

(1996) 02 AHC CK 0131

Allahabad High Court

Case No: C.M.W.P. No. 22123 of 1994

Shivraj Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Feb. 20, 1996

Acts Referred:

- Land Acquisition Act, 1894 - Section 17, 4, 6

Hon'ble Judges: R.K. Singh, J; B.K. Roy, J

Bench: Division Bench

Advocate: Lalji Sahai Srivastava, for the Appellant;

Final Decision: Dismissed

Judgement

B.K. Roy and R.K. Singh, JJ.

The eleven Petitioners pray to quash the Notification No. 2946/28-5-93-4-3-90 dated 9.7.1993 (as contained in Annexure A) and Notification No. 102/28-5-94-4-B-90 dated 22.3.1994 (as contained in Annexure B) issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) seeking to acquire about 25 Acres of lands.

2. A bare perusal of Annexures A and B show that they were made for the purpose of the development of Uttaranchal and Uttarakhand and that the lands in question were sought to be acquired for construction of an air-strip in village Panai Talli (Gauchar), Pargana Chandpur of the District Chamoli.

3. The grievance of the Petitioners is that the lands sought to be acquired under the emergent measures, as contemplated u/s 17 of the Act, are their best fertile paddy producing land, instead the lands at alternative places be acquired; that the alleged construction of the air-strip is contrary to the proclaimed policy of the Government of India; that no prior permission from the State Land Use Board was obtained for converting their lands for constructing an air-strip that the claim to the effect that the lands are acquired for promoting tourism is totally false and baseless inasmuch

as the districts of Chamoli, Uttar Kashi and Pithauragarh are restricted areas where foreigners are not allowed without prior permission.

4. In the counter affidavit filed on behalf of the State of U.P., it has been stated, inter alia, that for the purpose of tourism, transport and regional development, the air-strip was sought to be constructed expeditiously and for this reason, the action u/s 17 of the Act was taken; that it has been found as a fact on experience that due to development of transport and communication a region develops; that as no other land as per geographical and technical view point was available, hence the lands in question were selected for acquisition; that an air-strip in Pithauragarh has already been constructed and that the lands in question have been acquired at the request of the Director, Civil Aviation, U.P. and after obtaining the sanction of the Land Use Committee, U.P.

5. Sri Lalji Sahai Srivastava, learned counsel appearing on behalf of the Petitioners, contended as follows : (i) In view of the facts and circumstances mentioned by the Petitioners in the writ petition, the acquisition by invoking special powers mentioned u/s 17 of the Act was unwarranted. (ii) Alternatively, if this Court comes to a conclusion that recourse to Section 17 of the Act was rightly taken, in that event the Petitioners should be given a suitable land first and if for some reason, it is not possible for the Respondents to give them an alternative site in that event they should be paid reasonable compensation expeditiously.

6. Sri U. N. Sharma, learned Standing Counsel for the Union of India stated that the Union is not interested in acquisition of the lands and it is the State Government who is interested in acquisition of the lands for the purposes mentioned in its counter affidavit.

7. Sri Bisaria, learned Standing Counsel appearing on behalf of Respondents Nos. 1 to 4 contended that in view of the statements made in the counter affidavit, it is clear that the lands in question were sought to be acquired for the purposes of urgent development of Uttarakhand and for this reason, there is no merit in the grievance No. 1 proposed by Sri Srivastava. However, he has got no objection to any order being passed by this Court for expeditious grant of reasonable compensation under the provisions of the Act as there is no other site which can be allotted to the Petitioner.

8. There is a cry for all around development of Uttarakhand including augmenting the financial resources and development of the region. 21st Century which is supposed to be a century for all around modern technological advancement and development is only four years away. The emergent provisions were sought to be invoked for promoting tourism, transport and development of the region. This could not be shown to be vitiated on account of any colourable or mala fide exercise of power. We are not satisfied that there was/is any mala fide on the part of Respondent Nos. 1 to 3, rather. We hold that the acquisition is for public purposes

and required expedition. Thus, we do not find any merit in the submission made by Mr. Srivastava.

9. However, we find that the alternative prayer is reasonable. We, accordingly, while dismissing this writ application, direct Respondent Nos. 1 to 3 to expedite the acquisition proceeding and pay the compensation amount including solatium and interest, preferably within three months from the date of appearance of the Petitioners, which command them to appear before the Land Acquisition Authority of 11th March, 1996, along with a copy of this order in accordance with law.

10. In the peculiar facts and circumstances, however, we make no order as to cost.

11. We direct the office to serve a copy of this order on the learned Standing Counsel for its communication to and follow up action by Respondent Nos. 1, 2 and 3.