(2011) 6 ADJ 7

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 26032 of 2011

Vilay Gyan Dharmarth Sansthan and Another		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: May 31, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Land Acquisition Act, 1894 - Section 17, 4, 48, 6

Citation: (2011) 6 ADJ 7

Hon'ble Judges: Ran Vijai Singh, J; Ashok Bhushan, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard Sri Siddhartha Srivastava, learned Counsel for the Petitioners, Sri R. K. Singh learned Counsel appearing for Respondent No. 6 and learned Standing Counsel.

2. By this writ petition, the Petitioners have prayed for quashing the order dated 27th April, 2011 passed by the State Government rejecting the representation of the Petitioners for exempting the land of the Petitioners from acquisition.

3. Brief facts of the case are; the Petitioner No. 1 is a registered society under the Society Registration Act, 1860 having been registered on 7th January, 2000. Aland measuring 0.327 hectare of Plot No. 217 of village Mudia Ahmednagar, Tahsil and District Bareilly was purchased by the Petitioners by registered sale deed dated 27th January, 2000. A notification u/s 4 of the Land Acquisition Act was issued for acquisition of the land for public purpose, namely, for construction of bypass in district Bareilly. The declaration u/s 6 of the Land Acquisition Act was also issued. The Petitioners submitted representation to the Divisional Commissioner stating that on Petitioners" Plot No. 217 Vilay Dham Mandir

has been constructed in which large number of devotees come, hence the said property be kept out of acquisition and that the said land be not included in the acquisition for construction of bypass. The District Magistrate issued a letter dated 2nd May, 2005 to the Petitioners in reference to its representation submitted to the Commissioner informing that notification u/s 4 of the Land Acquisition Act read with Section 17 and Section 6 have been issued hence no construction be made. The Petitioners also represented the matter to the Special Land Acquisition Officer. A letter dated 23rd March, 2005 was written by the Superintending Engineer, 28th Circle (NH) P.W.D., Bareilly to the Chief Engineer (P-2), Ministry of Shipping, Road Transport and Highways (Department of Road Transport & Highways), New Delhi regarding bottlenecks and solutions pertaining to Bareilly bypass. In the said letter the matter regarding a management institute and Vilay Dham was specifically dealt with. It was communicated by the Superintending Engineer that it shall not be easy to demolish the buildings of management institute, hence an alternative alignment for the affected length was explored and marked on the attached sheet. It was further stated in the said letter that this slight change will not result in increase of overall length of bypass. With regard to Petitioners'' Vilay Dham it was communicated that after discussion it was decided that the alignment at this location should not be changed and continue as such. The Petitioners filed a writ petition being Writ Petition No. 36450 of 2006 praying for mandamus commanding the Respondents to exempt the temple "Vilay Dham'' situate at Plot No. 217 from land acquisition proceedings. The writ petition was disposed of by the Division Bench vide order dated 8th December, 2010 permitting the Petitioners to file an application u/s 48 of the Land Acquisition Act for release of the land which was directed to be considered by the State Government. The Petitioners made an application to the State Government. The State Government issued notice to the Petitioners and after hearing the matter has passed the order dated 27th April, 2011 rejecting the Petitioners'' application for release of the land from acquisition. This writ petition has been filed challenging the order dated 27th April, 2011.

4. Sri Siddhartha Srivastava, learned Counsel for the Petitioners, challenging the order impugned, has contended that part of land which was initially notified to be acquired of a management institute was released by changing the alignment of the bypass whereas Petitioners'' prayer for exempting its land has been refused, which is nothing but violation of Article 14 of the Constitution of India. It has further been submitted that the findings recorded in the order of the State Government that at the time of acquisition there was no construction on the land in question is incorrect. He submits that constructions were already made which is apparent from the inspection report dated 23rd July, 2002. He further submits that the order of the State Government is also against the findings recorded by this Court in its order dated 8th December, 2010 passed in Writ Petition No. 36450 of 2006. It is submitted that only reason for rejecting the Petitioners'' application for exemption of land is that there was no construction on the date of issuance of notification for acquisition, which findings being erroneous, the order of the State Government is unsustainable. He has placed reliance on a judgment of the Apex Court in the case of

5. Sri R.K. Singh, learned Counsel appearing for Respondent No. 6, has submitted that bypass was initially being constructed by Public Works Department for which the land acquisition proceedings were initiated by issuance of notification dated 20th December, 2003. He submits that the survey for construction of the bypass was made in the year 1998 and at that time the land was absolutely vacant. It was further held that the construction in question is not a temple, rather it is a building with statue of "Sheshnag" on the top of it. He submits that the project of the bypass has been handed over to the National Highways Authority which is now proceeding to construct the bypass. He further submits that expert committee has already decided that alignment cannot be changed at this stage so as to exempt the Petitioners'' land. It is further submitted that main reason given by the State Government is that the land is not being acquired for residential or commercial purpose but it is being acquired for construction of bypass which is necessary, hence the State Government did not commit any error in rejecting the application of the Petitioners.

6. We have considered the submissions of learned Counsel for the parties and perused the record.

7. The Petitioners have laid much emphasis on the inspection report dated 23rd July, 2002 in which there is a detail of the buildings, trees, wells etc. which are coming in the way of construction of the bypass. He has referred to Annexure-17 to the writ petition and submitted that against Plot No. 217 area 0.341 hectare is mentioned in the column of building which clearly proves that building was constructed. The Petitioners had purchased the plot on 27th January, 2000 and thereafter might have started construction. It has been stated by the Petitioners that the land in question is not within the municipal limit, hence no permission was required from any authority for making construction. A finding has been recorded by the State Government that the construction in question is not a temple but is a building. The State Government has also referred to a letter of the District Magistrate, Bareilly dated 19th March, 2005 in which it was stated that in the joint inquiry conducted by the Special Land Acquisition Officer, Sub-Divisional Officer and Executive Engineer, National Highways No. 24 no kind of temple was found.

8. Learned Counsel for the Petitioners has placed much emphasis that the land of management institute was exempted from the acquisition and in fact alignment to the extent of 1.2 kilo meters was changes whereas the Petitioners'' land was not exempted from acquisition, hence the action of the Respondents is discriminatory. It is relevant to notice that the change of alignment of the Petitioners'' Vilay Dham as well as the management institute was considered by the authorities themselves. The letter dated 23rd March, 2005 of the Superintending Engineer, 28th Circle (NH) P.W.D., Bareilly has been filed as Annexure-19 to the writ petition. It is useful to quote paragraphs 2 and 3 of the said letter, which are as follows:

2. After detailed deliberations it was decided that a team comprising of the Consultant, SE, Ministry of RT&H, SE PWD (NH), Bareilly and EE, NHCD, PWD Bareilly with their staff should go to site and physically inspect particularly the sites of bottlenecks. Accordingly joint inspection of alignment was done by the team on 18/19.3.2005. Although the actual alignment could not be followed due to standing crops in field. It was noticed that a building named Vilay Dham and major portion of buildings of Invertis Institute of Management were coming in R.O.W. Team observed that it would not be easy to demolish the buildings of management institute. Hence an alternative alignment for the affected length (approx. 1.25 km) was explored and marked on the attached sheet. This slight change will not result in increase of overall length of bypass. Compensation for buildings shall be saved by adopting this improved alignment. No extra cost will be involved in changing the alignment.

3. Committee met the D.M., Bareilly on the above subject who assured that there will be no problem in the acquisition of land involved in the proposed improved alignment. As regards Vilay Dham, D.M., Bareilly had discussions with the Committee members and it was decided that the alignment at this location should not be changed and continue as such.

9. The authorities including consultant of the Ministry of Shipping, Road Transport and Highways, Government of India had visited and inspected the site of the management institute and Petitioners'' land and it was found that it was possible to change the alignment of management institute whereas it was decided that alignment at the location of Petitioners'' plot cannot be changed and be continued as such. Thus under the decision of the experts alignment with regard to management institute was changed and consequent actions were taken thereunder. With regard to the Petitioners'' plot it has been recorded that alignment cannot be changed.

10. Learned Counsel for the Petitioners has relied on the judgment of the Apex Court in Hari Ram''s case (supra). In the aforesaid case the land acquisition proceedings initiated for a Development Authority were challenged in the High Court by land owners. A committee was got constituted under the orders of the High Court of Punjab and Haryana to inspect and suggest as to which plots of tenure holder can be exempted. The committee constituted under the orders of the High Court visited the site and submitted a report making recommendation for release of land of certain tenure holders and also for not release of land of several tenure holders. The High Court accepted the report and issued directions accordingly. Those cases where the High Court refused exemption on the basis of expert report were subsequently granted benefit of exempting their land u/s 48 of the Land Acquisition Act by the State Government. On the aforesaid basis, the plea of discrimination and violation of Article 14 of the Constitution was pressed. The Apex Court in the said judgment laid down following in paragraphs 40 and 41:

"40. It is true that any action or order contrary to law does not confer any right upon any person for similar treatment. It is equally true that a landowner whose land has been

acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition but where the State Government exercises its power u/s 48 of the Act for withdrawal from acquisition in respect of a particular land, the landowners who are similarly situated have right of similar treatment by the State Government. Equality of citizens'' rights is one of the fundamental pillars on which edifice of Rule of law rests. All actions of the State have to be fair and for legitimate reasons.

41. The Government has obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition whose lands have been acquired under the same acquisition proceedings. The State Government cannot pick and choose some landowners and release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power u/s 48 of the Act in respect of persons similarly situated relating to same acquisition proceedings and for same public purpose is definitely violative of Article 14 of the Constitution and must be held to be discriminatory.

11. There cannot be any dispute that while exercising the power u/s 48 of the Land Acquisition Act by the State Government, the land owners, who are similarly situated, have a right of similar treatment. Present is not a case where the State Government in exercise of power u/s 48 of the Land Acquisition Act has granted exemption to any other land holder to whom the Petitioners may claim similarity or parity. The land of the management institution which was proposed to be acquired for the bypass, was subsequently decided by the experts and authorities not to be demolished and alignment was changed and further notifications were made for acquiring certain other land on the basis of new alignment and for withdrawing the notification with regard to earlier land. The experts who visited the spot have opined that alignment with regard to management institute can be changed but the same was not found possible with regard to Petitioners'' land. Thus in the facts of the present case no discrimination can be pleaded or proved at the hands of the State Government while exercising jurisdiction u/s 48 of the Land Acquisition Act.

12. The construction of bypass is being undertaken in the National Highway 24 looking to the traffic problems of the city of Bareilly which was held to be necessary by the State Government. In view of the aforesaid, the State Government did not commit any error in refusing to release the Petitioners'' land.

13. From the materials brought on the record, it is clear that building in question is not a temple, rather it is building having a statue of "Sheshnag" on the top of it. When a bypass is to be constructed land or building coming in the alignment cannot be exempted. The construction of bypass serves a major public need to meet the ever increasing traffic problem in the city of Bareilly. We are of the view that there is no discrimination in not exempting the Petitioners'' plot in question in exercise of jurisdiction by the State Government u/s 48 of the Land Acquisition Act. u/s 48 of the Land Acquisition Act it is for

the State Government to consider all relevant facts and come to conclusion as to whether particular land which is sought to be acquired is to be exempted or not.

14. The Apex Court in the case of Anand Buttons Ltd. Vs. State of Haryana and Others, has laid down following in paragraph 13 of the judgment:

13. It is trite law that not only land but also structures on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the Appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the authorities concerned. We see no ground on which the Appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the Appellants to seek similar relief.

15. Thus the decision of the State Government being based on materials on records and also after considering the submissions made by the Petitioners, cannot be said to be arbitrary or unreasonable. This Court in exercise of writ jurisdiction need not interfere in such an order. We do not find it a fit case in which this Court may exercise its discretionary jurisdiction under Article 226 of the Constitution of India.

16. The writ petition is dismissed.