

(1995) 11 MP CK 0013

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 3290 of 1993

Jai Singh Rajput and
Others

APPELLANT

Vs

State of Madhya
Pradesh and Others

RESPONDENT

Date of Decision: Nov. 30, 1995

Acts Referred:

- Land Acquisition Act, 1894 - Section 17(1), 3, 4, 4(1), 5A
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 20, 42

Citation: (1996) 1 MPJR 326 : (1996) 41 MPLJ 570 : (1996) MPLJ 570

Hon'ble Judges: S.K. Dubey, J

Bench: Single Bench

Advocate: V.S. Dabir and A.G. Dhande, for the Appellant; S. Nagu, Government Advocate,
for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.K. Dubey, J.

In 7 Writ Petitions No. 3649192; No. 3650/92; No. 3651/92; No. 3652/92; No. 3653/92; No. 3654/92 and No. 3667 of 1991, the petitioners are the Housing Co-operative Societies registered under the M. P. Co-operative Societies Act, 1960 while in M. P. No. 3290/93, petitioners Nos. 1 to 19 alleged themselves to be holders of the land in part of Khasra No. 274 of village Narela Shankari, tahsil Huzur, district Bhopal, of which the Bhumiswami is petitioner No. 20 Devilal son of Balli Gahlot of the said petition. The petitioners by their separate petitions, under Article 226 of the Constitution of India, have challenged the acquisition of land and its proceedings pursuant to the notification dated 20th January, 1989 issued under Sections 4(1) and 17(1) of the Land Acquisition Act, 1894 (for short "the Act") published in the Madhya

Pradesh Rajpatra (Annexure T) of M. P. No. 3649/92 from which all other documents hereinafter shall also be referred. By the said notification the land measuring 55.719 Hectares was proposed to be acquired for the M. P. Housing Board (for short "Board") respondent No. 3 for public purpose that is, for constructing housing accommodation for the members of the weaker section of the society and for the members of the lower income group. The notification has been challenged on the ground that it does not satisfy the requirement of the provisions of Sections 4 and 17 of the Act, hence the entire acquisition proceedings in pursuance of the said notification and the award passed by the Land Acquisition Officer (LAO) Bhopal be quashed.

The petitioners' case is that low-paid employees of Bharat Heavy Electricals Ltd. and other Corporations and of the State Government formed the Housing Cooperative Societies with an object of providing small plots for construction of the houses to the members of the respective societies. To achieve the said object, the petitioner societies intended to purchase the land from the holders of the land who had excess and surplus land - over the limit as fixed under the Urban Land (Ceiling and Regulation) Act, 1976 (for short "U.L.C. Act") and for that applications were made by the respective societies, u/s 20 of the Ceiling Act for grant of exemption and to some of them exemption was granted and in respect of some the proceedings for grant of exemption are pending. The Societies were also granted licence under the relevant provisions of M. P. Vinirdishta Bhrasta Aacharan Nivaran. Adhiniyam, 1982 {for short "Adhiniyam") for establishing the housing colonies for the members of the societies. Much prior to the issuance of the notification, the petitioner societies entered into agreements of sale of the respective areas of the land to be purchased from the Bhumiswami, that is, holder of the land and thereafter initiated the proceedings for grant of exemption u/s 20 of the U.L.C. Act.

The Board applied for acquisition of the land for implementation of housing scheme under new housing policy 1988 in the name of Ayodhya" for providing housing accommodation to the members of the weaker section of the society and to members of the lower income groups, making a prayer that the land is immediately needed for the public purpose, the power u/s 17(1) of the Act be exercised for taking of the possession which be handed over to the Board. The Commissioner, Bhopal Division, after satisfaction and forming an opinion that the private land is required for the public purpose, granted permission for exercise of the power u/s 17(1) of the Act, vide letter dated 6th December, 1988. Thereafter, the notification u/s 4(1) and Section 17(1) of the Act was issued dispensing with the enquiry and hearing of objections u/s 5A of the Act. Thereafter a notification dated 6-5-1989 u/s 6 of the Act was issued and published in the Madhya Pradesh Rajpatra dated 26-5-1989.

Shri V. S. Dabir, learned counsel for the petitioners contended that exercise of urgency power dispensing with the enquiry u/s 5A of the Act is arbitrary as the right of the aforesaid affected persons to object the acquisition of the land intended to be

acquired has been denied. Formation of the opinion of the existence of real urgency is mechanical and without application of mind, reliance was placed on the decisions of the Supreme Court in case of [Narayan Govind Gavate and Others Vs. State of Maharashtra and Others,](#) ; [State of Punjab and Another Vs. Gurdial Singh and Others,](#) . Two unreported decisions of the Division Bench of this Court in Brijendra Kumar v. State of M. P., M.P No. 245 of 1978, decided on 29-10-1986 and Ahmed Khan v. Collector, East Nimar Khandwa, M. P. 114 of 1982, decided on 6-7-1982, were also relied. It was contended that the land so purchased by them were for the benefit of its members who are low paid employees and members belonging to the weaker section of the society which is also the object of the acquisition, that is, to provide housing accommodation to the members of the weaker section of the society and to the members of the lower income group. The petitioners having purchased the land and having applied for grant of exemption u/s 20 of the ULC Act, have invested the money for establishing the housing colonies. After grant of exemption u/s 20 of the ULC Act some of the petitioners have gone ahead in preparation of layout plans for construction of the houses after seeking permission from various authorities. The vendors of the land have stated before the LAO that they are not interested in the compensation since they have sold or have agreed to sell or have parted with the possession of the land to the societies. In the circumstances, in the process of purchasing the land by the respective societies the members who belonged to the lower strata and have contributed their life savings with the expectation of getting a plot and construction of house thereon as the object of the two Acts, that is, the Act and the ULC Act is almost the same, the ULC Act will have overriding effect in view of Section 42 of the said Act. Therefore, the notification so issued be quashed. The acquisition of the land for the Board is in turn has professed to make plots which are at exorbitant price as promised by the petitioner-societies to their members, that is, price fixed by the Societies after development is at the rate of Rs. 220/- per sq. meter while the price fixed by the Board is Rs. 870/- per sq. meter, which the members of the Societies cannot bear. Therefore, if notification issued u/s 4 read with Sections 17(1) and 6 of the Act is not quashed, the Board be directed to allot the land in question to the eligible members of the respective societies at the rate fixed by the petitioner-societies and the members be permitted to carry on constructions of their house in the same manner or else the land be deleted and or released from the acquisition, reliance was placed on the decision of the Supreme Court in case of [Ghaziabad Sheromani Sahkari Avas Samiti Ltd. and another etc. Vs. State of U.P. and others etc.,](#) . In support of the contention raised, learned counsel for the petitioners also cited the decisions reported in Bhimsingh v. Union of India and [Union of India \(UOI\) and Others Vs. Valluri Basavaiah Chowdhary and Others,](#) ; [State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others,](#) ; [Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others,](#) ; Chaitram Verma v. Land Acquisition Officer, 1993 MPLJ 572; Mohammed Shafi v. State of M. P., 1989 J LJ 501 and [Dattatray Shankarbhat Ambalgi and Others Vs. State of Maharashtra and Others,](#) .

Shri S. Nagu, Govt. Advocate contended that the petitioners Societies are not the land owners whose lands have been acquired as till the passing of the award sale-deeds were not executed. The agreement for sale does not confer any right, title or interest in the property. Even if the societies initiated the proceedings for grant of exemption u/s 20 of the ULC Act for grant of permission to purchase the land, that will not vest any interest in the societies. Though to meet the objection Misc. Petition No. 3290/92 has been filed by impleading the vendors and vendee as the petitioner to the petitions; but as the entire proceedings of acquisition have been concluded and the award having been passed, the notifications under Sections 4(1) and 6 of the Act have attained finality for all purposes and the land has vested in the State the possession of which has been handed over to the Board. Therefore, the petitions are liable to be dismissed. Learned Govt. Advocate relied on the decisions of the Supreme Court in [Satendra Prasad Jain and Others Vs. State of U.P. and Others](#), and Awadh Bihari and Ors. v. State of Bihar, IT. 1995 (6) SC 248.

Shri Mrigendra Singh, learned counsel for the Board while adopting the arguments of the learned Govt. Advocate submitted that the petitioners have not demonstrated that they were the owners of the land at the time of issuance of the notification u/s 4(1) and Section 17(1) of the Act or even thereafter till the award is passed by the LAO. The notifications under Sections 4(1) and 17(1) of the Act have been challenged after a period of three years. The Board has deposited Rs. 68 lacs and has spent huge amount and has awarded contracts for developing the land for construction of housing colony. If the notifications are quashed the public purpose will be defeated as the housing accommodation to the members of weaker section of the society and members of the lower income groups which is the need of the day will be defeated. The Board will suffer an irreparable loss and will be involved in multiplicity of the proceedings as the contracts have been awarded long back to various contractors. He submitted that if the petitioner societies apply for allotment of plots preference shall be given to them. Learned counsel also cited the decisions reported in [Hari Singh and Others Vs. State of U.P. and Others](#), ; State of Haryana v. Sukhdev, AIR 1994 SC 1255 and [Gandhi Grah Nirman Sahkari Samiti Ltd. ect. etc. Vs. State of Rajasthan and others](#), .

In the present petitions, the acquisition has not been challenged as mala fide or in colourable exercise of powers. The challenge is made on the ground that invoking of powers u/s 17(1) dispensing with the enquiry u/s 5A of the Act is without disclosing any urgency or application of mind for such action. Though, the State has not filed any return but has placed the record of the acquisition. It is not disputed that according to the policy of the State a scheme was framed for allotment of plots and housing accommodation to the members of the weaker section of the society and to the members of the lower income groups. To implement the said scheme the Board applied for acquisition of the land in question vide its letter dated 31st December, 1987. The LAO made the proposal for the land to be acquired, and made enquiries which were clarified by the Board by its letter dated 1-8-1988. Thereafter the LAO

recorded the proceedings dated 22nd November, 1988 that as the land is acquired for public purpose which is needed urgently, for that permission be obtained from the Commissioner urgently u/s 17(1) of the Act as without invoking urgency clause the possession cannot be taken. The Commissioner, Bhopal Division after going through the record vide letter dated 6th December, 1988 after applying his mind on subjective satisfaction granted permission for acquisition of private land area 55.719 hectares for public purpose, that is, for implementing the scheme by invoking the provisions of Section 17(1) of the Act. It is thereafter, only the impugned notification u/s 17(1) of the Act was issued and published in the M. P. Rajpatra.

It cannot be disputed that the acquisition of the land is for the public purpose, as defined u/s 3(f) of the Act. The acquisition of the land is for implementing the scheme by the Board for providing housing accommodation under the scheme for weaker section of the society and for the people of lower income groups and interest of the people belonging to such community is larger. It is settled that the satisfaction of the State Government regarding existence of the public purpose is not open to the judicial scrutiny by the Supreme Court or the High Court by evaluating the evidence and on coming to its own conclusion whether or not there is a public purpose unless the Court comes to the conclusion that it is mala fide and with colourable exercise of powers. Recently the Supreme Court in [Bajirao T. Kote \(Dead\) by Lrs. and Another Vs. State of Maharashtra and Others](#), after referring to its earlier decisions and the decision relied by the petitioners in case of [Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others](#), observed in paragraph 6 thus - "In [Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurumurthy Sastry and Others](#), a Bench of two Judges to which one of us (K. Ramaswamy, J.) was a member, considered the question whether acquisition for a private co-operative society was a public purpose. Considering that question, this Court* held that; "Public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny."

In that case it was found that since the acquisition was for a private co-operative house building society not sanctioned by the State Government, it was held that the acquisition was not for public purpose and that co-operative society was also not a company. In [Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others](#), on which strong reliance was placed by the counsel for the appellant, the facts were that the notification issued u/s 4(1) did not specify any public purpose. The notification merely reads that the land detailed in the schedule attached thereto was required

for a public purpose. The notification further disclosed that the State Government was being of the opinion that the provision of sub-section (1) of Section 17 was applicable in respect of the land required to be acquired, it dispensed with the enquiry u/s 5A of the Act. The schedule of the land was given. In that context a Bench of three Judges considered the controversy and had held that the latter elaboration that the land was acquired for the planned development under the M. P. Housing Construction Board was vague and that, therefore, it was not a public purpose. Accordingly the notification was quashed. It is seen that this Court consistently had taken the view that if the purpose has been mentioned in the notification as a public purpose, whether it "specified" the public purpose or not, the Court did not go behind the public purpose nor seek specification in the notification published u/s 4(1). When declaration under sub-section (1) of Section 6 was published, the public purpose was held to be conclusive by operation of sub-section (3) of Section 6. If there is any vagueness and if it is specified in the counter-affidavit or is evident from the record, it was also accepted by this Court amplifying the public purpose in the notification. If it is not a public purpose, i.e. to serve general interest but individual interest, it was held to be a colourable exercise of power. In M. P. Housing Board case as no mention was made of any public purpose in the notification issued u/s 4(1), the subsequent clarification was not accepted by this Court. This Court did not lay down any law contrary to or inconsistent with the law laid down by the two Constitution Bench judgments and successive three-Judge Benches and two Judge Benches. Therefore, the ratio therein must be understood in the backdrop of the facts and renders little assistance to the appellants.

The contention that exercise of power u/s 17(1) of the Act invoking urgency clause and dispensing with the enquiry u/s 5(A) of the Act is illegal, has no merit in the facts and circumstances of the case. In case of Narayan Govind Gavte (supra) Supreme Court observed that the formation of opinion by the Government is a subjective matter for exercise of the power, so as to take immediate possession without holding a summary enquiry u/s 5(A) of the Act, which is an exception to imperative provision u/s 5(A) which should be indicated from the very statement of the public purpose for which the land is acquired. Section 17(4) of the Act cannot be read in isolation from Section 4(1) and Section 5(A) of the Act. The immediate purpose of a notification u/s 4(1) of the Act is to enable those who may have any objections to make to lodge them for purposes of the enquiry u/s 5(A) of the Act. It is true that only 30 days' time is given for filing the objection, yet sometimes proceedings u/s 5(A) of the Act are unduly prolonged. But considering the nature of objection which are capable of successfully taken u/s 5(A) of the Act a summary enquiry can be completed quite expeditiously. The purpose of Section 17(4) of the Act is not merely to confine the action under it to waste an arable land but also to situations in which enquiry u/s 5(A) of the Act as it will serve no useful purpose or for overriding reasons it should be dispensed with. The mind of the Officer or the authority concerned has to be applied in question where there is a urgency of such a nature

that even the summary enquiry u/s 5(A) of the Act should be eliminated. It is not the just need of urgency but to dispense with the enquiry u/s 5(A) which has to be considered. Section 17(2) of the Act deals with the enquiry for any useful purpose after formation of the opinion of the subject matter; however, the administrative authorities to form certain opinion before taking any action, u/s 17(4) in public interest which they are expected to know the difference between the right and wrong opinion. Nevertheless formation of the opinion of the authorities depends on the existence of the prima facie purpose and no useful purpose would be served if the enquiry u/s 5(A) of the Act is not dispensed with. Therefore, it has to be considered whether it is not just the existence of the enquiry but the need of dispensing with the enquiry u/s 5(A) by applying Section 17(4) of the Act in public interest which has to be conceived. The Supreme Court after considering the facts of the case relating to the scheme of development of residential and industrial area observed that it must be urgent in the context of country's need for increase in more production, observed that the very nature of such scheme of development does not demand such action to eliminate summary enquiry u/s 5(A) of the Act, as there was no indication whatsoever in the affidavit filed by the State that the mind of the Commissioner applied to the case who formed an opinion that it was a case necessitating the dispensing with the enquiry u/s 5(A) of the Act.

In the case in hand from the record of the acquisition proceedings right from the application of the Board for acquisition, of the land for implementing the scheme of the State Government. The Commissioner on going through the record and considering the nature of the acquisition after its mental application of all the aspects found that there was urgency for public purpose and hence permitted dispensing with the enquiry u/s 5(A) of the Act. To that effect there is specific mention of the purpose of acquisition in the impugned notification. As the land is acquired for public purpose for implementing the scheme of the Board for providing housing accommodation to members of the weaker section of the society and of the public belonging to the lower income groups, because of the paucity of the residential accommodation in the city of Bhopal, the capital of the State of Madhya Pradesh Ayodhya Housing Scheme is framed for about 18000 beneficiaries who shall be given houses and plots, thereby about 90,000 people will get the benefit.

The land was suitable or not or some other land may be acquired was not relevant as since 1977 availability of residential accommodation has become difficult because of the increase in the population in particular to the members of the weaker section of the society and members of the lower income group as they cannot afford to purchase the plots and manage cost of construction thereon which the Board will provide on "no profit no loss basis". Therefore, it cannot be contended that exercise of power u/s 17(1) of the Act is arbitrary or illegal.

In the case of State of U. P. v. Keshav Prasad AIR 1995 SCW 3653 wherein because of mandatory injunction issued by the Civil Court for demolition of compound wall and

to restitute possession to owner and in view of the fact that the P.W.D. Office building was already constructed and compound wall was needed to make the building safe and secure, the land was acquired by issuance of notification under Sections 4(1) and 17(1) read with Section 17(4) of the Act by exercising powers u/s 17(4) of the Act. It was observed by the Supreme Court that the exercise of powers by the State was of eminent domain and would be justified as it was neither colourable exercise of powers or arbitrary exercise of powers since there was urgency and the public purpose was obvious. The object of Section 5(A) of the Act regarding enquiry was to show whether there was public purpose or not, or the land was not suitable or some other land may be acquired. By no stretch of imagination it can be said that there was no public purpose and enquiry u/s 5(A) of the Act is needed.

The contention that jurisdiction for applying u/s 20 of the ULC Act for grant of exemption so that surplus land of the holder beyond the ceiling limit for the purpose of forming housing society for providing housing accommodation to their members, the object of the Act and the ULC Act being the same, Section 42 will have overriding effect, and, therefore the impugned notification deserves to be quashed and the proceedings deserve to be dropped has also no merit. The object and the purpose of the two Acts are different. The primary object and the purpose of ULC Act as the long title and preamble shows that it is for the imposition of ceiling on vacant land in urban agglomerations for the acquisition of such land in the excess of ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to prevent the concentration of the urban land in the hands of few persons and speculation and profiteering therein and with a view to bring about an equal distribution of land in urban agglomeration to subserve the common good in furtherance of Directive Principles of Article 39(b) and (c) of the Constitution. See [S. Vasudeva Vs. State of Karnataka and others](#), and [Union of India \(UOI\) and Others Vs. Valluri Basavaiah Chowdhary and Others](#), .

A bare look to the provisions of ULC Act and its scheme shows that it applies to vacant land as defined in Section 2(q) of the" ULC Act which is in excess of the ceiling limit on the commencement of the ULC Act. Section 15 of the ULC Act also imposes ceiling limit on future acquisition of vacant land also. Section 42 of the ULC Act provides that the provisions of the ULC Act shall have the effect, inter alia, notwithstanding anything contained in the other law for the time being in force or any custom or usage or decree or order of the Court, Tribunal or other authority. Thus the ULC Act is given overriding effect in relation to vacant land which a person holds in excess of the ceiling limit, to ensure its equal distribution, while the object of the Act is different than that of the ULC Act, as is clear from the preamble of the Act, that is, primarily for the acquisition of land needed for public purpose and for determination of the amount of compensation to be made on account of such acquisition. See [State of Gujarat and Others Vs. Parshottamdas Ramdas Patel and Others](#), .

The proceedings under the Act cannot deal with the question whether the land in question is vacant land or not for the purpose of ULC Act. If the lands are vacant and surplus and are likely to be acquired under the ULC law by paying compensation as provided therein. If land is not surplus land under ULC Act, in that case the provisions of ULC Act would not be applicable, as in the present case is.

The petitioners can also not challenge the notification under Sections 4(1) and 17(1) of the Act as the societies do not have locus standi. It is well settled that the agreement of sale does not convey any right, title or interest. It would create only an enforceable right in the Court of Law and parties could act thereon. The right, title and interest in the land of the holders of the land extinguished because of the notification under Sections 4(1) and 17(1) of the Act as the land vested in the State. Government and there is no provision in the Act by which the land vested in the State can be reverted to the owner. At the most even if one or two sale deeds have been executed after the grant of permission under the ULC Act such societies who are the purchasers of the land subsequent to the issue of notifications under Sections 4(1) and 17(1) and Section 6 of the Act; the action u/s 17(4) of the Act cannot be challenged. See - the decision of the Supreme Court in the case of *State of Orissa v. Dhobai Sethi*, JT 1995 (6) SC 624.

The petitions are also liable to be dismissed on the ground of delay. Admittedly the holders of the land did not challenge the notifications. The validity of the notification under Sections 4(1) and 17(1) of the Act has been challenged by filing writ petition after two and half years or so. It is true that petitioners have pleaded that they did not know about the notifications but the holders of the land were well within the knowledge of acquisition. See - *Harisingh v. State of U. P.* (supra).

The contention that the acquisition of the land so acquired for the purpose of providing housing accommodation which is also object of the Societies and members of the societies are also low paid employees; judging the comparative utility of public purpose, the acquisition be quashed, can also not be gone into by this Court. See the decision in [Gandhi Grah Nirman Sahkari Samiti Ltd. ect. etc. Vs. State of Rajasthan and others](#), .

Coming to the last contention of the petitioners, in *Gaziabad Shiromani Sahakari Samiti v. State of U. P.* (supra), the Supreme Court observed that grievance advanced by the members who are low paid Government servants who acquired the land in dispute for providing land to the low paid workers and "employees and the land was acquired by the Development Authority constituted for the same purpose, such members should not be denied residential accommodation for which they had taken appropriate steps before the acquisition by the Development Authority, hence issued direction for deleting the land from the notification and for release. The decision in the facts of the case is of no help to the petitioners nor this Court can issue such direction as the petitioners societies did not acquire the title nor they were allotted the land to their members prior to the issue of the notification.

Besides, this power vests in the Government, in that respect, the petitioners, if so advised, may approach the State Government and the Board for release of the land and it is for the Government to consider the same and not for this Court.

However, as a statement has been made by counsel on behalf of the Board that if the Societies apply for allotment of land or plots to their members, the Board shall give preference to them, hence it would be open to the societies to apply for allotment of plots, they may also apply for adjustment of the amount of compensation in the price of the plots as the land owners have relinquished their claim and interest in the compensation before the LAO by stating that the land in question has already been sold to the respective societies. If the amount of compensation is not adjusted the same shall be disbursed to the land owners or their transferee Societies as the case may be in accordance with law.

With the aforesaid observations, the petitions are dismissed with no order as to costs. Security amount, if any, be refunded to the petitioners.