

(1966) 09 MP CK 0003

Madhya Pradesh High Court

Case No: M.P. No. 154 of 1966

Ganga Prasad and Others

APPELLANT

Vs

State of M. P. and Others

RESPONDENT

Date of Decision: Sept. 28, 1966

Acts Referred:

- Land Acquisition Act, 1894 - Section 4, 5A, 6

Citation: (1966) JLJ 1155

Hon'ble Judges: P.V. Dixit, C.J; R.J. Bhave, J

Bench: Division Bench

Advocate: R.K. Pandey, for the Appellant; K.K. Dubey, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.J. Bhave, J.

Notification No. 2292/1140, dated 18-4-61, was issued by the State Government u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) for acquisition of 462-22 acres of land of village Chhawani, near Bhilai. The land is proposed to be acquired for being used as industrial area. That notification also directs that the provisions of Section 5A of the Act shall not apply. Subsequently, a notification u/s 6 of the Act was also issued. The Petitioners by this petition under Article 226 of the Constitution seek a writ of certiorari for quashing both the notifications.

2. The contention of the Petitioners is that in the land notified u/s 4 of the Act certain Abadi land and land coverd under water (tanks) is also included. Under Sub-section (4) of Section 17 the State Government can direct that the provisions of Section 5A shall not apply if the land notified is arable or waste land only. The land reserved for Abadi or the land under water (tanks) cannot be described as "arable or waste land". It is, therefore, urged that the notification excluding the operation of Section 5A of

the Act with respect to the abovesaid land is invalid and that the notification u/s 4 is liable to be struck down.

3. In the return filed on behalf of the State it is admitted that part of the area covered by the notification is land reserved for Abadi or land under water. But it is submitted that by a local amendment the Land Acquisition Act, Sub-section (1) of Section 17 of the Act was amended so as to omit the words "Waste or arable land" from that Sub-section. As a result of this amendment, it is urged that the operation of Section 5A can be excluded with respect to any kind of land. The local Act, relied on by the State, is the Central Provinces and Berar Resettlement and Rehabilitation of Displaced Persons (Land Acquisition) Act, 1949 (Act No. XX of 1949). Section 3 of the said Act reads:

The Provincial Government may, where it considers necessary or expedient to acquire speedily any land for the resettlement and rehabilitation of displaced persons, acquire such land and the provisions of the Land Acquisition Act, 1894, as modified by the provisions contained in the Schedule shall apply to such acquisition.

The Schedule provides for the following modification:

In Section 17-

- (i) in Sub-section (1), the words "waste or arable" shall be deemed to have been omitted; and
- (ii) the following proviso shall be deemed to have been added to the said Sub-section, namely:

Provided that the Collector shall not take possession of any building or part of a building under this Sub-section without giving to the occupier thereof at least forty eight hours" notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

From the provisions of Act No. XX of 1949 it is obvious that the Act is designed to confer authority on the State Government to acquire land for the resettlement and rehabilitation of displaced persons and in doing that the provisions of the Land Acquisition Act, 1894, as modified by the Act, are to be applied. The modification of the Land Acquisition Act, 1894, is only for the purposes of acquisition of land for the resettlement and rehabilitation of displaced persons in exercise of the powers conferred under Act No. XX of 1949. The modification or amendment of the Land Acquisition Act, 1894, is not for all acquisitions. The deeming provision is limited in its Operation vis-a-vis the provisions of Act No. XX of 1949. In fact, there is no amendment of the Land Acquisition Act. What Act No. XX of 1949 provides is that for the purposes of the land acquisition under that Act the Central Act is to be read in a particular manner. We have elaborated this point because we find that in a number of commentaries on the Land Acquisition Act, Act No. XX of 1949 has been quoted as

an Act amending the provisions of the Land Acquisition Act and the impression is created that the Act has been locally amended for all acquisitions.

4. In [Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others](#), their Lordships of the Supreme Court observed that the right to file objections u/s 5A is a substantial right when a person's property is being threatened with acquisition and that right can only be taken away to the extent provided u/s 17(4) of the Land Acquisition Act and not otherwise. In that case, in the notification issued u/s 4 of the Act the State Government had excluded the operation of Section 5A on the assumption that as a result of local amendment of the Land Acquisition Act the Government had the authority to exempt the operation of Section 5A with respect to all kinds of land. This assumption was found to be incorrect in that case. The same is the case here. In the circumstances, their Lordships of the Supreme Court held:

We are therefore of opinion that it was not open to the State Government to say in the notification u/s 4 that the proceedings u/s 5A shall not take place. This part of the notification u/s 4 is therefore beyond the powers of the State Government. In consequence the notification u/s 6 also as it was issued without taking action u/s 5A must fall. The appeals must therefore be allowed and the notification u/s 6 and that part of the notification u/s 4 which says that the Governor was pleased to direct that under Sub-section (4) of Section 17, the provisions of Section 5-A shall not apply, are bad and are hereby set aside. Rest of the notification u/s 4 will stand and it will be open to the Government if it so chooses to proceed with the acquisition after action is taken u/s 5A and thereafter to issue a notification u/s 6 of the Land Acquisition Act.

In this case also, the proper course to be followed is the one indicated by their Lordships of the Supreme Court in the abovesaid case.

5. Shri Pandey, learned Counsel for the Petitioners, however, referred us to the decision of the Supreme Court in [Sarju Prasad Saha Vs. The State of U.P. and Others](#), and urged before us that if out of the land proposed to be acquired part of the land is arable or waste and the part is not, it would not be open to the Court to regard the notification as partially good and partially bad. Shri Pandey, therefore, urged that whole of the notification u/s 4 should be quashed as was held by the Supreme Court in Sarju Prasad's Case. In the case cited by Shri Pandey the previous decision in Nandeshwar Prasad's case was relied on by their Lordships and their Lordships were aware as to what was stated in that case. In Sarju Prasad's Case, an additional ground was urged that if part of the land was waste or arable and part was not, then the direction that the provisions of Section 5A would be dispensed with can be at least sustained with respect to the arable or waste land. That contention was repelled by their Lordships of the Supreme Court when it was observed:

But if only a part of the land is waste or arable and the rest is not, a notification u/s 17(4) dispensing with compliance with the requirements of Section 5-A would be

invalid. It would not be open to the Court to regard the notification as partially good and partially bad, for if the State had no power to dispense with the inquiry in respect of any part of the land notified u/s 4(1), an inquiry must be held u/s 5A giving an opportunity to persons interested in the land notified to raise their objections to the proposed acquisition and in that inquiry the persons interested cannot be restricted to raising objections in respect of land other than waste or arable land.

From the above observations it is clear that their Lordships were not dealing with the notification u/s 4 as such. What they observed was that the direction that the operation of Section 5A shall be excluded has to be struck down as a whole. This is what their Lordships did in the case of Nandeshwar Prasad. We are, therefore, not inclined to hold that in Sarju Prasad's Case there is any departure from what has been held in Nandeshwar Prasad's Case.

6. For the reasons stated above, that part of the notification u/s 4 which excludes the operation of Section 5A of the Act is quashed. The notification u/s 6 is also quashed. The Government may, if it so chooses, proceed u/s 5A of the Act and thereafter issue a notification u/s 6. The petition is allowed with costs. Hearing fee Rs. 100. The security amount shall be refunded to the Petitioners.