

**(2007) 04 AHC CK 0281**

**Allahabad High Court**

**Case No:** None

Rustom Khusro Sapurji Gandhi  
and Others

APPELLANT

Vs

Amrit Abhijit, D.M. and Others

RESPONDENT

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**Date of Decision:** April 26, 2007

**Acts Referred:**

- Constitution of India, 1950 - Article 202, 226
- Land Acquisition Act, 1894 - Section 17, 4, 5A, 6

**Citation:** (2007) 5 ADJ 97 : (2007) 3 JCR 610 : (2007) 103 RD 154

**Hon'ble Judges:** Sushil Harkauli, J; S.K. Singh, J; Krishna Murari, J

**Bench:** Full Bench

**Final Decision:** Disposed Of

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**Judgement**

Sushil Harkauli, J.

This matter has come up before this Full Bench by the order dated 19th September, 2006 passed by the Hon'ble the Chief Justice upon a reference dated 19th August, 2006 by a learned single Judge of this Court. The learned single Judge framed and referred the following four questions:

(1) Whether a Coordinate Bench while hearing a Public. Interest Litigation can issue directions without impleading the affected party which has the effect of taking away the impact of the final decision in favour of such party by a Bench of the same strength.

(2) Whether the directions dated 14.7.2006 and 31.7.2006 of the Division Bench in the Public Interes't Litigation (Writ Petition No. 2547 of 2005), run counter to and impede the implementation of the final decision dated 25.5.1998, in Writ Petition No. 32950 of 1994 and the decision dated 24.8.2005 in Writ Petition No. 20379 of 2003, keeping in view the fact that the order dated 5.11,2002 had not been quashed.

(3) Whether the High Court in exercise of powers under Article 226 of the Constitution of India can issue a mandamus to the State Authorities for acquiring land in suo moto exercise of its powers in a Public Interest Litigation.

(4) Whether in such a situation if there are 2 conflicting orders, judicial discipline demanded a reference to a Larger Bench instead of treating the impact of final judgments of this Court to be obiter.

Facts Necessitating the reference:

2. A lease of Nazul Plot No. 141, Civil Station, Allahabad, was originally granted in favour of Sapurji Rustam Gandhi and his son Khusro Sapurji Gandhi on 8th June, 1925 for a period of 50 years. The tenancy rights devolved upon Rustam Khusro Sapurji Gandhi, Jehangir D. Gandhi and Nariman D. Gandhi (hereinafter these three persons are referred to as petitioners for short), through testaments of will executed by the original lessees and, thereafter by the legatees.

3. As the lease was going to expire on 7th June, 1975, an application was filed by the lease-holders on 13th May, 1974 for renewal of the lease. No action was taken by the State to dispose of the application for renewal of lease and the matter remained pending with the District Magistrate, Allahabad. Therefore, the petitioners filed a Writ Petition No. 32950 of 1994, which was decided by a Division Bench of this Court on 25th May, 1998 in the following words:

The facts of this case are covered by the judgment of this Court in P.D. Tandon v. State of U.P. 1987 ALR 72.

This petition is disposed of on the same terms and conditions as in the aforesaid decision. The petitioner's lease shall be renewed within a month in accordance with law.

4. On 15th November, 2002, the application for renewal of lease was rejected by the District Magistrate, Allahabad, by a very detained order. The order of the District Magistrate dated 15th November, 2002 was challenged by the petitioners in Writ Petition No. 20379 of 2003. The said writ petition was disposed of by a Division Bench of this Court by order dated 24th August, 2005. In the judgment dated 24th August, 2005, the Division Bench quoted the earlier order dated 25th May, 1998 passed in Writ Petition No. 32950 of 1994, which has been quoted above in this judgment, and thereafter observed as follows:

Thus by allowing the earlier writ petition a direction had been issued to the respondents to grant renewal of the lease and no option had been given to the respondents to reject the application. The respondents had been asked only to perform the ministerial act; therefore, any order passed in contravention of this order is null and void. Whether this Court could have passed such an order is a debatable issue. However, the order has attained the finality and the issue cannot be reopened in these proceedings. In such a case, if the judgment and order dated

25.5.1998 has not been complied with by the respondents, the appropriate remedy for the petitioners is to file an application for Contempt of Court for not complying with the order of the Court.

With these observations, the writ petition is disposed of.

5. Thereupon, the petitioners filed the present contempt petition on 17th August, 2006, seeking punishment of the present and past District Magistrates; the Additional District Magistrate (Nazul), Allahabad, and the Secretary (Housing), U.P. Government, for the alleged disobedience of the order dated 25th May, 1998. The Stamp Reporter reported the contempt petition to be time barred by almost 7 years.

6. During the preliminary hearing of this time barred contempt petition, the learned single Judge shown copies of two orders dated 14th July, 2006 and 31st July, 2006 passed by another Division Bench of this Court in a PIL being Writ Petition No. 2547 of 2005. In a nutshell, the Division Bench hearing the Public Interest Litigation, after noticing the decisions of the Writ Petition No. 32950 of 1994, and Writ Petition No. 20379 of 2003, held by the two orders dated 14th July, 2006 and 31st July, 2006 that it did not find any obstacle in the way of the State Government/Administration to proceed with the acquisition of the Nazul land in question in public interest for the purposes of the High Court and accordingly issued a direction in the following words:

Nazul department is hereby directed to take immediate steps for acquisition of the said land.

7. Thus, the High Court directed the land, of which lease had been directed to be renewed in favour of the petitioners, to be acquired for the High Court, which is beyond doubt a "public purpose".

8. Faced with these apparently conflicting orders i.e., orders by the Division Benches in the two writ petitions of the petitioners on one side as against the order passed by the other Division Bench in the Public Interest Litigation on the other side, the learned single Judge made the reference by his detailed order dated 19th August, 2006.

The answers to the referred questions:

Question No. (IV):

9. Of the 4 questions referred, the 4th question hardly requires any debate and indeed there was no serious contest on that question by the learned Counsel before this Full Bench. It was in fact almost conceded, and, we may say rightly conceded, that where there are two conflicting judicial orders, judicial discipline requires reference to a Larger Bench. And, subject to the language used in the two conflicting decisions or orders, it would not be open to mellow down the impact of any of the conflicting judgments or orders, which have attained finality, treating it

too be obiter. The 4th question is answered accordingly.

Question No. (II):

10. So far as the second question referred by the learned single Judge concerned, we do not find any conflict in the directions issued in the Public Interest Litigation with the decisions of the two Division Benches in Writ Petition Nos. 32950 of 1994 and 20379 of 2003. The two decisions in the two writ petitions of the petitioners only direct renewal of lease in favour of the petitioner. We have not been shown any law which prohibits compulsory acquisition of the land, under the provisions of Land Acquisition Act, 1894, even after the lease had been renewed, merely because the lease has been renewed. A renewal of the lease in favour of the petitioners would not take away the power of the State Government of compulsory acquisition of the land under the provisions of Land Acquisition Act, 1894. In fact, the renewal of lease would at best be taken into consideration for determining the quantum of compensation. The question No. 2 is answered accordingly.

Question No. (I):

11. So far as the 1st question referred by the learned single Judge is concerned, although it does not directly arise in view of our answer given to the question No. 2 above, we have no doubt that legally once a decision has attained finality in favour of a party/litigant, no other Co-ordinate Bench while hearing a Public Interest Litigation or a writ petition of other nature can issue any directions, which could have the effect of taking away the impact of the final decision without impleading the affected party, who has obtained the decision which has attained finality, or even after impleading such party. The reason is that a Co-ordinate Bench cannot sit in appeal and pass a judgment or issue a direction taking away the impact of a decision, which has attained finality, as that would virtually mean a Co-ordinate Bench sitting in appeal over the final decision of another Bench of the same strength.

Question No. (III):

12. This brings us to the most important issue which has been referred by way of the 3rd question. For convenience, we reproduce the 3rd question again:

(3) Whether the High Court in exercise of powers under Article 226 of the Constitution of India can issue a mandamus to the State Authorities for acquiring land in suo moto exercise of its powers in a Public Interest Litigation.

13. Whether the High Court is deciding a Public Interest Litigation or a private litigation it is, in the ultimate analysis, exercising the powers vested in the High Court under Article 226 of the Constitution of India. A direction in the nature of mandamus, which is permissible under Article 226 of the Constitution of India has to conform to the well defined limits of such power as laid down by judicial decisions.

14. Reference may be made to the decision of the Hon"ble Apex Court in the case of [State of West Bengal and Others Vs. Nuruddin Mallik and Others](#), wherein while considering the extent and dimension of jurisdiction conferred on superior Courts to issue a writ of mandamus, it has been observed as under:

The Courts can either direct the statutory authorities, where it is not exercising its discretion, by mandamus to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter.

15. It is well-settled that a direction in the nature of mandamus to the executive can be issued as a positive direction only when the act directed to be done by the mandamus is a purely ministerial act, not involving any discretion on part of the executive. Where the executive has a discretion or adjudicatory function to perform; and the performance or non-performance of the ministerial act depends upon such discretionary or adjudicatory function, the mandamus can merely compel the executive to take a decision in respect of the discretionary or adjudicatory part of its function and thereby to decide whether the ministerial act ought or ought not to be performed. Such a mandamus can also, in most of the cases, fix a time frame for the performance of each of these functions i.e., the discretionary function and thereafter, if called for, the ministerial function. If the adjudicatory function or discretionary function has been wrongly performed by the executive, it would be open under Article 226 of the Constitution of India to quash the decision, but again the Court can normally only direct fresh consideration of the issue by the executive. It may also be open to the Court under Article 226 of the Constitution of India to guide the adjudicatory or administrative function by laying down the principles of law, but while quashing the wrong decision of the executive, it would normally not be open to the High Court under Article 226 of the Constitution of India to substitute its own decision in respect of the adjudicatory or discretionary function.

16. The view taken by us finds support from decision of Hon"ble Apex Court in the case of [Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others](#), wherein it has been held as under:

The High Courts and the Supreme Court would not ordinarily issue a writ of mandamus directing the State to carry out its statutory functions in a particular manner. Normally, the Courts would ask the State to perform its statutory functions, if necessary within a time frame and undoubtedly, as and when an order is passed by the State in exercise of its power under the statute, it will examine the correctness or legality thereof by way of judicial review.

17. Coming back to the specific question referred namely, permissibility of issuing a mandamus to the State to acquire land in "public interest" under the provisions of Land Acquisition Act, 1894, it would be necessary to examine the scheme of the acquisition proceedings under the said Act. The various steps in acquisition

proceedings are as follows:

- (1) It must first be ascertained by the executive that there is a public purpose involved.
- (2) Then, it has to be ascertained whether land is needed for the public purpose.
- (3) Then, it has to be ascertained how much land is needed for that public purpose.
- (4) After ascertainment of the above, a preliminary Notification u/s 4 of the Act is to be published in accordance with that section.
- (5) Thereafter, except in cases provided u/s 17(4), hearing of objections has to take place u/s 5A.
- (6) After disposal of the objections [except in cases of Section 17(4)], a declaration u/s 6 has to be published.

18. If a mandamus is permitted to be issued straight away directing acquiring of a particular land or a particular area of a particular land, the inquiry u/s 5A would become a meaningless empty formality. More importantly, it is not inconceivable that there may be a particular case where even the executive is of the opinion that there exists a "public purpose", that land is needed for that "public purpose", that a particular minimum area of a particular land is needed for that "public purpose" and yet that land cannot be acquired because the executive is not in a financial position to provide for the compensation. The State has multifarious public duties and functions, each of which require the support from the financial resources of the State. The balancing of the budget and distribution of available resources among the various requirements under the Constitution of India is essentially a function of the Legislature. It would not be appropriate for the Court to encroach upon such legislative function by directing allocation of funds in the budget for a particular purpose. Although, there is one provision in the Constitution namely Article 202(3)(e) of the Constitution of India; which provides for charging expenditure on the consolidated fund of each State with regard to any sums required to satisfy any judgment, decree or award of any Court or Arbitral Tribunal, but this provision must necessarily be confined to apply to only those matters where the State Government is a party litigant in a normal case or arbitral proceedings. We are of the opinion that even this provision cannot be utilised for holding that the Court can keep creating financial liability on the State to meet public welfare schemes which the Court may evolve in its wisdom. What is primarily a legislative function must be left to the Legislature and interference should normally be avoided by Courts for the obvious reason that the Court is only examining the matter before it, whether of private interest or public interest, whereas, the Legislature is expected to take into account the financial requirements of other sectors of public welfare and to balance and distribute its resources according to the needs, as per wisdom of the Legislature consisting of peoples' representatives who are accountable to the people not only

through elections but also through Courts.

19. To sum up a land acquisition is not a purely ministerial act to be performed by the executive and, therefore, no mandamus can be issued by the Court in exercise of its powers under Article 226 of the Constitution of India, whether suo moto or otherwise, whether in Public Interest Litigation or otherwise directing acquisition of land under the provisions of Land Acquisition Act, 1894. It would, however, be open to the Court in exercise of that power to invite the attention of the executive to any public purpose and the need for land for meeting that public purpose and to require the executive to take a decision, even a reasoned decision, with regard to the same in accordance with the statutory provisions, perhaps even within a reasonable time-frame. However, the power of the Court under Article 226 of the Constitution of India must necessarily stop at that. Thereafter, if the decision taken by the executive is capable of challenge and there exist appropriate legal grounds for such challenge, it may also be open to the Court to quash the decision and to require reconsideration. But no direction in the nature of mandamus whether interim or final can be issued by the Court under Article 226 of the Constitution of India to the executive to necessarily acquire a particular area of a particular piece of land for a particular public purpose. The question No. 3 is answered accordingly.

20. All the questions having been answered as above, the matter may be placed before the appropriate single Judge Bench for further consideration.