (2) of the Act. After the coming into force of the Constitution, it is obvious that no Legislature has the authority to take away a power conferred on the Courts by the Constitution.

The Land Acquisition Act was an existing law when the Constitution came into force and it has been" protected by Article 31 (5) of the Constitution, If any provision in this Act had, by the use of the express words, taken away the powers of the High Court to issue a writ of certiorari, the matter might have been different, but the situation, as it stands, is that there are no such express words, and I am, therefore, not prepared to hold that the Courts are precluded from issuing a writ of certiorari to the Government where they come to the conclusion that the notification under Section 6 should not be made as the purpose of the acquisition cannot possibly be 'useful to the public'. This objection of the learned counsel for the respondents, therefore, fails, but on the view that I have taken on both the points raised by the learned counsel for the petitioner, this petition must fail.

20. I accordingly dismiss this petition with costs which I assess at Rs. 300/- but of the sum of Rs. 300/- awarded as costs to the respondents, the respondent No. 2, namely, the Co-operative Housing Society Ltd., Pilibhit, shall be entitled to recover Rs. 200/-, and the State Government, respondent No. 1, Rs. 100/-.