

Arjun Singh and ors. Vs. State of Uttar Pradesh and anr.

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Court : Allahabad

Decided On : Sep-16-1960

Reported in : AIR1961All520

Judge : S.N. Dwivedi, J.

Acts : [Constitution of India](#) - Article 14; [Constitution of India](#) (Seventh Amendment) Act, 1956; Adaptation of Laws Order, 1950 - Sections 3; [Land Acquisition Act, 1894](#) - Sections 17(4)

Appeal No. : Civil Misc. Writ No. 1477 of 1959

Appellant : Arjun Singh and ors.

Respondent : State of Uttar Pradesh and anr.

Advocate for Def. : N.D. Pant, Adv.

Advocate for Pet/Ap. : S.C. Khare, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.N. Dwivedi, J.

1. There is some land, situate in village Baraubagh, in the district of Nainital. It comprised a part of the Khamestate, in Tarai and Bhabar area, belonging to the State Government. The State Government let it out by written leaser deeds to certain persons who, in turn, sublet it by registered sub-leases in favour of the Petitioners. Leaving out unnecessary details it appears that the State Government, by a notification, dated June 3, 1959, under Sub-section (1) of Section 4 of the Land Acquisition Act, published in the U.P. Gazette dated June 6, 1959, declared that it was proposed to acquire the land for rehabilitating displaced Persons from East Pakistan.

It was also stated in the notification that the Governor, being of opinion that the Provisions of Sub-section (1) of Section 17 of the Land Acquisition Act (hereinafter called the Act) were applicable to the land, has directed under Sub-section (4) of Section 17 that the provisions of Section 5A of the Act would not apply. By another notification issued under Section 6 of the Act and published in the same Gazette the Government acquired the land for the public purpose of rehabilitating displaced persons from East Pakistan. Since the matter was regarded as urgent, it was directed that the Collector, Nainital, should take Possession of any waste or arable land forming part of the land acquired, even though no award under Section 11 was made.

2. Aggrieved by these two notifications, the petitioners have preferred the instant writ petition under Article 226 of the Constitution, Learned counsel for the petitioners has impugned these notifications on three grounds, (1) that the Purpose of acquisition being a Union purpose, the Union Government and not the State Government was empowered to acquire the land, (2) that the provisions of Sub-section (4) of Section 17, which deprived the petitioners of the benefit of Section 5A were violative of the Provisions of Article 14 of the Constitution, and (3) that the provisions of that Sub-section were arbitrarily applied by the State Government to the instant case.

3. Before the Constitution Sections 4 and 6 of the Act gave exclusive power of acquiring land to the Provincial Government. After the Constitution the Adaptation of Laws Order, 1950, issued by the President under Article 372 of the Constitution,

inserted a new Clause (ee) to Section 3, which defined the expression 'appropriate Government', and substituted in Sections 4 and 6 the words 'appropriate Government' for the wordy 'Provincial Government'. Clause (ee) to Section 3 reads:

'the expression 'appropriate Government' means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government.'

4. As a result of these alterations the Power to acquire land for purposes of the Union became exclusively vested in the Central Government, while the State Government could acquire land for any other public purposes. Counsel for the petitioners appeared to me to assume that rehabilitation of displaced persons from East Pakistan was an exclusive purpose of the Union, and he built on that assumption the argument that the Central Government alone could acquire the land for that purpose.

5. It would, I think, be plain from an examination of some Provisions of the Constitution that there was no warrant for the assumption. Entry 33 in List I of Schedule VII to the Constitution dealt with acquisition or requisitioning of property 'for the purposes of the Union'; entry 36 in List II of Schedule VII dealt with acquisition or requisitioning of property 'except for the purposes of the Union'; entry 42 in List III of Schedule VII dealt with compensation for property acquired or requisitioned 'for the purposes of the Union, or of a State or for any other public purpose'. These entries would indicate that the Constitution recognised a trichotomy of public purposes, that is, a purpose of the Union, a purpose of the State and any other public purpose.

6. It is not possible to make a clear-cut division between these three sectors, and there is bound to arise some overlapping from time to time. Accordingly in some cases it would be open to either Government to acquire property. Broadly speaking, a purpose of the Union or of the State should be correlated to the legislative Power of Parliament or State Legislature, so that either legislature may legislate effectively within its own sphere.

Thus a purpose of the Union would extend to all matters included in List I of Schedule VII to the Constitution, and a purpose of the State to all matters included in List II of Schedule VII to the Constitution. In view of Arts 73(1) and 162 of the Constitution the Central and State Governments may acquire property for matters included in the said lists respectively. The position with respect to matters comprised in List III of Schedule VII to the Constitution is somewhat different.

With respect to these matters Parliament and the State Legislature have concurrent power to legislate; accordingly acquisition of property with respect to these matters would, I think, be for a purpose of the Union as well as for a Purpose of the State. The Central and the State Government would, therefore, have concurrent power of acquiring property with respect to these matters.

7. Now, the Purpose of acquiring land in the instant case is rehabilitation of displaced persons from East Pakistan. Item 27 of List III of Schedule VII to the Constitution deals with the matter of 'Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.' Since the U.P. Legislature is competent to legislate with respect to this matter, the State of U.P., as already discussed, is competent to acquire land of the Petitioners under the Act for rehabilitating displaced persons from East Pakistan.

8. The matter may be looked at in another way. There can be no clean demarcation between the three kinds of public Purpose. A purpose, which may in one aspect appear to be a purpose of the Union, may in another aspect also fall in the category of another public purpose, vide *State of Bombay v. Ali Gulshan*, (1955) 2 SCR 867(871) :((S) AIR 1955 SC 810 (812), which would enable the State Government to acquire property under the Act. Thus, assuming that rehabilitation of persons displaced from East Pakistan is a purpose of the Union, it appears to me to be irrefragable that rehabilitation of homeless Persons will also fall in the category of any other public purpose. The, State Government will, therefore, be competent to acquire the land of petitioners for rehabilitating; persons from East Pakistan, who have been up-rooted from their homes.

9. The next argument is foreclosed to the petitioners by a decision of the Court in *R. L. Aurora v. State of Uttar Pradesh* AIR 1958 All 872, where it was held that the provisions of Sub-sec. (4) of Section 17 of the Act were not unconstitutional.

10. As regards the third contention, it may be observed, at the outset, that the burden of showing that power under Sub-section (4) of Section 17 has been exercised arbitrarily in their case lies on the petitioners. All that the petitioners have said in their affidavit is that in a large number of acquisition cases the State Government has exercised this power. It does not necessarily follow from this circumstance alone that the power has been arbitrarily exercised in the instant case. In my opinion, there is no sufficient evidence on the record of the case to enable me to hold that the State Government has acted arbitrarily in the present case.

11. No other points have been pressed before me.

12. I am accordingly of opinion that there is no force in this petition, and it is hereby dismissed with costs.

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