

Ram Sewak Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/448426

Court : Allahabad

Decided On : Aug-09-1961

Reported in : AIR1963All24

Judge : Jagdish Sahai, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 5A, 6, 17, 17(1) and 17(4);
[Constitution of India](#) - Articles 14 and 245

Appeal No. : Civil Misc. Writ Nos. 1855 and 1856 of 1960

Appellant : Ram Sewak

Respondent : State of U.P. and ors.

Advocate for Def. : Shambhu Prasad, Standing Counsel

Advocate for Pet/Ap. : B.N. Saprú, Adv.

Disposition : Petitions allowed

Judgement :

ORDER

Jagdish Sahai, J.

1. These are three connected writ petitions and arise out of land acquisition proceedings going on in village Gohand, pargana Rath, in the district of Hamirpur.

The substantial prayer of the petitioners is for the quashing of the U. P. Government notification No. A-1632/XIIA-663/60 dated March 17, 1960, and for a writ of mandamus commanding the respondents not to enforce the aforesaid notification. The said notification is under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act). It is not necessary at this stage to mention the allegations made in the petition, the affidavit filed in support of it, the counter affidavit and the rejoinder affidavit. I shall deal with the relevant allegations in these documents while considering the various submissions made by the learned counsel for the parties.

2. Mr. Sapru has made the following submissions:

(1) The notifications under Sections 4 and 6 of the Act issued in this case are invalid because the numbers of the plots have not been mentioned therein.

(2) The present proceedings suffer from the defect that notifications under Sections 4 and 17 of the Act were published simultaneously.

(3) Section 17 of the Act is ultra vires inasmuch as it gives unguided discretion to the Collector to dispense with the provisions of Section 5A of the Act and thus infringes Article 14 of the [Constitution of India](#).

3. I will consider the submissions seriatim: The notification under Section 4 of the Act which is dated 17th of March, 1960 (Annexure II) reads as follows:

'Under Sub-section (1) of Section 4 of the [Land Acquisition Act, 1894](#) (1 of 1894) the Governor is pleased to notify for general information that the land mentioned in the Schedule is needed for a public purpose.

(2) The Governor, being of opinion that the provisions of Sub-section (1) of Section 17 of the said Act are applicable to the land, is further pleased under Sub-section (4) of the said section to direct that the provisions of Secs. 5A of the Act shall not apply.

Schedule District Pergana Village Approximate area in acres. Hamirpur Rath Gohand 31.50 acres. For what purpose required:

For the opening of Government Seed Multiplication Farm.'

The notification under Section 6 of the Act dated 23rd of March 1960, reads as follows:

'With reference to this department notification. No. 1629/XII-A. 660-60, dated March 17, 1960 issued under Sub-section (1) of Section 4 of the [Land Acquisition Act, 1894](#) (I of 1894) the Governor is pleased to declare under Section 6 of the Act that he is satisfied that the land mentioned in the schedule is needed for public purpose and, under Section 7 of the Act to direct the Collector of Hamirpur, to take order for the acquisition of the said land.

2. The case being one of urgency, The Governor is further pleased under Sub-section (1) of section 17 of the Act, to direct the Collector of Hamirpur though no award under Section 11 has been made, may on the expiration of the notice mentioned in Sub-section (1) of Section 9, take possession of the land, being waste or arable land mentioned in the schedule for public purposes.

SCHEDULE

District

Pargana

Village

Approximate area in acres

For what purpose required

1

2

3

4

Hamirpur

Rath

Gohand

31.05

For the opening of Government Seed Multiplication Farm.'

4. It is clear that in the two notifications mentioned above neither the number of the plots nor the names of the persons whose plots are sought to be acquired have been mentioned. All that is mentioned is the total area of the land to be acquired and the village, pargana and the district. The short question, therefore, for consideration is whether such a notification is in conformity with the provisions of Sections 4 and 6 of the Act. The provisions of Section 4(1) of the Act read as follows:

'4. (i) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality'.

5. It is clear that the law does not require that the notification under Section 4 should mention, the specific plots or the names of the persons whose land is sought to be acquired. All that is required by the section is that the notification must mention the locality in which the land is being acquired. In the present case the village, the pargana and the district have been clearly mentioned in the notification. The area has also been mentioned. It thus appears to me that the notification under Section 4 of the Act was in conformity with the law and does not suffer from any defect for not mentioning the names of the persons whose land was sought to be acquired as also the numbers of the plots. I find support for the view that I am taking from the case of *Barkya Thakur v. State of Bombay*, AIR

6. Section 6 of the Act reads as follows:

'6. (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under Section 5A, Sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by such Company, or wholly or partly out of public revenues or some funds controlled or managed by a local authority. (2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.'

7. It would be noticed that Sub-section (2) of Section 6 of the Act requires mention in the notification in addition to the district or other territorial division the purpose for which the acquisition is being made, the approximate area of the land sought to be acquired and also a statement that a plan has been prepared and is open for inspection at a particular place. It is true that this section does not say that the numbers of the plots sought to be acquired or the names of the persons whose property is sought to be acquired should be mentioned, but in Sub-section (1) of Section 6 the words used are:

'any particular land is needed for a public purpose'.

In other words, the law requires the land to be particularised in the notification under Section 6. It requires definiteness in the matter and it is clear that in the present case definiteness is wanting. It is not necessary that in every case the number of the plots should be given or the names of the persons whose land is sought to be acquired should be given, if such particulars are given which would indicate to the public & to the persons concerned as to which property is being acquired, it would be sufficient compliance of the provisions of Section 6, of the Act. In my judgment the impugned notification in the instant case suffers from the defect of want of particularity and is not in accordance with the law. The petition must therefore succeed on this ground alone.

8. I would, however, like to record my conclusion on the other submissions also because the submissions having been made and my judgment being appealable to a Division Bench as of right, it is only proper and fair that I recorded my views in respect of those submissions also. It is not quite correct to say that there were simultaneous notifications under Sections 4 and 17 of the Act. The notification under Section 4 was issued on the 17th of March 1960, whereas the composite notification under Sections 6 and 17 was issued on the 23rd of March 1960. Nothing has been pointed out to me to justify the conclusion that a composite notification under Sections 6 and 17 is bad in law and I have not been able to find anything in the Act to hold that it is so. In my opinion therefore there is no substance in this submission of the learned counsel.

9. The last submission is that under the provisions of Section 17 of the Act the State Government can in its discretion take possession over land in some cases while in other cases, though similar, refuse to take possession. It is contended that the discretion is completely unguided by any statutory provisions and is consequently in conflict with the provisions of Article 14 of the [Constitution of India](#). It is not correct to say that the discretion is completely unguided because the opening words of section 17(1) of the Act are, 'In cases of urgency whenever the appropriate Government so directs.' The appropriate Government' can direct the Collector only in cases of urgency. Therefore the existence of urgency is the guiding factor. It is another matter that the determination of the question of urgency has been left to the appropriate Government. The words used in this

section are not

'In cases where the appropriate Government is of the opinion that the matter is urgent'.

In other words, the matter has not been left to the subjective determination of the State Government but has got to be objectively decided by that Government considering all the circumstances. The powers that the Government exercises under Section 17 are no doubt administrative and not judicial or quasi-judicial. I am, therefore, unable to agree with Mr. Sapru that the provisions of Section 17 do not render any guidance to the appropriate Government in deciding whether or not to direct the Collector to take possession of any waste or arable land under the provisions of that section. In that view of the matter there, can be no application of Article 14 of the [Constitution of India](#) to the facts of the present case.

10. It has next been submitted that inasmuch as Sub-section (4) of Section 17 authorises the appropriate Government to direct that Section 5A shall not apply to a particular case, the appropriate Government has been given the power of repealing Section 5A for the purposes of that case and consequently has been invested with essential legislative functions, and Sub-section (4) of Section 17 is for that reason void. It is not correct to say that the effect of a direction under Section 17(4) of the Act is to repeal Section 5A. Matters of detail and the manner in which to execute the law are often left to the executive, the policy of law and legal principles having been enacted into a binding rule of conduct by the legislature itself. In such case there is no delegation of essential legislative functions. In *Banarsi Das v. State of Madhya Pradesh*, AIR 1958 SC 909 it was observed as follows:

'Now the authorities are clear that it is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws such as selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like'.

If the decision as to who will be liable to pay the tax & the rates to be charged cannot amount to repealing of the provisions of a taxing statute with regard to

persons not selected for taxations, it is difficult to accept the submission that simply because the State Government has been given the power to decide that in cases of urgency the provisions of Section 5A would not apply, it would amount to the repealing of that provision. In the U. P. Zamindari Abolition and Land Reforms Act it was left to the State Government to decide on what date that Act would come into force, and the power delegated to the State Government was not held to be delegation of essential legislative functions. Similarly, in the Gambling Act 'it is provided that it shall apply to particular areas and those areas can be extended by notification by appropriate Governments, and yet it has not been held that those provisions are void. I am, therefore, unable to agree with Mr. Sapru on this point also.

11. Even though I have repelled the othersubmissions of the learned counsel, inasmuch asI have held that the notification under Section 6 ofthe Act is not in accordance with the law and isconsequently invalid, these petitions have to succeed.They are allowed and the notification dated 20thof March, 1960, under Section 6 of the Act is quashed.Parties shall bear their own costs.

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