

Sarju Prasad Saha vs The State Of U.P. And Ors. on 3 March, 1965

Equivalent citations: AIR1965SC1763, 1966(14)BLJR33, AIR 1965 SUPREME COURT 1763, 1966 ALL. L. J. 1, 1966 BLJR 33, 1965 2 SCWR 1061, 1965 BLJR 33, 1965 2 SCJ 411, ILR 1965 2 ALL 564

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Bench: K. Subba Rao, J.C. Shah, R.S. Bachawat

JUDGMENT

J.C. Shah, J.

1. On June 28, 1955 the State of U.P. notified under Section 4(1) of the Land Acquisition Act 1 of 1894 that plots Nos. 1708, 1709 and 1710 admeasuring in the aggregate 3.21 acres situate at Moholla Nai Bazar in the town of Basti "were likely to be needed for a public purpose, i.e., for water-works supply scheme for the Basti Municipality". The appellant filed under Section 5-A of the Act objections against the intended acquisition. The Land Acquisition Officer held an enquiry and submitted a report to the Government recommending that the land be exempted from acquisition. On March 7, 1956 the proceedings for acquisition were abandoned by the Government of U. P. On November 10, 1960, a fresh notification was issued under Section 4(1) of the Land Acquisition Act by the Government of U. P. intimating that an area out of plots Nos. 1708, 1709 and 1710 admeasuring 1.13 acres was likely to be needed for a public purpose, viz., water-works scheme for the Basti Municipality. Simultaneously therewith the Government of U. P. in purported exercise of powers under Section 17(4) of the Act directed that the provisions of Section 5-A of the Act shall not apply to the land notified. Later the Government of U. P. on November 29, 1960 notified under Section 6 of the Act that the Governor was satisfied that the land mentioned in the Schedule was needed for a public purpose and directed the Collector, Basti to take order for acquisition of the land. It was recited in the notification that the case being one of urgency, the Collector may under Sub-sections (1) and (1-A) of Section 17 of the Act, on the expiration of the notice mentioned in Sub-section (1) of Section 9, take possession of the land though no award under Section 11 may have been made.

2. On December 12, 1960 the appellant petitioned the High Court of Judicature at Allahabad for a writ quashing the notifications. dated November 10, 1960 and November 29, 1960 and for a writ of mandamus directing the State of U. P., the Collector of Basti and the Land Acquisition Officer not to interfere with his possession over the land pursuant to the said notifications. Later by an application, dated January 4, 1961 the Municipal Board of Basti was impleaded as a

party-respondent. In support of the petition the appellant contended that in respect of the land under acquisition, a notification under Sub-section (4) of Section 17 of the Act excluding the application of Section 5-A could not be issued, that Section 17(4) was ultra vires the legislature in that it infringed the guarantee of equal protection of the laws under Art. 14 of the Constitution, that the Government of U. P. having abandoned the earlier proceedings for acquisition of the land, acquisition of the same land in 1960 by a fresh notification could not be enforced, for the abandonment of the earlier acquisition proceedings was the result of acceptance of the recommendation of the Land Acquisition Officer and that Section 17(1-A) added by U. P. Act 22 of 1954 was inapplicable, as the acquisition was not made for any of the purposes contemplated by that clause. The High Court rejected all the contentions raised and dismissed the petition. With certificate granted by the High Court, the appellant has appealed.

3. Counsel for the appellant has, beside certain other pleas which we will presently mention, sought to re-agitate the questions submitted for the decision of the High Court except the plea that Section 17(4) of the Act infringes the equal protection clause of the Constitution.

4. The scheme of the Land Acquisition Act, which provides machinery for compulsory acquisition of land, amongst others, for public purposes may be briefly referred to. The appropriate Government may, under Sub-section (1) of Section 4, if it appears to that Government, that land in any locality is needed or is likely to be needed for any public purpose, publish a notification to that effect in the Official Gazette. On the issue of such a notification it is open to any officer authorised by such Government to enter upon and survey and take levels of any land in such locality, and to do all such other acts necessary to ascertain whether the land is adapted for the public purpose. By Section 5-A opportunity is given to any person interested in any land which has been notified under Section 4(1) to raise objections either to the acquisition of the land or of any land in the locality, as the case may be. On the objections raised, the Collector has, after giving to the objector an opportunity of being heard and after making such further inquiry, if any, as he thinks necessary, to submit the case for the decision of the appropriate Government, together with his recommendations on the objections. The decision of the appropriate Government on the objections is made final. When the appropriate Government is satisfied, after considering the report, if any, made under Sub-section (2) of Section 5-A that any particular land is needed for a public purpose, a declaration under Section 6 may be made to that effect by the Government and by Sub-section (3) of Section 6 the declaration is made conclusive evidence that the land is needed for a public purpose. Thereafter the Government is authorised by Section 7 to direct the Collector to take order for the acquisition of the land. Section 9 provides for notice to persons interested in the land, stating that the Government intends to take possession of the land, and that claims to compensation for all persons interested in such land may be made to the Collector. Sections 10 to 15 provide for the manner of assessing compensation which may be awarded by the Collector on behalf of the Government. Section 16 provides that after the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. Then follows Section 17 which confers special powers exercisable in cases of urgency. Sub-sections (1), (2) and (4) of Section 17 of the Land Acquisition Act 1 of 1894 as enacted by the Central Legislature read as follows:

"(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in Sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

(3) Provided that the Collector shall not take possession of any building or part of a building under this Sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4, Sub-section (1)."

Thereby certain special powers exercisable in cases of urgency are conferred upon the appropriate Government. Under Sub-sections (1) and (2) power to take possession of land notified for acquisition is exercisable by the Collector when directed by the Government, even before an award is made, but the power under Sub-section (1) may be exercised only in respect of waste or arable land; by Sub-section (4) power is conferred upon the appropriate Government to direct that the provisions of Section 5-A shall not apply in respect of any land to which the provisions of Sub-section (1) are applicable, and a declaration may be made under Section 6 in respect of the land at any time after the publication of the notification under Section 4(1). By the Land Acquisition (U. P. Amendment) Act, 22 of 1954, the following Sub-section (1-A) was added immediately after Sub-section (1) of Section 17 of the Land Acquisition Act:

"The power to take possession under Sub-section (1) may also be exercised in the case of other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development."

The scheme of the Act is that after notifying that land is needed or likely to be needed for a public purpose, the Government directs the Collector to hold an inquiry into the objections which may be raised by persons interested in the land notified, and it is after the enquiry is made and the objections of persons interested in the land are considered, that the notification that the land is needed for a public purpose may issue. The right of the owner of the land is extinguished when Government takes possession of the land after an award of compensation is made. But by Section 17 two distinct powers exercisable by the appropriate Government in case of urgency are conferred: the first is the power to take possession before the award of compensation is made by the Collector, and the second is the power to dispense with an enquiry which the Act contemplates has to be made under Section 5-A(2). These powers could under the Act as originally enacted be exercised only in respect of lands described in Sub-sections (1) and (2). By Sub-section (1-A) added by the U. P. Amendment Act 22 of 1954 power to take possession under Sub-section (1) may also be exercised in the case of lands other than waste or arable land, where the land is acquired for or in connection with sanitary improvements of any kind or planned development. The U. P. Amendment Act has, therefore extended the scope of the special powers exercisable by the Government of taking possession of the land before an award is made. It is to be noticed that power exercisable in case of urgency to take possession of land needed for a public purpose before an award is made has been extended by the U. P. Legislature to cases where the land is acquired for or in connection with sanitary improvements of any kind or planned development: the Legislature has, however, not authorised the Government to direct that the provisions of Section 5-A shall not apply to acquisitions of land other than waste or arable land. This Court in *Nandeshwar Prasad v. U. P. Govt.*, has held that:

"If the Government makes a direction only under Section 17(1) the procedure under Section 5-A would still have to be followed before a notification under Section 6 is issued, though after that procedure has been followed and a notification under Section 6 is issued the Collector gets the power to take possession of the land after the notice under Section 9 without waiting for the award and on such taking possession the land shall vest absolutely in Government free from all encumbrances. It is only when the Government also makes a declaration under Section 7(4) that it becomes unnecessary to take action under Section 5-A and make a report thereunder. It may be that generally where an order is made under Section 17(1), an order under Section 17(4) is also passed; but in law it is not necessary that this should be so. It will also be seen that under the Land Acquisition Act an order under Section 17(1) or Section 17(4) can only be passed with respect to waste or arable land and it cannot be passed with respect to land which is not waste or arable and on which buildings stand. * * * Sub-section (1A) as introduced by the U. P. Act, therefore, has the effect only of accelerating the taking of possession which normally can take place after the award has been made under Section 11 in the case of land other than waste or arable in the circumstances and under the conditions mentioned in Sub-section (1). But Sub-section (1-A) does not amend Sub-section (1) so as to include within that sub-section land other than waste or arable. Therefore, when Sub-section (4) was not amended by the U. P. Legislature to include Sub-section (1-A) as introduced by it, it can apply only to waste or arable land mentioned in Sub-section (1), * * * Sections

17(1) and 17(4) are independent of each other in the sense that an order under the former one does not necessarily require an order under the latter. Similarly Section 17(1-A) must be independent of Section 17(4) and an order under Section 17(1-A) would not necessarily mean that an order under Section 17(4) must be passed."

"In these circumstances it seems to us that if the legislature intended that provisions of Sub-section (4) should also apply to a case falling under Sub-section (1-A), it has failed to carry out that intention. Sub-section (1-A) has been added as an independent sub-section and no amendment has been made either in Sub-section (1) or Sub-section (4); nor has any separate provision been made for applying Sub-section (4) to a case falling under Sub-section (1-A) and so Sub-section (4) cannot be applied to Sub-section (1-A)".

5. It was the case of the appellant that the land notified for acquisition under the notification, dated November 10, 1960 was not waste or arable land, and this case was not controverted by the State of U. P. and the Land Acquisition Authorities. The High Court opined that even in respect of land which is not waste or arable if the proposed acquisition is for purposes mentioned in Sub-section (1-A) of Section 17, the Government of U. P. had power to dispense with the inquiry under Section 5-A. That conclusion of the High Court must be regarded as erroneous in view of the judgment of this Court in Nandeshwar Prasad's case, , and it must be held that the notification dated November 10, 1960 issued in exercise of powers under Sub-section (4) of Section 17 declaring that the provisions of Section 5-A shall not apply to the acquisition was invalid. As the notification under Section 6 was issued without following the procedure prescribed by Section 5-A, which was obligatory, that notification also must be declared invalid.

6. Other contentions raised by counsel for the appellant may be briefly noticed. Counsel submitted that the notification under Section 4 declaring that the land was likely to be needed for a public purpose was itself invalid, on the ground that the land was not "specified". No such objection was raised before the High Court and we would not, in an appeal from an order passed in a petition for a writ under Article 226 of the Constitution, be justified in allowing this new objection to be raised in this appeal. It was also contended that the notification for acquisition of the land belonging to the appellant was issued mala fide or for a collateral purpose. In the petition the appellant did aver that the proceedings for acquisition were commenced with a view "to defeat his legal rights" to sue the Government for damages in respect of wrongful sinking of a tube-well on the land and for criminal trespass, and on that account it was mala fide and constituted a fraud on the law of acquisition of property, but it appears that the plea was not pressed before the High Court. The High Court has observed that four questions (which we have set out earlier) were raised before them. We do not think that in this appeal, we would be justified in allowing this question, which the High Court was never called upon to consider, to be raised.

7. It was then contended that if after a piece of land has been notified under Section 4(1) as being likely to be needed for a public purpose, the notification is abandoned after considering the report of the Collector made under Section 5-A, it would not be open to the Government, without fresh grounds, to commence a fresh acquisition proceeding in respect of the same land for the purpose for

which it was originally notified as likely to be needed. It was submitted that the Act has expressly provided for making a quasi-judicial inquiry into the objections which may be raised against the proposed acquisition, and has made the decision of the Government on the objections final, and initiation of fresh acquisition proceedings in respect of the same land makes an inroad upon the finality declared by the statute. We do not propose to express any opinion on the merits of this argument, because there is not on the record evidence on which the argument may be founded. On behalf of the State of U. P. it has been denied that the Government abandoned the acquisition proceedings because it accepted the report of the Land Acquisition Officer. The report of the Land Acquisition Officer itself is not before the Court, and there is no evidence about the contents of the report of the Land Acquisition Officer or that the report was accepted. It may be remembered that in the first notification issued in the year 1955 the total area of the land declared to be likely to be needed for a public purpose was 3.21 acres, but in the notification issued in November 1960, an area of 1.13 acres alone was declared to be likely to be needed. The documents which may have a bearing on what persuaded the Government of U. P. to abandon the proceeding for acquisition are not before the Court. It would, in the circumstances, be impossible for us to hold that because of the finality of the order of the Government under Section 5-A(2) on the objections raised by the appellant, the Government is prohibited from commencing a fresh acquisition proceeding. We may observe that as we are setting aside the notification under Section 17(4) and also the notification issued under Section 6 of the Land Acquisition Act, the appellant will have an opportunity of raising his objections to the proposed acquisition under Section 5-A and it will of course be the duty of the Collector to make a report on those objections and on such further inquiry as the Collector may choose to make under that provision and upon the report so made, the Government of U. P. will arrive at its decision on the objections filed.

8. Mr. Agarwalla appearing on behalf of the State of U. P. contended that after the High Court dismissed the appellant's writ petition challenging the validity of the notification which have been set out, the appellant had filed a suit in the Civil Court for a decree declaring that the notifications are invalid, and that suit was dismissed. But the dismissal of that suit does not restrict our power to issue an appropriate direction in this appeal, because an appeal is filed against the decision of the Civil Court and the same is pending in the High Court.

9. One other point raised at the Bar may be briefly referred to. It was contended by Mr. S.P. Sinha appearing on behalf of the Municipal Board, Basti, that a part of the land notified for acquisition was waste or arable and in support of his contention, counsel referred us to certain revenue record. But if only a part of the land is waste or arable and the rest is not, a notification under Section 17(4) dispensing with compliance with the requirements of Section 5-A would be invalid. It would not be open to the Court to regard the notification as partially good and partially bad, for if the State had no power to dispense with the inquiry in respect of any part of the land notified under Section 4(1), an inquiry must be held under Section 5-A giving an opportunity to persons interested in the land notified to raise their objections to the proposed acquisition and in that inquiry the persons interested cannot be restricted to raising objections in respect of land other than waste or arable land.

10. The appeal is, therefore, partially allowed and the notification, dated November 10, 1960 issued under Section 4 and the notification, dated November 29, 1960 under Section 6 are set aside. Parties will bear their own costs in this Court as well as in the High Court.