Ram Kishan Agarwal, Sumit Mittal, Madhur Mittal and Smt. Raj Kumari Mittal Vs Mathura Vrindawan Development Authority

Court: Allahabad High Court

Date of Decision: Sept. 14, 2005

Acts Referred: Constitution of India, 1950 â€" Article 39
Land Acquisition Act, 1894 â€" Section 11A, 4, 6, 6(1)
Uttar Pradesh Urban Planning and Development Act, 1973 â€" Section 14, 15, 3, 40(1), 44B

Citation: AIR 2006 All 27 : (2006) 1 AWC 277

Hon'ble Judges: Vikram Nath, J; Sushil Harkauli, J

Bench: Division Bench

Advocate: P.C. Jain, for the Appellant; D.S. Chauhan and S.C., for the Respondent

Final Decision: Allowed

Judgement

Sushil Harkauli and Vikram Nath, JJ.
We have heard Sri P.C.Jain Advocate for the petitioners, the learned Standing Counsel for the State

and Sri D.S. Chauhan for the Mathura Vrindawan Development Authority (referred hereafter as MVDA) at length. A short counter affidavit has

been filed by the MVDA.

2. The petitioners are small colonizers. On 2.7.2005 they submitted a lay out plan to the MVDA for sanction u/s s 14 & 15 of U.P. Urban

Planning and Development Act 1973. The plan was kept pending without any orders till 3.9.2005 when an order was passed by the MVDA

refusing to sanction the plan on one solitary ground. That order was disclosed for the first time through the counter affidavit. A copy of that order

has been enclosed as second annexure to the short counter affidavit of the MVDA.

3. This writ petition was filed originally seeking a direction to the MVDA to take a decision in respect of the plan submitted by the petitioners.

Upon disclosure of the said order dated 3-9-2005, it has also been challenged by means of an amendment application, which we have allowed

today.

4. The order of the MVDA refusing to sanction the plan of the petitioner is not based on lack of any requirements on the part of the petitioner, or

for any defect in the plan, or for non-compliance with any Building Regulations. The only reason for refusing to sanction plan is a government policy

contained in a letter dated 22.11.2003, which is enclosed as the first annexure to the same short counter affidavit of the MVDA. By that policy the

government has taken a decision that private sector should be invited for creating such ""high-tech townships"" in various cities of Uttar Pradesh

which require a minimum investment of Rs. 750 crores and development of at least 1500 acres of land. This makes it obvious that only the biggest

colonizers will be permitted. The policy further says that for such development, out of the interested big colonizers, one will be selected by the

Government for each city. The developer so selected will have the liberty to identify any land in his city which he proposes to develop, and such

land would be acquired under the Land Acquisition Act 1894 for the Government and thereafter the land will be handed over to the private

developer. The policy does not place any kind of public obligation on the private developers, meaning thereby that the private developers

contemplated by policy are nothing but pure commercial private colonisers.

5. Part VII of Land Acquisition Act provides for acquisition of land for Companies. The word "Company" according to Section 3 (e) includes co-

operative and other societies. Section 44-B says that notwithstanding anything contained in the Act, no land shall be acquired under that part VII

for a private Company, which is not a government Company, except for the purpose mentioned in Section 40 (1)(a). The only purpose

contemplated by Section 40 (1)(a) is where the purpose of acquisition is to obtain land for the erection of dwelling houses for workmen employed

by the Company or for the provision of amenities directly connected therewith. Thus, the provisions of Land Acquisition Act, which are basically

intended to cover compulsory acquisition for "public purpose" and for no other purpose, do not contemplate compulsory acquisition of land for

benefiting the big private colonizers.

6. Besides, prima facie it also does not appear to be permissible for the State to frame policies for promoting the big colonizers at the cost of or to

the detriment of small colonizers or individual developers. This is against very concept of socialist State mentioned in the preamble of the

Constitution of India as such policy would also be contrary to the Directive Principles contained in Articles 39(b) and (c).

7. Learned standing counsel has argued that the petitioners have not challenged the Government policy in question. However when the illegality has

come to our notice and considering its large scale and long term effect upon the public we are taking suo motu action. Therefore upon prima facie

finding that government policy contained in the letter dated 22-11-1003 is violative of and contrary to the provisions of Land Acquisition Act we

stay the operation of government policy contained in the letter dated 22.11.2003 (Annxure SCA 1 to the Short Counter Affidavit of MVDA),

pending filing of the counter affidavit justifying the policy, which may be filed within one month as prayed by the Standing Counsel.

8. Having stayed the government policy dated 22.11.2003, the impugned order dated 3.9.2005 (Annexure SCA 1 to the Short Counter Affidavit

of MVDA) which is based solely upon that policy also cannot be sustained and accordingly the same is also stayed. The MVDA is directed to re-

examine the layout plan submitted by the petitioners on merits, also taking into consideration the Government Order dated 1-5-1997 (Annexure 5

to the writ petition), and ignoring the government policy dated 22.11.2003. The MVDA will intimate its decision, along with the plan if sanctioned

or deemed sanctioned, to the petitioners within one month from today. The decision with full details will also be submitted with a detailed counter

affidavit to be filed by the next date.

9. At this point it also appears to be necessary to clarify another aspect which has also been arising frequently before us. According to the decision

of the Supreme Court in the case of A.S. Sulochana Vs. C. Dharmalingam, even after issue of the notification u/s 4 and 6 of the Land Acquisition

Act the owner of the land is free to use his land as he likes. The reason is obvious. The compensation for acquired land is to be determined

according to the situation as it existed on the date when Section 4 Notification was issued. Therefore, if any construction or improvement is made

in respect of the land after that date, the persons indulging in the construction would not be entitled to claim any additional compensation for any

development affected by that person on the land after Section 4 Notification.

10. Therefore, even pendency of land acquisition proceedings would not entitle a Development Authority to refuse sanction to the layout or

construction plan. Sanction of plan by the Development Authority does not create any additional rights for the owner in respect of the land or

otherwise. Sanction merely removes the bar on construction imposed by the U.P. Urban Planning and Development Act 1973, which Act is

basically to prevent haphazard construction activity. But for that bar every owner of any land would be free to make any kind of construction on

his land subject only to the rights of his neighbours to light air etc. Thus, despite sanction of a plan, the construction made by the land owner after

Section 4 notification will be at his own risk.

11. But where the proceedings for acquisition have not even been initiated, that is to say Notification u/s 4 of the Land Acquisition Act is yet to be

issued, there is no bar in the Land Acquisition Act or the U.P. Urban Planning and Development Act against sanction of construction plan or lay

out plan. The legislative intent is quite clear by the central amendments of 1984 (Act 68 of 1984) in the Land Acquisition Act introducing the first

proviso to Section 6(1) and Section 11A. The Parliament was not in favour of allowing the threat of acquisition to hang on the land owners'' head

indefinitely like the proverbial sword of Democles. When the legislature has fixed a time limit for issue of Section 6 declaration after Section 4

notification, and thereafter a further time limit for making of the compensation award, any Government orders or policies having the contrary effect

of increasing the period of uncertainty would be unsustainable being contrary to the scheme of the Land Acquisition Act.

12. The petitioner will have two weeks time for filing rejoinder affidavits. List this writ petition immediately after six weeks.