

Lolar Ram Pathak and Others Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: April 16, 2008

Acts Referred: Land Acquisition Act, 1894 " Section 4, 48, 5A, 6

Hon'ble Judges: B.S. Chauhan, J; Arun Tandon, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

B.S. Chauhan and Arun Tandon, JJ.

This writ petition has been filed for quashing the notification dated 27.07.2007 under the provisions

of Section 4 of the Land Acquisition Act, 1894 (hereinafter called the "Act 1894") published on 30.08.2007 and further to declare the land

acquisition proceedings as ultra vires.

2. The facts and circumstances giving rise to this case are that a huge area of land, including the land of the present petitioners who are 51 in

umber, has been notified u/s 4 of the Act 1894 which has been challenged by filing this writ petition. Large number of grounds have been taken

particularly that if the land is acquired, the petitioners would be deprived of their livelihood as there is no other means for their survival except the

land in question and, therefore, the said notification is liable to be quashed.

3. Learned Standing Counsel appearing for the respondents has raised a preliminary objection regarding maintainability of the writ petition

contending that the writ petition is premature as no declaration u/s 6 of the Act 1894 has been pleaded nor has been brought on record.

4. We have considered the rival submissions made by learned Counsel for the parties and perused the record.

5. Admittedly, there is no pleading to the effect that after publication of notification u/s 4 of the Act (Annex.1), any further step has been taken by

the respondent authorities under the Act 1894. No declaration u/s 6 of the Act 1894 has been brought on record.

6. The notification u/s 4(1) of the Act is a condition precedent to exercise any further powers under the Act. Therefore, a notification u/s 4(1) of

the Act is a sine qua non for initiating the acquisition proceedings. In the absence of such a notification, the machinery provided by the Act for

further action obviously cannot be proceeded. (Vide Babu Barkya Thakur Vs. The State of Bombay and Others, Khub Chand and Others Vs.

State of Rajasthan and Others, ; Tharoo Mal Vs. Puran Chand Pandey and Others, State of Mysore Vs. Abdul Razak Sahib, and Aflatoon and

Others Vs. Lt. Governor of Delhi and Others,

7. The declaration u/s 6 of the Act is conclusive proof for acquisition of land as it envisages that the Authority has decided to acquire the land.

8. Section 4 Notification can be challenged on limited grounds, i.e., that the mandatory requirement of the publication etc. in the official gazette or

local newspapers has not been made. The description of the land sought to be acquired is not made properly. Notification, itself, suffers from some

vagueness, thus persons interested one not able to file objection u/s 5A of the Act and also on the ground of mala fides.

9. In the Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, , the Apex Court after considering the statutory provision

of the Act held that on some limited grounds the validity of Section 4 can be examined. In the said case the amendment made by the State of U.P.

in 1974 to the effect that publication in the local newspapers was not required, was considered, as the Notification involved therein was prior to

the Amendment 1984 in the Act. The requirement of the law had been that after publication of the Notification u/s 4 in the official gazette, the

Collector shall paste public notice and the substance of such Notification at convenient place in the said locality. Such amendment stood wiped out

after the amendment of the Act in 1984. Dealing with the issue of mala fides, the Apex Court has held as under:

Where power is conferred to achieve a purpose, it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to

effectuate the purpose. And in this context, any "good faith" means "for legitimate reasons". Where power is exercised for extraneous or irrelevant

consideration or reasons, it is unquestionably a colourable exercise of power, or fraud of power, and the exercise of power is vitiated. If the power

to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for a extraneous,

irrelevant or non-germane consideration, the acquiring Authority can be charged with legal mala fides. In such a situation, there is no question of

any personal ill will or motive.

10. While deciding the said case, the Hon"ble Supreme Court placed reliance upon its earlier judgment in The State of Punjab and Another Vs.

Gurdial Singh and Others, A Division Bench of this Court in Kashama Sahkari Avas Samiti v. State (2006) 7 All 133 has taken the same view.

11. However, there are large number of Division Bench judgments of this Court, e.g., Kamal Singh v. State of U.P. (2007) 3 ALJ 146; Civil Misc.

Writ Petition No. 13440 of 2007 Smt Deoki v. State of U.P. and Ors. decided on 13.03.2007; and Writ Petition No. 53329 of 2006 Sukhbir

Singh v. State of U.P. and Ors. decided on 15.03.2007, wherein, the petitions have been dismissed being premature, giving opportunity to the

petitioners therein to approach the Court after publication of Declaration u/s 6 of the Act, for the reason that in case the Declaration is not made

within stipulated period, the proceedings would lapse, and entertaining the petition at this stage would render in futility. Such a view had been taken

following the judgments of the Hon"ble Apex Court in H.M.T. Ltd. and Anr. v. Mudappa AIR 2007 SCW 1058, wherein, while considering a

similar issue, the Apex Court held that the High Court had erred in quashing the preliminary Notification under Sub-section(1) of Section 28 of the

Karnataka Industrial Areas Development Act 1966 (hereinafter called the Act 1966), observing as under.

To us, therefore, the parties were right in raising a preliminary objection that the petition was premature, as by issuance of Notification under Sub

section (1) of Section 28 of the Act, an intention was declared by the State to acquire the land for public purpose, i.e., for developing industry....

The Court further held that Section 28(1) of the said Act 1966 was synonymous to Section 4(1) of the Act and raising objections against

acquisition at that stage and not to have been interfered and a preliminary Notification ought to have been quashed"" overruling well-founded

objections as to the maintainability of the petition raised by the State.

12. In Kanpur Development Authority v. Mahabir Sahkari Avas Samiti Ltd. (2005) 10 SCC 320, the Apex Court held as under:

It is well settled that notification issued u/s 4(1) of the Act normally cannot be quashed unless there are exceptional circumstances, like the one

where the notification issued u/s 4(1) of the Act suffers from incurable irregularity, such as total vagueness in regard to the property to be acquired

and in regard to the public purpose.

13. In Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors. (2007) 1 SCC 641, the Hon"ble Supreme Court held that

validity of such a Notification can be challenged only on the ground of ambiguity, indefiniteness and vagueness of public purpose.

14. Thus, the settled legal proposition remains that aggrieved persons can challenge the validity of Section 4 Notification only on the ground of

ambiguity, indefiniteness and vagueness in public purpose etc. Undoubtedly, petition can be entertained challenging the said proceedings on the

ground of mala fides. However, as Section 4 Notification is merely a proposal and Declaration u/s 6 is conclusive proof of the intention of the

Government to proceed with acquisition proceedings. In case Section 6 Declaration is not made, any exercise undertaken by the Court becomes

futile. Declaration u/s 6 can be made within the limitation prescribed in the Act which starts from the date of last publication in the newspaper.

(Vide Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others,

Government of Tamil Nadu and another Vs. Vasantha Bai, M. Ramalinga Thevar Vs. State of Tamil Nadu and Others, and Smt. Bailamma @

Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others, . Proceedings are to be concluded

within the limitation prescribed thereafter. In such an eventuality, if the petition is entertained challenging the proposal of acquisition wherein Section

6 Declaration has not been placed, the Court would be deciding merely an academic issue. Same remains the fate of an application made u/s 48 of

the Act for exemption of the land from acquisition proceedings. A person aggrieved is not precluded from raising such issues after issuance of the

Declaration u/s 6 of the Act, inasmuch as no immediate rights are affected upon publication of Section 4 Notification and the aggrieved person

cannot be said to be prejudiced, as there is no diversity of interest till the Declaration u/s 6 is issued.

15. Even otherwise, the question of dispossession arises upon the publication of Declaration u/s 6 of the Act. Thus, it is desirable that the

petitioners can, at legally mature stage, invoke the jurisdiction of the writ Court raising all factual and legal issues challenging the validity or

otherwise of the entire proceedings. This will also eliminate the possibility of multiplicity of the proceedings and shall at the same time reduce the

burden of litigant as well as of the Court, without prejudice to the cause of the other side.

16. Subject to the aforesaid observations, the petition lacks merit and is accordingly dismissed.