State Of U.P. Etc vs Smt. Pista Devi & Ors on 12 September, 1986

Equivalent citations: 1986 AIR 2025, 1986 SCR (3) 743, AIR 1986 SUPREME COURT 2025, (1986) 2 APLJ 25.1, (1986) JT 420 (SC), 1986 (4) SCC 251, (1986) 3 SUPREME 460, (1986) ALL WC 1027, (1986) 2 CURCC 916

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, V. Khalid

PETITIONER:
STATE OF U.P. ETC.

Vs.

RESPONDENT:
SMT. PISTA DEVI & ORS.

DATE OF JUDGMENT12/09/1986

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
KHALID, V. (J)

CITATION:
1986 AIR 2025 1986 SCR (3) 743
1986 SCC (4) 251 JT 1986 420
1986 SCALE (2)423
CITATOR INFO :
R 1988 SC1450 (16)

ACT:
Land Acquisition Act, 1894: ss. 4, SA, 6, 17(1), (4) and 17(1A)- Acquisition for urban housing-Urgency-Inquiry dispensed with- Post-notification delay of one year in publishing declaration-Action whether vitiated-Whether Government can take possession of land, other than waste and arable.
Delhi Development Act, 1957 : s. 21(2)- Provision of relief to those being expropriated-Principle recommended to be followed by other Development Authorities.

HEADNOTE:

The appellants are owners of arable land Lying on the outskirts of Meerut City. The land was sought to be acquired by the Meerut Development Authority for its scheme to provide housing accommodation to the residents of the city. The Collector, recommended the acquisition of the said land on December 13, 1979, stating that in view of the acute shortage of houses in the city it was necessary that the State Government invoke s. 17(1) and (4) of the Land Acquisition Act, 1894. The notification under s. 4(1) of the Act dated April 29, 1980 was published in the Gazette on July 12, 1980, stating that the provisions of sub-s. (1) of s. 17 of the Act were applicable to the said land and that s. 5-A shall not apply to the proposed acquisition. After publication of the notification the Collector noticed some errors in it which needed to be corrected by a corrigendum. The corrigendum and the declaration under s. 6 of the Act were issued on May 1, 1981. The possession of the land was taken and handed over to the Authority in July 1982.

The appellants filed writ petitions in the High Court questioning the notification under s. 4 and declaration under s. 6 of the Act alleging that the action of the Government in invoking s. 17(1) and dispensing with the inquiry under s. 5A were not called for since the case of urgency put forward by the State Government had been belied by the delay of nearly one year that had ensued between the date of notifica-

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tion under s. 4 and the declaration under s. 6 of the Act. It was also contended that in the large extent of the land acquired there were some buildings here and there and so the acquisition was not justified since these portions were not either waste or arable lands which could be dealt with under s. 17(1).

The High Court being of the view that the failure to issue the declaration under s.6 of the Act immediately after the notification under s. 4 was fatal, held that the notification dated April 29, 1980 under s. 4 which contained a direction under s. 17(4) dispensing with the inquiry under s. 5A of the Act was invalid and, therefore, both the notification under s. 4 and the subsequent declaration made under s. 6 were liable to be quashed.

In the appeals by special leave to this Court on the question: Whether in the circumstances of the case it could be said that on ac count of mere delay of nearly one year in the publication of the declaration it could be said that the order made by the State Government dispensing with compliance with s. 5A at the time of publication of the notification under s. 4(1) would stand vitiated in the absence of any other material.

Allowing the appeals,

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HELD: 1.1 Having regard to the enormous growth of population in the country the provision of housing

accommodation in these days has become a matter of national urgency. The schemes relating to development of residential areas in the urban centres are so urgent that it is necessary to invoke s. 17(1) of the Act to dispense with the inquiry under s. 5A. [749 F-G]

1.2 In the instant case, there is no allegation of any kind of mala fides on the part of either the Government or any of the officers, nor do the respondents contend that there was no urgent necessity for providing housing accommodation to a large number of people of the city during the relevant time. [749 E]

1.3 The mere fact that on account of some error on the part of the officials processing the case at the level of the Secretariat there was a post-notification delay of nearly one year in issuing declaration under s. 6 is, therefore, not by itself sufficient to hold that the decision taken by the State Government under s. 17(1) and (4) of the Act at the time of the issue of the notification under s. 4(1) of the Act was either improper or illegal. [751 A-B]

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Deepak Pahwa etc. v. Lt. Governor of Delhi & Ors., [1985] (1) S.C.R. 588 referred to.

Narayan Govind Gavate etc. v. State of Maharashtra, [1977] (1) S.C.R. 768 distinguished.

2.1 Where a large extent of land is being acquired for planned development of an urban area it would not be proper to leave small portions, over which some super-structures have been constructed, out of the development scheme. In a situation where there is real urgency it would be difficult to apply section 5-A of the Act in the case of few bits of land on which some structures are standing and to exempt the rest of the property from its application. [751 D-E]

2.2 Whether the land in question is waste or arable land has to be judged by looking at the general nature and condition of land. [751 E-F]

3.1 Whenever power under s. 17(1)is invoked, the Government automatically becomes entitled to take possession of land, other than waste and arable, by virtue of sub-s. (1-A) of s. 17 without further declaration where the acquisition is for sanitary improvement or planned development. [752 B-C]

3.2 In the instant case, the acquisition was for planned development. The mere omission to refer expressly to s. 17(1-A) of the Act in the notification cannot be considered to be fatal in this case. [752 B]

4.1 It may be that many of the persons from whom lands have been acquired are also persons without houses or shop sites and if they are to be thrown out of their lands they would be exposed to serious prejudice. Since the land is being acquired for providing residential accommodation to the people of Meerut those who are being expropriated on account of the acquisition proceedings would also be

eligible for some relief at the hands of the concerned Development Authority. [752 D-E]

4.2 Although s. 21(2) of the Delhi Development Act, 1957 which provides for such relief is not in terms applicable to the present acquisition proceedings, the provision nonetheless contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas. [753 B-C]

The Meerut Development Authority, for whose benefit the land in
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question has been acquired, it is hoped, will as far as practicable, provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question. [753 C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1495- 1507 and 1509-1511 of 1986 etc. From the Judgment and order dated 24.5.1985 of the Allahabad High Court in Civil Misc. Writ Petition Nos. 7729/82, 12762/81, 7810, 7865, 8408, 8409, 8407, 8410, 8872, 9527, 9439, 2482, 5170, 5122, 7903 and 7904 of 1982.

K. Parasaran, Attorney General, Anil Dev Singh, Mrs. S. Dixit, B.P. Maheshwari and S.N. Agarwal for the Appellants.

R.K. Garg, Raja Ram Agarwal, P.D. Sharma, M.C. Dhingra, D.D. Gupta and Ashok Srivastava for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. Meerut city which is situated in a densely populated part of the State of Uttar Pradesh is growing very fast. The State Government constituted a Development Authority under the provisions of the U.P. Urban Planning and Development Act, 1973 for the city of Meerut for the purpose of tackling the problems of town planning and urban development resolutely, since it felt that the existing local body and other authorities in spite of their best efforts had not been able to cope up with the problems to the desired extent.

The Meerut Development Authority sent a proposal to the Collector of Meerut for acquisition of 662 bighas 10 biswas and 2 biswanis of land (approximately equal to 412 acres) situated at villages Mukarrabpur, Plahera, Paragana-Daurala, Tehsil Sardhana, Distt. Meerut for its housing scheme with the object of providing housing accommodation to the residents of Meerut city. After making necessary enquiries and receipt of the report from the tehsildar of Sardhana, the Collector was fully satisfied about the need for the acquisition of the land. He accordingly wrote a letter on December 13, 1979 to the Commissioner and Secretary, Housing and Urban Development, Government of

Uttar Pradhesh recom- mending the acquisition of the above extent of land in the villages men tioned above and he also stated that since there was acute shortage of houses in Meerut city, it was necessary that the State Government should invoke section 17(i) and (4) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). He also submitted a certificate as required by the Rules containing the relevant data on the basis of which the Government could take a decision. In that certificate he stated that the acquisition of the land was very necessary for the purposes of the housing scheme. The total value of the land was estimated to be about Rs.55,01,270.25 paise and the cost of trees and structures was stated to be in the order of about Rs. 1 lakh. The Secretary of the Meerut Development Authority also submitted his certificate in support of the acquisition of the land in question. He stated that the proposed cost of the project was in the order of Rs. 48 crores. He also furnished the number of flats to be constructed and house sites to be allotted. The certificate further stated that the land which was proposed to be acquired was being used for cultivation and that the said land had been proposed to be used for residential purposes under the master plan of Meerut city. After taking into consideration all the material before it including the certificates of the Collector and the Secretary, Meerut Development Authority, referred to above, the State Government published a notification under subsection (1) of section 4 of the Act notifying for general information that the land mentioned in the Schedule was needed for a public purpose, namely, for the construction of residential buildings for the people of Meerut by the Meerut Development Authority under a planned development scheme. The notification further stated that the State Government being of the opinion that the provisions of subsection (1) of section 17 of the Act were applicable to the said land inasmuch as it was arable land which was urgently required for the public purpose, referred to above. The notification further directed that section 5-A of the Act shall not apply to the proposed acquisition. The above notification was published in the U.P. Gazette on July 12, 1980 and it was followed by a declaration under section 6 of the Act which was issued on May 1, 1981. The possession of the land, which had been notified for acquisition, was taken and handed over to the Meerut Development Authority in July, 1982. Thereafter about 17 persons who owned in all about 40 acres of land out of the total of about 412 acres acquired, filed writ petitions in the High Court of Allahabad questioning the notification under section 4 and declaration under section 6 of the Act on the ground that the action of the Government in invoking section 17(1) of the Act and dispensing with the inquiry under section 5-A of the Act was not called for in the circumst-

ances of the case. The High Court after hearing the parties held that the notification dated 29.4.1980 under section 4 of the Act which contained a direction under section 17(4) of the Act dispensing with the inquiry under section 5-A of the Act was an invalid one and, therefore, both the notification under section 4 and the subsequent declaration made under section 6 of the Act were liable to be quashed. Accordingly they were quashed.

It should be stated here that while only 17 persons owning about 40 acres of land had filed the writ petitions, the High Court set aside the acquisition of the entire extent of about 412 acres. That was the effect of quashing the notification issued under section 4(1) of the Act and all subsequent proceedings as the relief was not confined to the petitioners only. By the time the judgment of the High Court was pronounced on May 24, 1985, it is stated, that the Meerut Development Authority had spent more than Rs.4 crores on the development of the land which had been acquired. By then 854 houses had been constructed on the land and 809 plots had been allotted by it to various

persons. All the landowners other than the writ petitioners before the High Court had been paid two-thirds of the compensation due to them.

Aggrieved by the decision of the High Court, the State of Uttar Pradesh and the Meerut Development Authority have filed the above appeals by special leave.

The main ground on which the High Court set aside the impugned notification and the declaration was that the case of urgency put forward by the State Government for dispensing with the compliance with the provisions of section 5-A of the Act had been belied by the delay of nearly one year that had ensued between the date of the notification under section 4 and the date of declaration made under section 6 of the Act. It, however, rejected the contention of the petitioners based on the delay that had preceded the issue of the notification under section 4 of the Act. The High Court observed that 'if the Government were satisfied with the urgency it would have certainly issued declaration under section 6 of the Act immediately after the issue of the notification under section 4 of the Act.' It found that the failure to issue declaration under section 6 of the Act immediately on the part of the State Government was fatal. That there was delay of nearly one year between the publication of the notification under section 4(1) of the Act containing the direction dispensing with the compliance with section 5-A of the Act and the date of publication of the declaration issued under section 6 of the Act is not disputed. It is seen from the record before us that after the publication of the notification under section 4(1) of the Act, the Collector after going through it found that there were some errors in the notification which needed to be corrected by issuing a corrigendum. Accordingly, he wrote a letter to the State Government on 25.8.1980 pointing out the errors and requesting the State Government to publish a corrigendum immediately. Both the corrigendum and the declaration under section 6 of the Act were issued on May 1, 1981. It is on account of some error on the part of the officials who were entrusted with the duty of processing of the case at the level of the Secretariat there was a delay of nearly one year between the publication of the notification under section 4(1) and the publication of the declaration under section 6 of the Act. The question for consideration is whether in the circumstances of the case it could be said that on account of the mere delay of nearly one year in the publication of the declaration it could be said that the order made by the State Government dispensing with the compliance with section 5-A of the Act at the time of the publication of the notification under section 4(1) of the Act would stand vitiated in the absence of any other material. In this case there is no allegation of any kind of mala fides on the part of either the Government or any of the officers, nor do the respondents contend that there was no urgent necessity for providing housing accommodation to a large number of people of Meerut city during the relevant time. The letters and the certificates submitted by the Collector and the Secretary of the Meerut Development Authority to the State Government before the issue of the notification under section 4(1) of the Act clearly demonstrated that at that time there was a great urgency felt by them regarding the provision of housing accommodation at Meerut. The State Government acted upon the said reports, certificates and other material which were before it. In the circumstances of the case it cannot be said that the decision of the State Government in resorting to section 17(1) of the Act was unwarranted. The provision of housing accommodation in these days has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke section 17(1) of the Act and to dispense with the compliance with

section 5-A of the Act. Perhaps, at the time to which the decision in Narayan Govind Gavate etc. v. State of Maharashtra, [1977] (1) S.C.R. 768 related the situation might have been that the schemes relating to development of residential areas in the urban centres were not so urgent and it was not necessary to eliminate the inquiry under section 5-A of the Act. The acquisition proceedings which had been challenged in that case related to the year 1963. During this period of nearly 23 years since then the population of India has gone up by hundreds of millions and it is no longer possible for the Court to take the view that the schemes of development of residential areas do not 'appear to demand such emergent action as to eliminate summary inquiries under section 5-A of the Act'. In Kasireddy Papaiah (died) and Ors. v. The Government of Andhra Pradesh & Ors., A.I.R. 1975 A.P. 269. Chinnappa Reddy, J. speaking for the High Court of Andhra Pradesh dealing with the problem of providing housing accommodation to Harijans has observed thus:

> "That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which courts are bound to take judicial notice. History has made it urgent that, among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharging of their duties, unless, of course, it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not trying to make any pontific pronouncements. But I am at great pains to point out that provision for house sites for Harijans is an urgent and pres sing necessity and that the invocation of the emergency provisions of the Land Acquisition Act cannot be said to be improper, in the absence of mala fides, merely because of the delay on the part of some Government officials."

(Underlining by us) What was said by the learned Judge in the context of provision of housing accommodation to Harijans is equally true about the problem of providing housing accommodation to all persons in the country today having regard to the enormous growth of population in the country. The observation made in the above decision of the High Court of Andhra Pradesh is quoted with approval by this Court in Deepak Pahwa etc. v. Lt. Governor of Delhi & Ors., [1985] (1) S.C.R. 588 even though in the above decision the Court found that it was not necessary to say anything about the post-notification delay. We are of the view that in the facts and circumstances of this case the post-notification delay of nearly one year is not by itself sufficient to hold that the decision taken by the State Government under section 17(1) and (4) of the Act at the time of the issue of the notification under section 4(1) of the Act was either improper or illegal.

It was next contended that in the large extent of land acquired which was about 412 acres there were some buildings here and there and so the acquisition of these parts of the land on which buildings were situated was unjustified since those portions were not either waste or arable lands which could be dealt with under section 17(1) of the Act. This contention has not been considered by the High Court. We do not, however, find any substance in it. The Government was not acquiring any

property which was substantially covered by buildings. It acquired about 412 acres of land on the out-skirts of Meerut city which was described as arable land by the Collector. It may be true that here and there were a few super-structures. In a case of this nature where a large extent of land is being acquired for planned development of the urban area it would not be proper to leave the small portions over which some super-structures have been constructed out of the development scheme. In such a situation where there is real urgency it would be difficult to apply section 5-A of the Act in the case of few bits of land on which some structures are standing and to exempt the rest of the property from its application. Whether the land in question is waste or arable land has to be judged by looking at the general nature and condition of the land. It is not necessary in this case to consider any further the legality or the propriety of the application of section 17(1) of the Act to such portions of land proposed to be acquired, on which super-structures were standing because of the special provision which is inserted as sub-section (1-A) of section 17 of the Act by the Land Acquisition (U.P. Amendment) Act (20 of 1954) which reads thus:

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

It is no doubt true that in the notification issued under section 4 of the Act while exempting the application of section 5-A of the Act to the proceedings, the State Government had stated that the land in question was arable land and it had not specifically referred to sub section (1-A) of section 17 of the Act under which it could take possession of land other than waste and arable land by applying the urgency clause. The mere omission to refer expressly section 17(1-A) of the Act in the notification cannot be considered to be fatal in this case as long as the Government had the power in that sub-section to take lands other than waste and arable lands also by invoking the urgency clause. Whenever power under section 17(1) is invoked the Government automatically becomes entitled to take possession of land other than waste and arable lands by virtue of sub-section (1-A) of section 17 without further declaration where the acquisition is for sanitary improvement or planned development. In the present case the acquisition is for planned development. We do not, therefore find any substance in the above contention.

It is, however, argued by the learned counsel for the respondents that many of the persons from whom lands have been acquired are also persons without houses or shop sites and if they are to be thrown out of their land they would be exposed to serious prejudice. Since the land is being acquired for providing residential accommodation to the people of Meerut those who are being expropriated on account of the acquisition proceedings would also be eligible for some relief at the hands of the Meerut Development Authority. We may at this stage refer to the provision contained in section 21(2) of the Delhi Development Act, 1957 which reads as follows:

> "21(2). The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to

comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority or the local au-

thority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its develop- ment and use as the Authority or the local authority concerned may think fit to impose."

Although the said section is not in terms applicable to the pre sent acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question.

Having regard to what we have stated above, we are of the view that the judgment of the High Court cannot be sustained and it is liable to be set aside. We accordingly allow these appeals, set aside the judgment of the High Court and dismiss the Writ Petitions filed by the respondents in the High Court. There is no order as to costs.

P.S.S. Appeals allowed.