Abdul Sattar and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Aug-18-1993

Reported in : AIR1994All77

Judge : B.L. Yadav and ;O.P. Pradhan, JJ.

Acts : Land Acquisition Act, 1894 - Sections 4, 4(1), 5A, 6, 6(3), 9, 17, 17(1), 17(4), 39, 40 and 41; Constitution of India - Article 226

Appeal No. : Civil Misc. Writ Petition No. 1572 of 1982

Appellant : Abdul Sattar and Others

Respondent : State of U.P. and Others

Advocate for Def. : Sri. R.P. Agarwal, S.C.

Advocate for Pet/Ap. : Sri N.C. Rajvanshi and ; Prabhu Khant, Advs.

Judgement :
ORDER

B. L. Yadav, J.

1. Whether the public notice of the substance of notification under Section 4(1) of the Land Acquisition Act, 1894, (for short, the Act), was imperative when the hearing of objections under Section 5-A of the Act was dispensed with; and

whether the purpose of construction of factories of the Handloom Complex was 'public purpose' and whether the provisions of Section 5-A of the Act have been dispensed with arbitrarily and mala fide; and whether without following the procedure provided under Part VII of the Act pertaining to acquisition of land for companies, can the acquisition be made, are the questions for our determination in the present petition filed by the petitioners under Article 226 of the Constitution of India, seeking relied for a writ of certiorari quashing the impugned notification dated 3-8-81 and 16-10-81 (Annexures 1 and 2 respectively).

2. The portrayal of the essential, facts need not detain us, inasmuch as a number of agricultural plots situate in village Alipur Jijmana and Dhikauli were acquired by the aforesaid notificatins for the construction of factories of handloom complex by M/s. Cooperative Handloom Industrial Estate Limited, Meerut. The plots of petitioners, i.e. plot No. 590, area 2 bighas 17 biswansis belongs to petitioner No. 1 plot No. 588, are a 2 bighas 17 biswansis belongs to petitioners Nos. 2 and 3, plot No. 84 measuring 1 bigha 11 biswa and 15 biswansis belongs to petitioners 4 to 7, plot No. 91 measuring 3 bigha 9 biswa and 17 biswansis belogs to petitioners 8 to 10, plot Nos. 93-A and 93-B and 92 also belong to petitioners 8 to 10. Similarly plot No. 80 area 1 bigha 17 biswa and 5 biswansis belongs to petitioners 12 to 14 and 15, and plat No. 79belongs to petitioner No. 11, whereas plot No. 128, area 1 bigha 10 biswa and 6 biswansis was the holding of petitioner No. 16. Plot Nos. 94 and 95 measuring 5 biswa and 5 biswansis and 6 biswa 13 biswansis respectively, were the holdings of petitioner No. 17, whereas plot No. 96 measuring 1 bigha 13 biswa and 7 biswansis, is the holding of petitioner No. 18. It is only after the service of notice under Section 9 of the Act on 10-1-82 that the petitioners came to know about the progress in the land acquisition proceedings. They made enquiries and came to know that on an application of the co-operative society on 24-8-78, the proceedings commenced, even though the first application was withdrawn and subsequent application was filed by the co-operative society on 19-2-80 before the Meerut Development Authority, Meerut, and ultimately the impugned notices were issued.

3. Sri N. C, Rajvanshi, learned counsel for the petitioners, urged that unless the procedure under Part VII was followed no acquisition could be made. Section 39

provides that in such matters where acquisition was for the Company, the previous consent of the State Government was necessary, and for that purpose an enquiry under Section 40 (Forty) of the Act ought to have been made. But this was not done, hence the acquisition was bad in law and the same was arbitrary and mala fide, and the acquisition was not for public purpose.

4. A counter-affidavit has been filed on behalf of the State and material averments in the writ petition have been denied. It has been urged by the learned standing counsel, that the enquiry under Section 5-A of the Act has been dispensed with, the substance of the notification under Section 4(1) need not have been published, nor a notice of the same was required to be served on the petitioners, and that the construction of the new factory was public purpose, and once publication was made stating satisfaction of the State Government that the land was acquired for construction of factories and the same was public purpose, the scrutiny by the Court was not required, And as the part of compensation was paid by the State Government, hence the pro-cedure contemplated under Part VII (Seven) need not be complied with. Reliance was placed on Ajab Singh v. State of U.P., AIR 1993 All 10; Kunwar Lal v. State of U.P., (1989) 1 UPLB EC 772 : (1989 All LJ 670); Manbhai Jethalal v. State of Gujarat, AIR 1984 SC 120; and Srate of U.P. v. Smt. Pista Devi, AIR 1986 SC 2025.

5. Having scrutinised the submissions of the learned counsel for the petitioners and the learned Standing Counsel, the points that fall for our determination are as to whether the substance of notification as contemplated under Section 4(1) was to be published and served on the petitioners, in case enquiry under Section 5-A has been dispensed with; and whether the 'public purpose' was open to scrutiny by the Court when it was clearly mentioned; and whether the provisions of Part VII would apply; and whether part compensation was paid by the State Government?

6. As regards the first question as to whether the substance of notification under Section 4(1) could have been published and served on the petitioners, suffice it to say that provisions of Section 4 con jointly read with Section 5-A of the Act would indicate that in case the enquiry under Section 5-A was not dispensed with in that event the substance of notification under Section 4(1) must have been served on

the petitioners and a public notice of the same must have been given at a convenient place in the said locality. But as the procedure under Section 5-A itself was dispensed with, no useful purpose would be served by sending substance of the notification under Section 4(1) and serving it on the petitioners, or to give public notice at a convenient place in the locality. In the present case it was a case of urgency, consequently enquiry under Section 5-A was dispensed with. There could be no use in such matters to send notice or to cause a public notice to be given to the petitioners or to cause substance of such notification to be kept at a convenient place in the said locality.

7. In Ajab Singh v. State of U. P. (supra), a Division Bench of this Court recently held that where the enquiry under Section 5A was dispensed with, the public notice about thepreliminary notification under Section 4(1) was not required to be given. There was another aspect of the matter. In view of the Land Acquisition (U. P. Amendment and Validation) Act No. 8 of 1974, the public notice of the publication under Section 4(1) was not required where the provisions of Section 17(4) have been invoked. In view of this provision, the public notice of the substance of notification under Section 4(1) was not required to be given.

8. As regards the next question as to whether the purpose 'construction of factories for the handloom complex' was 'public purpose', there is no denying the fact to that extent that the 'public purpose' for acquisition is sine qua non. The construction of factories and other allied construction was certainly a public purpose. It was for the State Government to form opinion as to whether the purpose for which acquisition was being made was public purpose. The State Government has formed that opinion and the declaration as contemplated under Section 6 of the Act has been made. In view of Section 6(3) once the declaration has been made, the same is conclusive evidence that the land is needed for public purpose or for a company, as the case may be. The establishment of industries was certainly a public purpsoe. It has not been stated in the writ petition that formation of opinion by the State Government was mala fide. The intention of legislature appears that once the State Government has applied its mind and issued the requisite notification that the land was needed for public purpose, the court ought to be slow in such matters. Under the circumstances, it is apparent

that the acquisition was made for public purpose. (See State of Punjab v. Gurdayal Singh, AIR 1980 SC 319.

9. In Kunwar Lal v. State of U. P. (supra), a Division Bench of this Court, of which one of us (B. L. Yadav, J.), was a member, also held that dispensation of enquiry under Section 5-A depends on the subjective satisfaction of the State Government, and the same can be quashed only if it is proved to be mala fide, and for such purpose, heavy burden lay on the petitioners. We are fully satisfied thatconstruction of factories was a public purpose and the scope of enquiry as to whether the provisions of Section 5-A have been dispensed correctly or with mala fide, was also very limited. In the present case, no specific instance of mala fide has been indicated, nor the same has been substantiated. Mala fide allegations are not just to be assumed in favour of petitioners, rather a heavy burden lay on them, which they failed to discharge. Neither there was proper pleading nor adequate proof to prove the plea of mala fide. Consequently, the acquisition or dispensation of procedure under Section 5-A could not be said to be mala fide.

10. Reverting to the last question as to whether without following the procedure as contemplated under Part VII and without obtaining the previous consent of the State Government, and without there being an agreement, whether the acquisition for company could be said to be valid? In substance, acquisition was made by the State Government for public purpose, which was for the establishment of industries, particularly the small scale industry. From the point of view of Indian economy and the object of development of industries being also to provide employment to millions, small scale industries or the factories for the purpose of handloom was a must. The object of small scale industry was suggested by late Mahatma Gandhi, father of the nation, who has visualized the Indian economy and development in a beter perspective than anybody else. A counter-affidavit has been filed on behalf of the Collector, Meerut and the State of U. P. by one Sri Pradeep Kumar, and material averments in the writ petition have been denied. Para 20 of the counter-affidavit is extracted below:

'20. That the contents of paras 18, 19, 20, 21, 22, 23, 24, 25, 28 and 29 are not admitted. They are based on the ignorance of law. The law is that in cases where

the compensation payable is being paid in part or in full from Government funds, the Part VII of the Land Acquisition Act shall not Be applicable. In the instant case, the Government has paid a part of the compensation out of its funds, so all theprovisions of the Act and rules referred to in the paras 18 to 25, 28 and 29 are not applicable.'

11. It was thus obvious and we are satisfied that a part of compensation payable to petitioners was paid out of the Government fund and in such matters, Part VII of the Land Acquisition Act would not be applicable, nor there was any necessity to enter into an agreement with the State Government. To put it differently as the agreement with the State Government was not necessary as part of the compensation paid by it, Part VII of the Act, was not relevant and State Government correctly made declaration under Section 4(1) read with Section 17(1) and (4) for acquisition of land dispensing with the enquiry under Section 5-A. In such matters, provisions of company Rules or the provisions of Sections 39, 40 and 41 etc. of the Act were not applicable.

12. In Manbhai Jethalal v. State of Gujarat (supra), it was ruled by the Supreme Court that even the contribution of Re. 1/-from the State Government was adequate to hold that the acquisition was for public purpsoe, and consequently the provisions of Part VII of the Act and the company Acquisition rules would not apply. It was also sought to be submitted by the learned counsel for the petitioners that dispensation of Section 5-A of the Act was arbitrary, and that there was no urgency for which the procedure under Section 5-A could be dispensed with. We have perused the averments made in the writ petition and the affidavit in support of the same and also the counter and rejoinder affidavits. We are satisfied that the provisions of Section 5-A have been correctly dispensed with and it was not an arbitrary act of the State Government, rather the circumstances justified that with a view to establish factor at an early date, the enquiry under Section 5-A must be dispensed with, as the said enquiry would have prolonged the matter.

13. In State of U. P. v. Smt. Pista Devi (supra), it was held that provisions for housing accommodations, (similarly construction of factories of handlooms) in the present case) are the matters of public im-portance. The industrial development

was the object for which the acquisition in question has been made and the urgency was visualized by the State Government and the same cannot be said to be arbitrary.

14. Under the circumstances of the case, the satisfaction of the State Government for public purpose and the urgency was exhibited by issuing notification under Section 4(1) read with Sections 17(1) and 17(4). As the matter involved urgency, we have no manner of doubt that there was sufficient material on the basis of which the State Government could have formed the opinion. A part of compensation was also paid by the State Government out of its revenue, consequently there was no occasion to apply the provisions of Part VII of the Act and Company Rules. In such matters, this court normally would keep its hands off and would not examine just like an appellate court about the validity to public purpose or the dispensation of provisions of Section 5A or the existence of urgency. Substantial justice has been done and there is no error, much less an error apparent on the face of record in issuing the requisite notifications. See Rajasthan Housing Board's case 1993 (2) SCC 84 : (1993 AIR SCW 1163).

15. In view of the premises aforesaid and applying the principles of Aristotalean and Baconian reasonings, we do not find any merit in the petition which deserves to be dismissed.

16. In the result, the petition fails and it is accordingly dismissed. The interim stay order dated 9-2-82 and 31-3-82 are vacated. There shall be no order as to costs.

17. Petition dismissed.