

## **Pratap And Anr vs The State Of Rajasthanand Ors on 27 February, 1996**

**Equivalent citations: 1996 AIR 1296, 1996 SCC (3) 1, AIR 1996 SUPREME COURT 1296, 1996 AIR SCW 1404, 1996 (3) SCC 1, 1996 (1) UJ (SC) 822, (1996) 2 SCR 1088 (SC), (1996) 2 JT 759 (SC), 1996 (2) SCR 1088, 1996 UJ(SC) 1 822, (1996) 1 RENTLR 723, (1997) 1 CURLJ(CCR) 4, (1996) 4 LANDLR 52, (1996) 1 RAJ LW 150, (1996) LACC 264, (1996) 3 ICC 2**

**Author: B.N Kirpal**

**Bench: B.N Kirpal, Jagdish Saran Verma, N.P Singh**

PETITIONER:

PRATAP AND ANR.

Vs.

RESPONDENT:

THE STATE OF RAJASTHANAND ORS.

DATE OF JUDGMENT: 27/02/1996

BENCH:

KIRPAL B.N. (J)

BENCH:

KIRPAL B.N. (J)

VERMA, JAGDISH SARAN (J)

SINGH N.P. (J)

CITATION:

1996 AIR 1296

1996 SCC (3) 1

JT 1996 (2) 759

1996 SCALE (2)543

ACT:

HEADNOTE:

JUDGMENT:

W I T H CIVIL APPEAL NOS.626-28 OF 1993 Chanda and Ors.

V. The State of Rajasthan and Ors.

W I T H CIVIL APPEAL NO. 3851 OF 1996

-----

(Arising out of S.L.P. (C) No. 15971 of 1995) Sheo Narain and Anr.

V. The State of Rajasthan and Ors.

J U D G M E N T Kirpal, J.

In these appeals the challenge is to the decision of the Rajasthan High Court who had upheld the acquisition of land of the appellants which had been acquired by the respondents under the provisions of the Rajasthan Urban Improvement Act, 1959 (hereinafter referred to as 'the said Act').

The proceedings for acquisition of land of the appellants commenced with the State of Rajasthan issuing notification dated 10th October, 1979, under Section 52 (2) of the said Act proposing to acquire the land, described in the said notification, which was situated in various villages in and around the city of Jaipur. The notification stated that it was necessary to acquire the land mentioned therein for improvement of land of Sector 1A of Jaipur City for the purposes of multipurpose schemes, i e., for the construction of buildings residential, commercial and industrial units. By this notification information was given to all the concerned owners and persons interested in the land which was sought to be acquired to file any objections, which they had, against the proposed acquisition. In respect of the land of the appellants notification under Section 52 (1) of the said Act was issued on 20th April, 1984. It was stated therein that the land mentioned in the said notification was needed under the said Act for the improvement of urban areas and this notification was issued after considering those objections which had been filed by the interested persons. It was also notified that on the date of publication of the said notification in the Rajasthan Rajpatra "the said land shall be vested in the State Government free from all encumbrances". Though, this notification was dated 7th March, 1984, the same was, however, published in the Rajasthan Rajpatra on 20th April, 1984.

The Land Acquisition Act, 1894, was extended to the State of Rajasthan on 24th September, 1984. Some of the persons whose lands were acquired filed suits challenging the acquisition proceedings under Section 52 of the said Act. According to the appellants the said suits were dismissed on 2nd September, 1986. Awards were passed on different dates. In the present appeals the awards were passed on 30th September, 1988, 30th November, 1988 and 28th June, 1989.

A number of writ petitions were then filed in the Rajasthan High Court. Vide a common judgment dated 21st October, 1992, a Single Judge of the Rajasthan High Court dismissed 24 writ petitions and upheld the acquisition of the land which had been made. Appeals were filed against the said judgment and a Division Bench of the Rajasthan High Court dismissed the same on 17th December, 1992. Civil Appeal nos.624-25 and 626-28 of 1993 challenge the aforesaid judgment of the Division

Bench of the Rajasthan High Court.

Another set of appeals against the judgment of the Single Judge of the Rajasthan High Court were dismissed by the Division Bench vide judgment dated 12th May, 1994, by following its earlier decision of 17th December, 1992. Special Leave Petition (Civil) No.15971 of 1995 is filed against this judgment.

The main contention which has been urged on behalf of the appellants is that no award had been made within two years of the notification issued under Section 52 of the said Act. It was contended that with the Land Acquisition Act 1894 having been extended, the Rajasthan Urban Improvement Act, 1959 ceased to have any operation and thereafter acquisition proceedings were required to be taken under the relevant provisions of the Central Act. Section 11-A of the Land Acquisition Act 1894 requires that the awards should be made within two years of the publication of Section 6 notification and, it was submitted, that in the instant cases the awards were made beyond the said period of two years and without complying with the provisions of Section 6 of the Land Acquisition Act, 1894.

It was also submitted by Mr. A.K. Sen, learned senior counsel for the appellants that another Division Bench of the Rajasthan High Court in the case of Narain and Ors. Vs. State of Rajasthan ( 1993 [2] Western Law Cases (Rajasthan) 738 ) had quashed the notification of 10th October, 1979, issued Under Section 52 (2) of the said Act as well as the notification dated 7th March, 1984, issued under Section 52

(i) of the said Act. The submission was that as this judgment has not so far been reversed, therefore, this Court must hold that the acquisition allegedly made by the respondents could no longer be sustained.

Section 52 of the Rajasthan Urban Improvement Act, 1959 contains provision for compulsory acquisition of the land and the same reads as under:

"Compulsory acquisition of land -

(1) Where on representation from the Trust [or otherwise] it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under this Act, the State Government may acquire such land by publishing in the official Gazette a notice specifying the particular purpose for which such land is required and stating that the State Government has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section (1), the State Government shall by another notice call upon the owner of the land and any other person who in the opinion of the State Government may be interested therein to show cause, within such time as may be specified in the notice, why the land should not be acquired.

[Such notice shall be individually served upon the owner of the land and any other person who in the opinion of the State Government may be interested therein. It shall also be published in the Official Gazette at least 30 days in advance and shall be pasted on some conspicuous place in the locality, where the land to be acquired is situate. Such publication and pasting of notice shall be deemed as sufficient and proper service of notice upon the owner of the land and upon all other persons who may be interested therein.] (3) Within the time specified in the notice, the owner of the land or any other person interested therein may show cause and make objections, why the land should not be acquired. Every such objection to the notice given under sub section (2) shall be made in writing to the Officer on Special Duty, or any other officer appointed by the State Government for the purpose. Such officer shall give the objector an opportunity of being heard, either in person or by pleader, and after hearing all such objections and after making such enquiry, as he deems necessary, shall submit the case for the decision of the State Government together with the record of the proceedings held by him and a report containing his recommendations on the objections.

Thereafter, the State Government may pass such orders as it deems fit . The decision of the State Government thereon shall be final.

(4) When a notice under sub-section (1) is published in the Official Gazette, the land shall, on and from the date of such publication, vest absolutely in the State Government free from all encumbrances.

(5) Where any land is vested in the State Government under sub-section (4), the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorized by it in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the State Government may take possession of the land and may for that purpose use such force as may be necessary.

(7) After the land has been acquired and its possession taken the State Government shall, on payment of the amount of compensation as determined under section 53, the amount of interest thereon and of all other charges incurred by the State Government in this connection, transfer it to the Trust or any other prescribed authority or Department for the purpose for which it is acquired.

Provided that such Transfer of the land may be made to the trust or to any other prescribed authority or the Department of the Government without recovering any amount,

(i) where the State Government is satisfied that any such land is urgently needed by the Trust, prescribed authority or Department of the Government for carrying out improvement under the Act immediately, or

(ii) where any such land is intended to be allotted free of charge to the Scheduled Castes, Scheduled Tribes or to person entitled under section 31 of the Rajasthan Tenancy Act, 1955 [Rajasthan Act 3

of 1955] to possess a site for a residential house in the abadi of the Urban area free of charge.] (8) Any notice issued or published by the State Government under this section may also be issued or published for and on behalf of it by any officer subordinate to it so authorized."

After the extension of the Land Acquisition Act 1894, to the State of Rajasthan, the existing Rajasthan Urban Improvement Act, 1959 stood repealed. The State legislature then reassessed the Rajasthan Urban Improvement (Amendment) Act, 1987 (hereinafter referred to as 'the Amending Act') with a view to amend the provisions of the Principal Act and to provide for certain transitory and Facial procedure nor the disposal of pending and present proceedings as well as payment of compensation, interest etc. The Amending Act incorporated a new provision, namely, Section 60 A in the Principal Act. This Section 60 A provided for transitory provisions for pending matters relating to acquisition, of land. Sub-section (3) of this section relating to the period within which the award could be made was as follows:

"(3) Where in a matter pending on the date of commencement, a notice under subsection (2) of section 52 or a notice under sub-section (1) thereof has been served or, as the case may be, published, such notice shall be deemed to be the notification or declaration published or made under sub-section (1) of section 4 or, as the case may be, under sub-section (1) of section; 6 of the Land Acquisition Act and the declaration or award in such a matter shall be made within a period of one year or, as the case may be, two years from the date of commencement."

The provisions of this Amending Act were held to be ultra vires by a decision of the Rajasthan High Court inasmuch as the said Act did not have the assent of the President. Thereupon, the Rajasthan Urban Improvement (Amendment and Validation) Act, 1990 (hereinafter referred to as 'the Validating Act') was passed which received the assent of the President on 24th March, 1995. A new Section 60-A was inserted in the Principal Act which contained a transitory provision and which reads as follows:

"60-A Transitory provisions for pending matters relating to acquisition of land notwithstanding anything otherwise contained in sub-section (1) of Section 52, where in any matter relating to the acquisition of land pending on the date of commencement of the Rajasthan Urban Improvement (Amendment) Act, 1987 (hereinafter in this section referred to as the date of commencement), an action, thing or order had been taken, done, or made under and in accordance with the provisions of this Act as it stood before the date of commencement such action, thing, or order shall not be re-opened or reviewed or be liable to be challenged on the ground that such action, thing or order was at variance with that provided in the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter in this section referred to as the Land Acquisition Act) subject however that any further proceedings action or order in such matter conducted, taken or made on or after the date of commencement shall subject to the other provisions of this section, be made under and in accordance with the Land Acquisition Act.

(2) The amount of compensation or interest or that payable for any other reasons shall in a matter pending on the date of commencement by payable under and in accordance with the provisions of the Land Acquisition Act and the money paid prior to the date of commencement shall be deduced from or adjusted against the said amount.

(3) Where in a matter pending on the date of commencement, a notice under sub-section (2) of Section 52 or a notice under sub-section (1) thereof has been served or as the case may be published such notice shall be deemed to be the notification or declaration published or made under sub-section (1) of Section 4, or as the case may be, under sub-section (1) of Section 6 of the Land Acquisition Act and the declaration or award in such a matter shall be made within a period of one year or, as the case may be, two years from the date of commencement.

(4) Where any land has, prior to the date of commencement, vested in the State Government or its possession has been taken in accordance with the provisions of this Act as it stood before the date of commencement, such vesting or possession of land shall not be liable to be challenged on the ground that no amount of compensation was tendered and paid in accordance with sub-section (3A) of Section 17 of the Land Acquisition Act subject, however, that such amount shall be tendered and paid within a period of six months from the date of commencement.

(5) In determining the amount of compensation to be awarded in a matter pending on the date of commencement, the market value of the land at the date on which the notice was published in the official gazette under clause (b) of subsection (6) of Section 52 as it stood before the date of commencement shall be taken into consideration.

(6) An appeal filed under Section 54 or Section 56 or a dispute referred under Section 55 or Section 59 and pending on the date of commencement shall be decided having regard to the provisions of the Land Acquisition Act."

The provisions of Section 52 (2) of the said Act are akin to Section 4 of the Land Acquisition Act. According to this section before publishing a notice under sub-section (1), a notice is issued to the owners of land and other persons, who are interested, to show cause why the State Government should not acquire the land. Due publicity of the issuance of the said notice is required to be given, apart from individual service of the said notice. Sub-section (3) of Section 52 enables the owners or the person interested to show cause and file objections against the proposed acquisition of the land. These objections are to be in writing and an opportunity of being heard, in person or through pleader, has to be afforded by the Officer on Special Duty to the objectors. Thereupon a report is required to be given to the State Government containing the recommendations on the objections which are filed. It is evident that the enquiry envisaged by sub-section (3) of Section 52 is similar to the one under Section 5-A of the Land Acquisition Act, 1894. It is after complying with the provisions of sub-sections (2) and (3) that the State Government can issue a notification under

sub-section (1) of Section 52 acquiring the land specified in the notification for the purpose of improvement or for any other purpose under the Act. On the said notification under Section 52 (1) being issued, sub-section (4) of Section 52 provides that with the publication of the notice in the Official Gazette, the land shall on and from the date of the publication "vest absolutely in the State Government free from all encumbrances". Once the land has so vested, possession is to be taken by the State Government and after the amount of compensation is determined according to Section 52, the payment of the same is to be made and the land can then be transferred to the Improvement Trust.

From the facts narrated hereinabove it is clear that the Central Act was extended to the State of Rajasthan only after the land in question had vested in the State Government with the publication of the notification under Section 52 (1) on 10th October, 1984. Once the vesting of the land in the State Government, free from all encumbrances, was completed the subsequent extension of the land Acquisition Act, 1894 to the State of Rajasthan and the amendments made by the Amending Acts to the Rajasthan Urban Improvement Trust Act becomes wholly irrelevant and of no consequence. Neither the amendments nor the extension of the Central Act can have the effect, in law or otherwise, of divesting the State of ownership of the land which had already been vested in it.

The provisions of sub-section (4) of Section 52 are somewhat similar to Section 17 of the Land Acquisition Act, 1894. Just as publication of a notification under Section 52 (1) vests the land in the State, free from all encumbrances, as provided by Section 52 (4), similarly when possession of land is taken under Section 17 (1) the land vests absolutely in the Government free from all encumbrances. A question arose before this Court that if there is a non-compliance with the provisions of Section 5-A and an award is not made in respect to the land so acquired, would the acquisition proceedings lapse. In *Satendra Prasad Jain and Ors. Vs. State of U.P. and Ors.* [ (1993) 4 SCC 369 ] this Court held that once possession had been taken under Section 17 (1) and the land vested in the Government then the Government could not withdraw from acquisition under Section 48 and the provisions of Section 11-A were not attracted and, therefore, the acquisition proceedings would not lapse on failure to make an award within the period prescribed therein. It was further held that non-compliance of Section 17 (3-A), regarding part payment of compensation before taking possession, would also not render the possession illegal and entitle the Government to withdraw from acquisition. The aforesaid principle has been reiterated by this Court in *P. Chinnanna and Ors. Vs. State of A.P. and Ors.* [ (1994) 5 SCC 486 ] and *Awadh Bihari Yadav and Ors. Vs. State of Bihar and Ors.* [ (1995) 6 SCC 31 ]. In view of the aforesaid ratio it follows that the provisions of Section 11A are not attracted in the present case and even if it be assumed that the award has not been passed within the stipulated period, the acquisition of land does not come to an end.

It was contended by the learned counsel for the respondents that the State had complied with all the legal requirements in the present case. Our attention was drawn to Section 60-A of the Amending Act and the Validating Act and it was submitted, and in our opinion rightly, that subsection (3) of the Amending Act and sub-section (4) of the Validating Act only required the making of the award and payment of money within the period stipulated therein. The facts narrated hereinabove show that this was done. In any case noncompliance with the provisions of this subsection will not in any

way affect the vesting of the land which has already taken place with the publication of the notification dated 20th April, 1984. The provisions of sub-section (4) of Section 60-A of the Validating Act are analogous to Section 17-A of the Land Acquisition Act and as held in the aforesaid decisions of this Court non-compliance with the said provisions will not in any way amount to the divesting of acquisition which has taken place or the acquisition proceedings having lapsing.

There is also no merit in the contention of the learned counsel for the appellants that the decision of the Division Bench of the Rajasthan High Court rendered in 1993 in Narain's case (supra) can in any way affect the present proceedings. Firstly, the said decision of the Division Bench of the Rajasthan High Court is not final because the Special Leave Petition (c) Nos. 3100-3127 of 199a have been filed and the same are pending in this Court; secondly this decision has not been approved by a Full Bench of the Rajasthan High Court in its judgment dated 1st November, 1995 in D.B. Civil Special Appeal No.255 of 1995 - Urban Improvement Trust, Jodhpur Vs. The State of Rajasthan and Ors. and the other connected cases. In this judgment, dealing with Narain's case the Full Bench observed as follows:

" The Division Bench of this Court in the case Narain Vs. State of Raj. & Ors. reported in 1993 (2) WLN 527, has held that the acquisition proceedings cannot be taken in the absence of sanctioned notified scheme. This view has been taken in the absence of sanctioned notified scheme. This view has been taken by interpreting only para 9 of the Supreme Court decision of Gandhi Grah Nirman Sahkari Samiti Ltd.'s case to the facts and circumstances of the case before the Division Bench. Consideration of paras 8 and 11 of the Supreme Court decision does not find place in the decision of the Division Bench. As stated above, the combined. effect of paras 8, 9 and 11 of the Supreme Court decision seems to be otherwise. With utmost respect, it is difficult to agree with the observations made and view expressed by the Division Bench in the case of Narain (Supra) as regards the decision of the Supreme Court in the case of Gandhi Grah Nirman Sahkari Samiti Ltd. (supra)."

It is indeed unfortunate that the judgment of the Division Bench in Narain's case was relied on, when the same had been over-ruled by the Full Bench of that Court without referring to the Full Bench decision, Further-more even on merits we find that the said decision of the Division Bench of the Rajasthan High Court in Narain's case does not lay down the correct law and the later decision of the Full Bench is correctly decided. The contention which was raised before the High Court, and it succeeded, in Narain's case was that there could be no proceedings for acquisition which do not conform with the provisions of the Master Plan inasmuch as the Master Plan shows one particular use for the land in question the said land could not be acquired for a different purpose. It was further contended that without framing of a scheme land could not be acquired under Section 52 of the said Act. In upholding this contention the High Court placed reliance on the Two Judge Bench decision of this Court in State of Tamil Nadu and Anr. Vs. A. Mohammed Yousef and Ors. [ (1991) 4 SCC 224 ].

Decision of this Court in Gandhi Grah Nirman Sahkari Samiti Ltd. and Ors. Vs. State of Rajasthan and Ors. [ (1993) 2 SCC 662 ] also considered a similar question pertaining to the Rajasthan Urban



Improvement Act, 1959 itself. It had been contended that land could not be acquired under Section 52 of the Act unless and until there was a scheme for improvement of the urban area under the Rajasthan Urban Improvement Act, 1959. Rejecting this contention this Court observed as follows:-

"The crux of the argument is that the improvement in the urban area can only be carried out by executing the schemes framed under the Act and in no other way. We do not agree with Mr. Shanti Bhushan. Under the scheme of the Act the improvement of the urban area can be undertaken by the Trust and also by any of the departments of the Government. The framing of the scheme becomes mandatory only when the work is undertaken by the Trust. The State Government, in any of its departments, may decide to develop the urban area under the Act and in that case it would not be necessary for the Government to have a scheme framed under Chapter V of the Act. The power of the State Government to acquire land under the Act has been designed to meet the scheme of the Act. Under Section 52 of the Act the land can be acquired by the State Government at the instance of the Trust, or a department of the Government or any prescribed authority. The plain language of Section 52 (1) of the Act negates the contention raised by Mr. Shanti Bhushan. Where on a representation from the Trust or otherwise it appears to the State Government that any land is required for the purpose of improvement or for any other purpose under the Act it can acquire such land by issuing a notification under Section 52 (1) of the Act. It is, thus, clear that the State Government has the power to acquire land either for the execution of the schemes framed by the Trust under Chapter V of the Act or for any other public purpose under the Act. No fault can be found with the procedure followed by the State Government in this Case. The notification issued by the State Government under sub-section (1) of Section 52 of the Act specifically states that the land was being acquired for the construction of residential, commercial and administrative buildings. The Government - having taken a policy decision to acquire land for the public purpose - was justified in issuing the notification under Section 52 (1) of the Act in respect of the land in dispute."

The effect of this is that even if there is no scheme prepared or finalized, under a Housing Board or Urban Improvement Act, acquisition could be validly made under the provisions of the Land Acquisition Act for a public purpose or under the Rajasthan Urban Improvement Act for the purpose of improvement or for any other purpose under the Act. The decision relating to the Rajasthan Act is directly on the point. The other decision under the Tamil Nadu Act does not, therefore, require any further discussion.

For the aforesaid reasons, we do not find any merit in these appeals and the same are dismissed with costs.

-----

(@ SLP (C) No. 15971/95) Leave granted. The appeal is dismissed with costs.