
Shri Mahendra Bal Vidyalaya Society and Others Vs The State of Uttar Pradesh and Others

Civil Misc. Writ No. 877 of 1973

Court: Allahabad High Court

Date of Decision: Aug. 22, 1975

Acts Referred:

Land Acquisition Act, 1894 " Section 4(1), 5A, 6

Citation: AIR 1976 All 188

Hon'ble Judges: P.N. Bakshi, J

Bench: Single Bench

Advocate: Palok Basu, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.N. Bakshi, J.

Mahendra Bal Vidyalaya Society is a registered body and Mahendra Bal Vidyalaya is a recognised institution having about

500 students on its rolls. It began functioning in July 1966 and is now reputed as the Junior High School of the locality.

Respondent No. 7 is the

Varshini Maha Vidyalaya, Respondent No. 5 is the Varshini College Society which runs the above Vidyalaya. Respondent No. 6 namely Dina

Nath is the Secretary of this Society.

2. Bereft of unnecessary details, the relevant facts are that on 5-5-1966 respondent No. 5 at the instance of respondent No. 6 passed a resolution

that steps be taken for acquisition of plots Nos. 2128 to 2133, 2150, 2151, 2152, 2154 and 2155 vide Annex. "E" to the writ petition. Respdt.

No. 7 deposited a sum of Rupees 66,436/- on 10-8-1966 vide treasury challan No. 9 of that date purporting to be a deposit for the acquisition of

plots proposed for the purpose of acquisition. On 3-9-1966, the Collector Aligarh respondent No. 3 published a Notification purporting to be u/s

4 of the Land Acquisition Act No. 1 of 1894 (hereinafter referred to as the Act) for acquisition of Plots Nos. 2146, 2147, 2149, 2157, 2128 to

2133, 2150, 2151, 2152, 2154 and 2155. It appears that no steps for acquisition were taken after the publication of this notification for quite a

long time in spite of objections having been filed u/s 5-A of the Act. It is admitted in paragraph 5 of counter affidavit of Sri Sukhdeo Pant, Deputy

Secretary to the U.P. Government in the education section of the U.P. Secretariat, Lucknow that proceedings under the Act could not proceed

further since they became time-barred on 19-1-69. It appears that respondent No. 6 again approached the Government for acquiring the plots in

question for the "Varshini College". Thereafter Notifications Nos. 650/VIII and 650 A/VIII issued on 1-1-1970 and purporting to be u/s 4(1) of

the Act were published in the Gazette on 17-1-1970 Vide Annexure "I", for acquisition of plots specified in those two notifications for the Varshini

College, Aligarh. Purpose indicated by the first notification was construction of building for N.C.C. parade, shooting range, play ground, stadium in

addition to a hostel building of the Varshini College, Aligarh. The purpose of the second notification was for play ground for the aforesaid college.

The petitioners' case is that the respondents Nos. 5, 6, and 7 did not enter into any agreement with the respondent No. 1 or 3 for acquiring the

acquisition of plots on their behalf and for their benefit. Petitioners Nos. 1, 2, 3, 4, 5, 6, 8, 18, 20, 21, 24 and 41 filed objections before the District

Land Acquisition Officer respondent No. 4 u/s 5(a) of the Act. By order dated 30-11-1970, the respondent No. 4 dropped the proceedings in

both the cases vide Annexure "K". He held as follows:

I find that the proposals for the acquisition of land are not really for a bona fide public purpose and the acquisition proceedings are unnecessary

and uncalled for. I, therefore, allow the objections u/s 5-A of the Land Acquisition Act and drop the proceedings of both the cases

3. The petitioners' case is that this report of the District Land Acquisition Officer was accepted by the U.P. Government which is also obvious

from the fact that nothing happened from 20-11-1970 to 11-1-1973. In para. 8 of the counter affidavit of Sri Sukhdeo Pant referred to above, it is

stated as follows:--

It is true that at one stage the State Government had accepted the report of the Collector, Aligarh but on a review being made of all the relevant

materials on the record and further enquiry the State Government felt satisfied that the land was in fact needed for a public purpose and that it was

essential to acquire the same.

4. It is submitted that the acceptance of the report for dropping the proceedings given by the Collector is admitted by Sri Sukhdeo Pant, a

responsible Deputy Secretary to the U.P. Government though a plea has been taken up that the acceptance was subsequently reviewed.

5. The petitioner's case further is that letter No. 1-941/VIII LAC dated 23-9-1971 was sent by the Collector, Aligarh, respondent No. 3 to the

State of U.P. requesting for the cancellation of the notification of the acquisition of plots and dropping of the proceedings. The petitioner alleges

that on account of the friendly terms between Sri Dina Nath respondent No. 6 and Sri Kamlapat Tripathi the then Chief Minister respondent No. 8

denotification could not take place. Sri Kamlapat Tripathi in his counter-affidavit has denied that he was on friendly terms with respondent No. 6

and that denotification could not take place on account of his personal intervention. It is clear from paragraph 5 of the counter-affidavit that Sri

Tripathi had directed the Deputy Director, Education, Agra to visit Sri Mahendrapal Vidyalaya, Aligarh and to submit his report with regard to the

acquisition in question. On 6-1-1973 the aforesaid Deputy Director visited the said Vidyalaya in the absence of petitioner No 2 who is the

Manager of the Mahendra Vidyalaya and submitted his report thereafter on 8-1-1973. The petitioner No. 2 apprehending some trouble met

respondent No. 8 at Lucknow on 10-1-1973. He submitted a memorandum to him explaining the real facts of the case vide Annexure "L".

Respondent No. 8 has stated in paragraph 6 of his counter-affidavit that he does not recollect about his meeting with petitioner No. 2, but it

appears from the record that a representation dated 19-1-1973 was given to him.

6. It appears from the record that the respondent No. 8 passed an order on 9-1-1973 for the publication of the notification u/s 6 of the Act. A

single notification No. II 205/15-73-16 (1)-70 dated 11-1-1973 was published in the gazette on 13-1-1973. The case of the petitioner is that the

order of the respondent No. 8 directing publication of the notification u/s 6 has not been passed after considering the record of the Land

Acquisition Officer, since the record of the case and the recommendations of the said Officer, Aligarh were despatched from Aligarh on 11-1-

1973 and as such respondent No. 8 did not apply his mind to the facts of the case in accordance with law. Hence the notification u/s 6 of the Act

is legally vitiated. Respondent No. 8 has sworn in paragraphs 5 and 7 of the counter-affidavit that ""he had seen the file and also the representation

which had been made for acquiring the land for the College"" before passing the order for publication of the notification u/s 6 of the Act. There is

however nothing in the counter-affidavit of Shri Tripathi to show that the entire record of the Land Acquisition Officer Aligarh was before him

when he passed the impugned order.

7. I have heard learned counsel for the parties at considerable length and have also perused the record of the case which was specially summoned

by this Court. I shall deal now with the various points which have been argued by the petitioner's counsel,

8. u/s 4 of the Land Acquisition, Act,

Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a

notification to that effect shall be published in the official gazette and the Collector shall cause public notice of the substance of such notification to

be given at convenient places in the locality.

9. From the narration of the facts mentioned above, it is clear that notification u/s 4(1) of the Act issued on 1-1-1970 was published in the official

gazette on 17-1-1970. But publication of the substance of the information in the locality was done On 18-3-1970. From Annexure "Q" which is

the report of the process server dated 18-3-1970. It appears that he had affixed the public notice in the locality on 18-3-1970. A copy of the

same was fixed to a Neem tree and Manadi was also effected. All this took place on 18-3-1970.

10. From a perusal of Section 5-A(1) of the Act, it is clear that ""any person interested in any land which has been notified u/s 4, Sub-section (1) as

being needed or is likely to be needed for public purpose or for a company, may within 21 days after the issue of notification object to the

acquisition of land. The Collector has to give an opportunity of a hearing to the objector. After completing the enquiry he has to forward his

recommendations along with the record of the proceedings for the decision of the Government.

11. u/s 6 of the Act when the Government is satisfied after considering the report, if any made u/s 5-A that the land under acquisition is needed for

the pubic purpose, a declaration to that effect is to be made by the Government. Such declaration has to be published in the official gazette.

12. In the present case the notification was issued on 1-1-1970 and published in the" gazette on 17-1-1970. Its publication in the locality was

effected on 18-3-1970. A period of 21 days is allowed u/s 5-A of the Act for filing objections from the date of the issue of the notification. Thus at

the time of the publication on 18-3-1970, this period for filing objections had already run out. It has been decided by the Supreme Court in (AIR

1966 SC 1593) State of Madhya Pradesh v. Vishnu Prasad Sharma that Sections 4, 5-A and 6 of the Act have to be read together. It has also

been held in the aforesaid case that the provisions of the Act must be strictly construed. Having regard to the facts of the present case mentioned

above, there can be no doubt that the persons whose lands were acquired were deprived of their right of filing objections as a result of the belated

publication of the notification in the locality. It is clear that only 12 persons aggrieved have filed the objections before the Land Acquisition Officer.

There are 56 petitioners in the present case whose rights have been affected. Thus 44 petitioners could not file their objections u/s 5-A of the Act

because of the lacuna in publication mentioned above. The view I have discussed above finds support from a decision of Brother K. N. Singh, J.,

reported in Shrimati Daya Wati and Another Vs. Collector, Saharanpur and Another, , It was held in that case as follows:--

The two requirements laid down in Section 4(1) (viz., publication in the gazette and publication of the substance of the notification in the locality)

are mandatory. Where the publication of substance of notification was not done in the locality within 21 days from the date of publication of gazette

notification the provisions of Section 4(1) were not complied with rendering the Section 4(1) notification invalid. In case of compulsory acquisition

of property by the State the law must be strictly complied with.

13. In this view of the matter, I am of the opinion that the notifications Nos. 650/VIII and 650-A/VIII issued u/s 4 of the Act on 1-1-1970 are

invalid and must be set aside.

14. It is not disputed that the two notifications were issued u/s 4(1) of the Act. One notification was with respect to Plots Nos. 2155, 2150, 2151,

2152, 2154. 2128, 2129, 2130, 2131, 2132, and 2133. The second notification was for Plots Nos. 2146, 2147, 2149 and 2157. The owners of

plots pertaining to these two notifications were different. However, it cannot be disputed that a single notification u/s 4(1) of the Act could be

issued for both these acquisitions, but the counsel for the petitioner has submitted that a single notification for both these acquisitions u/s 6 of the

Act could not legally be issued. He has placed reliance upon the decision of the Supreme Court reported in State of Madhya Pradesh and Others

Vs. Vishnu Prasad Sharma and Others, , which I have already referred to above in a different connection. I have carefully perused the above

ruling. The facts of the case mentioned therein are totally different from the facts of the instant case. In that case, the Supreme Court was dealing

with the consideration of Section 17(4) of the Act under which the Government is authorised to direct that in case of waste or arable Land, the

provisions of Section 5-A can be dispensed with. Their Lordships observed as follows:--

But even assuming that it is possible to make two declarations under S. 6 where the Land to be acquired is not of the kind mentioned in

Section 17(1) and also of the kind not comprised therein, all that the Government can do in those circumstances after one notification u/s 4(1)

comprising both lands is to issue one notification u/s 6 comprising lands coming within Section 17(1) and another notification u/s 6 with respect to

land not coming within Section 17(1) sometime later after the enquiry u/s 5-A is finished. This however, follows from the special provisions

contained in Section 17(1) and (4) and in a sense negatives the contention based only on Sections 4, 5-A and 6.

15. In my opinion, no illegality has been committed by the State in issuing a single notification u/s 6 of the Act.

16. It has been urged by the petitioner that since the purpose for which the acquisition has been made was for construction of building for the

N.C.C. parades, shooting range etc., the Central Government was the proper and appropriate authority for issuing the notification. In the counter

affidavit filed by Sri Sukhdeo Pant, it has been mentioned in paragraph 12 that the Centre bears the cost of clothing and equipment, pay and

allowances of regular instructional staff and 50% of the camp expenditure, while, provisions of office accommodation for the utensils and civilian

staff, pay and allowances of N.C.C. Officers, refreshment and washing allowance to cadets and 50% of the camp expenditure are responsibility of

the State. The camp expenditure for the N.C.C. is in fact met by the State of U.P. In view of these facts alleged in the counter-affidavit which I

have no reason to disbelieve I am of the opinion that there is no substance in this contention of the petitioner's counsel.

17. Counsel for the petitioner has stressed that if an acquisition is being made for the Varshini College, the provisions of Part 7 of the Land

Acquisition Act would be applicable. In that case the State has to prove that there has been an agreement between the Government and the

Company in which the latter has agreed to the payment of compensation, otherwise the acquisition cannot be upheld. If however, there is no such

agreement in existence, it is incumbent upon the State to show that part of the compensation is paid out of the State revenue. From the counter-

affidavit of Ghulam Nabi who is an assistant in the Shiksha (II) Anubhag, U.P. Secretariat, Lucknow, it appears that he has sworn in paragraph 4

that the compensation for the land under acquisition is to be paid partly by the State Government out of the public revenue; in as much as a sum of

Rs. 1,000/- has been sanctioned by the Governor to be paid towards compensation for the land under acquisition. In paragraph 18 of the counter-

affidavit of Sri Sukhdeo Pant, the same position is reiterated. It is averred therein that the State Government has contributed towards acquisition in

question. Reliance was placed by the petitioner's counsel on the use of the word "cost of acquisition" in the notification u/s 6 of the Act vide

Annexure "M". Learned counsel has argued that cost can only be given u/s 27 of the Act after an award has been made and therefore, the deposit

of Rs. 1,000/- should not be taken as the compensation for the acquisition, but as cost payable after the award. In my opinion, this submission is

devoid of merits. The use of the words "cost of acquisition" may be a loose expression but reading the two affidavits referred to above along with

the notification, the inference is inevitable that what was intended to be shared by the State out of the public revenue was not the cost but the

compensation for acquisition.

18. Having regard to the facts stated above I am satisfied that part of the compensation viz., a sum of Rs. 1,000/- has been contributed by the State

Government. As such, the petitioner's objection with regard to the applicability of Chapter VII of the Act also fails.

19. The crucial question however which remains to be considered is whether the notification u/s 6 of the Act has been issued in accordance with

law. u/s 5-A(2) of the Act, the Collector has to give an opportunity to the objector of being heard either in person or by pleader. After hearing

such objections and making such further enquiries if any, as he thinks necessary, he has to make a report to the appropriate Government containing

his recommendations on the objections, together with the record of the proceedings, held by him for the decision of that Government.

20. Counsel for the petitioner has submitted that the record of the proceedings was not before the respondent No. 8 at the time he directed issue

of a notification u/s 6 of the Act. He submits that the report and the record are both necessary to be placed before the authority concerned so that

he can be satisfied as to the existence of the public purpose and issue a notification u/s 6 of the Act- A failure to do so vitiates the issue of

notification u/s 6 of the Act. Reliance for this purpose is placed upon a decision of the Supreme Court reported in Abdul Husein Tayabali and

Others Vs. State of Gujarat and Others, . It has been held therein as follows:

Under Section 5-A the Collector has to hear the objections of the owner, take them on record and then submit his report to the Government. The

section also requires him to send along with his report the entire record of his inquiry which would include the objections. The report has merely

recommendatory value and is not binding on the Government. The record has to accompany the report as it is for the Government to form

independently its satisfaction. Both are sent to enable the Government to form its satisfaction that the acquisition is necessary for a public purpose

or for the Company. It is then that Section 6 notification which declares that particular land is needed for either of the two purposes is issued.

21. Learned counsel for the State has submitted on the other hand that the record of the case had been sent to the Government along with report

as early as 30-9-1971 by the Land Acquisition Officer Aligarh. It remained with the Secretariat at Lucknow till 10-1-1972. Thereafter, it was

returned to the Land Acquisition Officer, Aligarh. On 5-9-1972, an intimation was again sent from Lucknow Secretariat to the Collector (Land

Acquisition Officer) calling for the record. On 25-11-1972 the Land Acquisition Officer went to Lucknow in person with the record. On 28-11-

11972 the Land Acquisition Officer returned back to Aligarh along with the record of the case. A copy of the report of the Land Acquisition

Officer however, remained on the file at Lucknow along with the notings pertaining to the case. The State counsel further submits that the

respondent No. 8 had directed the Deputy Director of Education to make an inspection of the locality and to submit his report which was received

on 8-1-1973. Thereafter, respondent No. 8 passed the order of the issue of the Notification u/s 6 of the Act on 9-1-1973. On the basis of these

dates which have been borne out from the record, the State counsel submits that the record pertaining to this land acquisition proceedings had

already been sent to the Government and is not necessary to send the same again for perusal by respondent No. 8 before he passed his order on

9-1-1973 for the issue of the notification u/s 6. In the counter-affidavit which has been filed by Sri Kamlapati Tripathi, respondent No. 8 it has

been mentioned therein that he has seen the file and also the representation which has been made for acquiring the land for the College. He was of

the opinion that further investigation was necessary. As such, a report was called for from the Deputy Director of Education for the purpose of

satisfying him on the need for the acquisition of the land for the College. The respondent No. 8 claims to have considered the report of the Deputy

Director of Education and all other necessary notings and papers on the record before he came to the conclusion that a notification u/s 6 of the Act

could be issued,

22. Prima facie it might appear that the material requisite for recording satisfaction was before respondent No. 8 before he passed his order on 9-

1-1973 but that will not satisfy the requirements of law. Moreover there are some inherent infirmities which lend support to the submission of the

petitioner's counsel that the respondent No. 8 has not applied his mind to the facts of the present case in accordance with the law but has been

guided by extraneous considerations.

23. From paragraph 41 of the petition it is clear that the record of the case was despatched from the office of the Land Acquisition Officer, Aligarh

to Lucknow on 11-1-1973. This fact is borne out from Annexure "N" filed along with this petition, which is an application for inspection filed

before the Land Acquisition Officer, Aligarh. On that inspection application, an endorsement was made that the record has been despatched to the

Government on 11-1-1973. This document has not been denied. As such, there can be no doubt that the record of the proceedings was not

before the respondent No. 8 when he issued the impugned order. Section 5(a) of the Land Acquisition Act makes it mandatory for the Collector

(Land Acquisition Officer) to send the result of his enquiry viz. his recommendations and the record of the proceedings for decision to the

Government. Notings and jottings in the Secretariat at Lucknow, cannot replace the mandatory requirement of the record, contemplated u/s 5-A

of the Act, which must be considered by the Government so that it could apply its mind to the entire facts of the case and be satisfied before

issuing a declaration u/s 6 of the Act. Strict compliance of this provision is very necessary because the objector has no right to present his case

before the Government at the stage when the record has been transmitted to it for final consideration.

24. In the present case, respondent No. 8 had called for a report from the Deputy Director, Education, The petitioners were not informed of the

date on which the Deputy Director, Education inspected the locality. His report which was submitted behind the back of the petitioners has

seriously prejudiced their case. Moreover, Section 6 of the Land Acquisition Act does not contemplate any such ex parte enquiry by the State

Government. The Government has to decide whether a declaration should issue u/s 6 of the Act, or not, on the basis of the report of the Land

Acquisition Officer and the material on the record.

25. It has been urged on behalf of the petitioner that the Land Acquisition Officer had vide his report dated 30-11-1970 (Annexure "K")

considered the proposal for acquisition of land and had come to the conclusion that the land was not really needed for a bona fide purpose and

that the acquisition proceedings were unnecessary and uncalled for. He had directed that the proceedings be dropped in both the cases. A letter

was sent by the Collector Aligarh to the Government praying for denotification of the acquisition of plots. As I have already mentioned above. Sri

Sukhdeo Panth has admitted in paragraph 8 of the counter-affidavit that at one stage, the State Government had accepted the report of the

Collector. If that be the correct position, I am extremely doubtful whether the proceedings for acquisition can be continued in the manner they have

been done and a notification u/s 6 of the Act can be issued. Of course, it is always open to the Government to issue fresh notification u/s 4 and to

follow it up by notification u/s 6 in accordance with the procedure prescribed by law but in the instant case, the notification u/s 4(1) was issued on

1-1-1970. This was followed by an enquiry by the Land Acquisition Officer and the submission of his report which according to Shri Pant was

accepted by the Government. There can be no doubt that in the same continuation notification dated 11-1-1973 u/s 6 could not be legally issued.

26. From a perusal of letter No. 205-A/15-73(ii) dated 12/1/1973 (Annex-lire "P") sent by Shri Sukhdeo Pant to the Collector, Aligarh, some-

amendment was advised in the acquisition plots. It was mentioned in this letter that the Government had decided to exclude 3 biswas land of Plot

No. 2155 on which the Mahendra Bal Vidyalaya and the Shiva temple stand from acquisition. I have very carefully considered the map of the

locality which has been filed as an Annexure "A" to this petition and have also gone through the relevant details in this connection. The petitioner's

counsel submits that after acquisition of the plots detailed in Section 6, Mahendra Bal Vidyalaya and the temple would be completely land locked.

There is no passage for ingress and egress at all from the building of Sri Mahendra Bal Vidyalaya and the Shiva temple to the outside world. In

paragraph 14 of the petition. It has been sworn on oath that the passage leading to the school building of petitioner No. 1 passes through the

acquisition plots and there is no other passage for the students and the public to approach the school and the temple. The same assertion is

repeated in paragraph 56 of the petition. no reply to this assertion has been given in the counter-affidavits filed by Sri Sukhdeo Pant, Sri Ghulam

Nabi or by Sri Kamlapati Tripathi. In the counter-affidavit filed by Sri Deokinandan Gupta respondent No. 5 who now claims to be the Secretary

of Varshni Maha Vidyalaya he has mentioned in paragraph 3 that an alternative passage can easily be provided. It is significant that no specific

alternative passage has been suggested in his counter-affidavit. In my opinion, this assertion by him is wholly vague and unbelievable, particularly in

view of the fact that there is no repudiation of these facts in the other three counter-affidavits which I have referred to above. The acquisition in

question completely blocks all the passages of entry and exit from the Mahendra Bal Vidyalaya. This is a very serious matter which jeopardizes the

interest of the institution and might result in its closure. This is a glaring example of how the interests of one educational institution viz. The

Mahendra Bal Vidyalaya is being sacrificed at the altar of another institution namely the Varshni Maha Vidyalaya. If the entire record of the case

had been before respondent No. 8. this arbitrary and impossible situation which has made the petitioner's institution inaccessible would have

appeared before h Moreover, the building of the school and the temple lies in an area of 468 yards which is more than three biswas while only

three biswas have been excluded. All these facts indicate that the authority concerned has not applied its mind before issuing the declaration u/s 6

of the Act. In my view, the absence of the record before respondent No. 3 has very seriously prejudiced the case of the petitioner. It is to

safeguard against such arbitrary acquisitions that the statute makes it mandatory for the Collector (Land Acquisition Officer) to transmit the record

of the entire proceedings before him along with his recommendations for decision by the appropriate Government.

27. For the reasons given above, I am of the opinion that the notification u/s 6 of the Act is vitiated in law and cannot be allowed to stand.

26. In the result, therefore, this writ petition is allowed and the impugned notifications dated 1-1-1970 (Annexure "1") and Annexure "M" dated

11-1-1973 are hereby quashed. The petitioners are entitled to their costs.