

Devendra Singh & Ors vs State Of U.P. & Ors on 3 August, 2011

Equivalent citations: AIR 2011 SUPREME COURT 2582, 2011 (9) SCC 551, 2011 AIR SCW 5240, 2011 (6) ALL LJ 387, 2012 (1) AIR JHAR R 74, (2011) 2 CLR 593 (SC), (2011) 3 CURCC 149, (2011) 3 KER LT 101, (2011) 4 ICC 150, (2011) 114 REVDEC 418, (2011) 5 ALL WC 4378, (2011) 88 ALL LR 485, (2011) 4 CALLT 59, (2011) 8 SCALE 244, (2011) 4 RECCIVR 840, (2012) 1 MAD LW 401, (2011) 105 ALLINDCAS 104 (SC), (2012) 1 MAD LJ 994, (2012) 1 LANDLR 179, (2012) 1 CIVLJ 731

Author: H.L. Dattu

Bench: G.S. Singhvi, H.L. Dattu

REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6293 OF 2011

(Arising out of Special Leave Petition (C) No. 15151 of 2011)

Devendra Singh & Ors.

..... Appellants

versus

State of U.P. & Ors.

..... Respondents

J U D G M E N T

H.L. Dattu, J.

Leave granted.

2). This appeal, by special leave, is directed against the Judgment and Order dated 08.10.2010 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 61903 of 2010 whereby, the writ petition filed by the appellants challenging the acquisition of their land for construction of District Jail by invoking Sections 17(1) and 17(4) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was dismissed.

3). The facts of the present appeal are as follows:-

The District Magistrate, Jyotiba Phule Nagar, had sent a proposal to the Principal Secretary, Home/Prisons Section 4, Government of U.P. for acquisition of land situated at Amroha- Naugawan Sadat Road for the construction of District Jail vide letter dated 24.01.2003. After the gap of 5 years, the Special Secretary, Prisons Administration and Reforms, Government of U.P., had requested the District Magistrate to find the available lands for acquisition, for the said purpose, in the proximity of the District Head Quarters vide letter dated 16.01.2008. Subsequently, the District Magistrate traced and informed the availability of such lands in village Dasipur and other nearby villages for possible acquisition to the Special Secretary vide letter dated 25.2.2008. Thereafter, the Special Secretary directed the Selection Committee to inspect the available lands regarding the feasibility of their acquisition for the construction of Jail vide letter dated 22.04.2008. Accordingly, the Selection Committee, after conducting detailed spot inspection of the available lands, found and recommended that the lands at village Dulhar Sant Prasad were suitable for construction of Jail on 05.05.2008. In this backdrop, the respondent had issued a notification dated 05.03.2010 under Section 4 read with Section 17(4) of the Act for acquisition of 20.870 hectares of land at village Dulhapur Sant Prasad, Tehsil Amroha, Jyotiba Phule Nagar for public purpose of construction of District Jail. The same was published in the local newspapers on 26.03.2010. The relevant part of the notification is extracted below:

"UTTAR PRADEHS SHASAN KARAGAR PRASHASAN EVEM SUDHAR ANUBHAG - 4 The Governor is pleased to order the publication of the following English translation of Notification No. 443/22-4-2010-101 (b) 2000 dated 05 March, 2010 for general information:

NOTIFICATION No. 443/22-4-2010-101 (b) 2000 Lucknow: Dated 05 March 2010 Under subsection (1) of section 4 of the Land Acquisition Act, 1894 (Act No. 1 of 1984 (sic.)), the Governor is pleased to notify for general information that the land mentioned in the schedule below is needed for the public purpose namely, for

construction of the District Jail in District Jyotiba Phule Nagar.

Being of opinion that provisions of subsection (1) of section 17 of the said Act are applicable to the said land in as much as the said land is urgently required for construction of the District Jail in District Jyotiba Phule Nagar and that in view of the pressing urgency it is as well necessary to eliminate to delay likely to be caused by an enquiry under section 5-A of the said Act the Governor is further pleased to direct, under subsection (4) of section 17 of said Act, that the provisions of section 5-A shall not apply."

4). Since the appellants' land was also included in the notification, they made representations dated 07.04.2010 and 20.08.2010 to the Land Acquisition Officer, the District Magistrate, Jyotiba Phule Nagar, the Chief Minister and the Home Secretary, Government of U.P. with the request that their land may not be acquired as they had raised construction of houses, tube wells and lands are under cultivation. They also suggested the availability of large tracts of alternative lands with no construction and irrigation facility situated within one Kilometer towards North. However, the concerned authorities did not reply to these representations of the appellants. Subsequently, the appellants, aggrieved by the said notification, filed Writ Petition No. 22252 of 2010 before the High Court of Judicature at Allahabad, which was dismissed vide its Order dated 22.04.2010 without deciding any issue on merits on the ground that the writ petition is premature as the declaration under Section 6 has not been issued. The High Court further granted liberty to the appellants to raise all the available grounds, including the applicability of Sections 17(1) and 17(4) of the Act, in order to challenge the acquisition of their land once the State Government proceeds to issue Notification under Section 6(1) of the Act. Thereafter, the State Government issued a Notification dated 06.08.2010 under Section 6 read with Section 17(1) of the Act whereby, it directed the Collector of Jyotiba Phule Nagar to take possession of the said land on the expiry of 15 days from the date of publication of the Notice under Section 9(1) even in the absence of any award being made under Section 11. Eventually, the Public Notice dated 03.09.2010 was issued, which expressed the intention of the Government to take possession of the said land, in which it was directed to the appellants to appear before the Special Land Acquisition Officer, Jyotiba Phule Nagar. The appellants, being aggrieved, filed a Writ Petition before the High Court of Judicature at Allahabad inter alia questioning the correctness of the Notification dated 5.3.2010 issued under Section 4 read with Section 17(4) and Notification dated 6.8.2010 issued under Section 6 read with Section 17(1) thereby dispensing with the opportunity of hearing and enquiry under Section 5-A of the Act. The High Court, vide its impugned Judgment and Order dated 8.10.2010, dismissed the Writ Petition and allowed the respondents to proceed further with acquisition of the said land in terms of the Act on the ground that the construction of the District Jail is an urgent matter which has been mentioned in the Notification under Section 4 as the very purpose of acquisition of the land. Aggrieved by this Judgment and Order of the High Court, the appellants are before us in this appeal.

5). The issue involved in the present appeal for our consideration is: Whether the respondent is justified in invoking the urgency provision under Section 17(1) and excluding the application of Section 5-A in terms of Section 17(4) of the Act for acquisition of the land for construction of District Jail.

6). The learned counsel Shri. Prashant Kumar submits that the district of Jyotiba Phule Nagar came into existence on 24.04.1997. Since then, the State Government had not shown any kind of urgency and was only considering the proposal of acquiring the land for the public purpose of construction of the District Jail. It was only in the year 2010 that the State Government had issued Notifications under Sections 4 and 6, invoking urgency provision as contemplated by the Sections 17(1) and 17 (4). In other words, the lackadaisical attitude of the State Government since the creation of the new district nearly 13 years ago does not exhibit or depict any kind of urgency but only lethargy on their part in acquiring the land. Therefore, the urgency contemplated in the Act cannot be equated with dereliction of responsibility on the part of the State Government. The learned counsel contends that the respondents had unnecessarily invoked the urgency provisions under Section 17 (1) read with Section 17 (4) for acquisition of the land for construction of the District Jail in view of the delay of 13 years in the issuance of the Notification under Section 4 of the Act and still, the said land is under the possession of the appellants. The learned counsel argues that invoking of the urgency provisions under Section 17(4), which excludes the application of Section 5-A, by the respondents in the absence of any real urgency as contemplated by Section 17, amounts to illegal deprivation of the right to file objection and hearing of the appellants under Section 5-A of the Act. He submits, relying on various decisions of this Court, that the expropriatory legislation like Land Acquisition Act must be given strict construction. He further submits that Section 5-A is a substantial right and akin to Fundamental Right which embodies a principle of giving of proper and reasonable opportunity to the land owner to persuade the authorities against the acquisition of his land which can be dispensed with only in exceptional cases of real urgency. The learned counsel relies on the decision of this Court in *Dev Sharan & Others v. State of U.P.* (2011) 4 SCC 769 in support of his contention that dispensing with the opportunity of hearing and enquiry under Section 5-A of the Act in view of prolonged lethargy of almost 13 years on the part of respondents by invoking emergency provisions under Section 17 is illegal and unjustified. The learned counsel has further cited catena of Judgments of this Court in support of his arguments which has already been dealt with by this Court in *Radhy Shyam v. State of U.P.* (2011) 5 SCC 553.

7). Per Contra, the learned senior counsel Shri. K.K. Venugopal submits that the newly created district of Jyotiba Phule Nagar does not have a District Jail to lodge the prisoners of the district who are presently accommodated in the Moradabad District Jail, wherein the total population of inmates exceeds by more than three times the capacity of the Jail, causing great hardships to inmates. Further, producing of the prisoners from Moradabad Jail to various Courts in Jyotiba Phule Nagar raises financial and security concerns. He submits that since the creation of the new district, the State Government has been making continuous efforts for acquisition of land to construct the District Jail. However, the process of construction of Jail could not be carried forward due to subsequent dissolution of the district vide Notification dated 13.04.2004, which was challenged before the High Court and later, the High Court quashed the said Notification of Dissolution. Pursuant to this Order of the High Court, the district was recreated in 2004. He further submits that the State Government had issued a Notification dated 5.3.2010 under Section 4 read with Section 17 (4) of the Act for acquisition of the said land for public purpose of urgent construction of Jail in the newly created district by invoking Section 17(4) of the Act in order to eliminate delay likely to be caused by enquiry under Section 5-A of the Act. Subsequently, in view of the said urgency, the State Government had issued Notification dated 6.8.2010 under Section 6 read with Section 17(1) of the

Act and published it in the Newspaper along with a Public Notice under Section 9 of the Act dated 20.08.2010, all within a period of 5 months. Further, the respondents, after hearing the objections and claims of the appellants dated 03.09.2010 regarding the compensation and measurement of the land under Section 9 of the Act, handed over the possession of the said land to the Senior Superintendent of Jails, Mordabad, on 07.01.2011. The learned senior counsel submits that there is no lethargy or negligence on the part of the State Government to acquire the said land. He further supports the observation of the High Court in the impugned Judgment that construction of Jail is an urgent matter requiring acquisition of the land by invoking urgency provisions under Section 17 (1) and Section 17(4) thereby dispensing with the enquiry under Section 5-A of the Act. He further contends that the right of the citizens of filing of objections and opportunity of hearing under Section 5-A are subject to the provisions of Section 17 of the Act and the same can be legally curtailed in the event of any pressing need and urgency for acquisition of land in order to eliminate delay likely to be caused by an enquiry under Section 5-A of the Act. The learned senior counsel further submits that Dev Sharan's Case (Supra) upon which, the appellant had placed strong reliance is not relevant and applicable to the present case because in that case, this Court invalidated the acquisition of land by invoking urgency provisions for construction of a new Jail when old Jail was already existed in District Shahjahanpur but was located in a densely populated area which needs to be shifted. Learned Senior Counsel has placed reliance on the decisions of this Court in Deepak Pahwa v. Lt. Governor of Delhi, (1984) 4 SCC 308 and Chameli Singh v. State of U.P., (1996) 2 SCC 549 in support of his arguments that even the delay and lethargy on the part of the respondents will not disentitle them to invoke urgency provisions under Sections 17 of the Act.

8). The issue before us is no more res integra as it has already been decided by this Court in Radhy Shyam's Case (Supra) in which one of us was the party (G.S. Singhvi, J.) wherein this Court has considered the development of the jurisprudence and law, with respect to invoking of the urgency provisions under Section 17 vis-à-vis right of the landowner to file objections and opportunity of hearing and enquiry under Section 5-A of the Act, by referring to plethora of earlier decisions of this Court. This Court had culled out various principles governing the acquisition of the land for public purpose by invoking urgency thus:

"From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good --

Dwarkadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd.⁴⁶, Charanjit Lal Chowdhury v. Union of India⁴⁷ and Jilubhai Nanbhai Khachar v. State of Gujarat⁴⁸.

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly -- DLF

Qutab Enclave Complex Educational Charitable Trust v. State of Haryana⁴⁹; State of Maharashtra v. B.E. Billimoria⁵⁰ and Dev Sharan v. State of U.P.²⁴²

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons. (v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-

section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years.

Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Sections 5-A(1) and (2) is not at all warranted in such matters."

9). In view of the above it is well settled that acquisition of the land for public purpose by itself shall not justify the exercise of power of eliminating enquiry under Section 5-A in terms of Section 17 (1) and Section 17 (4) of the Act. The Court should take judicial notice of the fact that certain public purpose such as development of residential, commercial, industrial or institutional areas by their intrinsic nature and character contemplates planning, execution and implementation of the schemes which generally takes time of few years. Therefore, the land acquisition for said public purpose does not justify the invoking of urgency provisions under the Act. In *Radhy Shyam* (Supra), this Court, whilst considering the conduct or attitude of the State Government vis-à-vis urgency for acquisition of the land for the public purpose of planned industrial development in District Gautam Budh Nagar, has observed:

"In this case, the Development Authority sent the proposal sometime in 2006. The authorities up to the level of the Commissioner completed the exercise of survey and preparation of documents by the end of December 2006 but it took one year and almost three months for the State Government to issue notification under Section 4 read with Sections 17(1) and 17(4). If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under sub-section (1) of Section 5-A and the time spent by the Collector in making enquiry under sub-section (2) of Section 5-A would have defeated the object of the acquisition."

10). Moreover, in *Dev Sharan Case* (Supra) the acquisition of land for construction of new District Jail, since the old Jail was overcrowded and causing hardships including health and hygiene concerns to the inmates, by invoking urgency provision under Section 17 was quashed on the ground that the government machinery had functioned at very slow pace in processing the acquisition which clearly evinces that there was no urgency to exclude the application of Section 5-A of the Act. The Court further observed:

"35. From the various facts disclosed in the said affidavit it appears that the matter was initiated by the Government's Letter dated 4-6-2008 for issuance of Section 4(1) and Section 17 notifications. A meeting for selection of a suitable site for construction was held on 27-6-2008, and the proposal for such acquisition and construction was sent to the Director, Land Acquisition on 2-7-2008. This was in turn forwarded to the State Government by the Director on 22-7-2008. After due consideration of the forwarded proposal and documents, the State Government issued Section 4 notification, along with Section 17 notification on 21-8-2008. These notifications were published in local newspapers on 24-9-2008.

36. 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 19-6-2009. The Director in turn forwarded all these to the State Government on 17-7-2009, and the State Government finally issued the Section 6 declaration on 10-8-2009. This declaration was published in the local dailies on 17-8-2009.

37. Thus the time which elapsed between publication of Section 4(1) and Section 17 notifications, and Section 6 declaration in the local newspapers is 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.

38. In Para 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 5-A. 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.

39. 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, the Government can initiate acquisition proceeding by following the provision of Section 5-A of the Act and in accordance with law."

11). In the facts and circumstances of the present case, it is clear that the District of Jyotiba Phule Nagar was created in the year 1997 which was, however, dissolved and recreated in 2004. The District Magistrate, Jyotiba Phule Nagar, had sent a proposal to the Principal Secretary, Home/Prisons, Government of U.P. for acquisition of land for the construction of District Jail on 24.01.2003 which is undoubtedly a public purpose. After the lapse of 5 years in the year 2008, the State Government asked District Magistrate to trace availability of lands for acquisition for construction of the District Jail in the proximity to District Headquarters and further requested the Selection Committee to recommend the land suitable for the said purpose. Thereafter, the Selection Committee recommended the acquisition of the said land as suitable for the construction of the Jail but it took two years for the State Government to issue the said Notifications under Section 4 and Section 6 respectively, thereby invoking the urgency provisions under Section 17 of the Act. The series of events shows lethargy and lackadaisical attitude of the State Government. In the light of the above circumstances, the respondents are not justified in invoking the urgency provisions under Section 17 of the Act, thereby depriving the appellants of their valuable right to raise objections and

opportunity of hearing before the authorities in order to persuade them that their property may not be acquired.

12). The decision of this Court in Chameli Singh (Supra), upon which Shri. K.K. Venugopal, learned senior counsel for the respondents has placed reliance, has already been considered and distinguished by this Court in Radhy Shyam Case (Supra) in the following terms:

"74. In State of U.P. v. Pista Devi, Rajasthan Housing Board v. Shri Kishan and Chameli Singh v. State of U.P. the invoking of urgency provision contained in Section 17(1) and exclusion of Section 5-A was approved by the Court keeping in view the acute problem of housing, which was perceived as a national problem and for the solution of which national housing policy was framed and the imperative of providing cheaper shelter to Dalits, tribals and other disadvantaged sections of the society."

13). Learned senior counsel for the respondents also relied on the decision of this Court in Deepak Pahwa Case (Supra). In that case, the land was acquired by invoking urgency provisions under Section 17 for the purpose of construction of a New Transmitting Station for the Delhi Airport after the correspondence of nearly eight years among the various Departments of the Government before the Notification and the declaration was published in the Gazette. This Court has held that mere pre-notification delay would not render the invocation of the urgency provisions void as very often, the delay increases the urgency of the necessity for acquisition. We are afraid that the decision will not come to the rescue of the respondents because this Court has observed that delay only accelerates or increases the urgency of need of acquisition, which contemplates that delay does not create a ground or cause for urgency but increases the already existing urgency for acquisition of land for any public purpose. Therefore, the delay, by itself, does not create urgency for acquisition but accelerates urgency only in case it already exists in the nature of the public purpose.

14). 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. Therefore, the appellants cannot be denied of their valuable right under Section 5-A of the Act.

15). In the result, the appeal is allowed. The impugned Judgment and Order of the High Court dated 08.10.2010 is set aside. No order as to costs.

.....J. [G.S. SINGHVI]

...J. [H. L. DATTU] New Delhi, August 03, 2011.