

Chandan Singh Gosaln Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Aug-03-1979

Reported in : AIR1980All106

Judge : K.N. Singh and ;B.D. Agarwala, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1), 5A and 6(1)

Appeal No. : Civil Misc. Writ No. 6274 of 1974

Appellant : Chandan Singh Gosain

Respondent : State of U.P. and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R.H. Zaidi, Adv.

Disposition : Petition dismissed

Judgement :

K.N. Singh, J.

1. By this petition under Article 226 of the Constitution the petitioner has challenged the validity of the notifications dated 2-4-1959 and 19-2-1967 issued under the Land Acquisition Act acquiring the petitioner's land.

2. The State Government issued a notification dated April 25, 1959 under Section 4(1) of the [Land Acquisition Act, 1894](#), hereinafter referred to as the Act, notifying that the land having an area of 2.037 acres situate in village Shitapur, Pargana Danga Salem, District Garhwal, was needed for public purpose for constructing a building for veterinary hospital. The notification further invited objections under Section 5A of the Act. Chandan Singh Gosain-petitioner and several other affected persons filed objections under Section 5A of the Act. The Special Land Acquisition Officer after hearing objections submitted his report to the State Government, thereupon a notification under Section 6 of the Act was published in the U. P. Gazette on Feb. 25, 1967, notifying that the Governor was satisfied that the Plot No. 50 having an area of 2.037 acres situate in village Shitapur, District Garhwal was needed for public purpose for constructing a building for veterinary hospital. The notification further authorized the Collector to take possession of the land. Notices under Section 9 of the Act were issued and the petitioner again filed objection. The petitioner appears to have further filed a number of objections before the Collector and Sub-Divisional Officer, asserting that the land in dispute should not be acquired. When he was unsuccessful in his attempt, he approached this Court by means of this petition.

3. Sri R. H. Zaidi, learned counsel for the petitioner, urged that the entire land acquisition proceedings are vitiated as the petitioner's objection under Section 5A of the Act was neither considered nor decided by the Special Land Acquisition Officer. He emphasized that unless a positive order accepting or rejecting the objections was passed by the Special Land Acquisition Officer, the purpose of Section 5A of the Act could not be fulfilled.

4. In the counter-affidavit filed on behalf of the Land Acquisition Officer, it is asserted that the petitioner was afforded opportunity of hearing and thereupon the Land Acquisition Officer exercising powers of the Collector, submitted a report to the State Government on 31-7-1959 with recommendation that the objections may be rejected and notification under Section 6 of the Act may be published. The State Government considered the report and accepted the recommendation of the Collector and issued notification under Section 6 of the Act.

5. Section 5A(1) lays down that any person interested in the land notified under Section 4 of the Act may object to the acquisition of the land. Sub-section (2) lays down that the Collector shall give the objectors an opportunity of being heard either in person or through a Pleader and after hearing such objections and making such enquiry as he may think necessary, submit a report to the appropriate Government containing his recommendation on the objections together with record of the proceedings for the decision of the Government. The decision of the appropriate Government on the objections shall be final. It may be noticed that the Collector hearing the objections has no authority to reject or accept the objections. The law enjoins upon the Collector to hear the objectors and hold enquiry and thereafter to submit a report to the appropriate Government making his recommendations on the objections. The appropriate Government is empowered to take a decision on the objections and its decision is final under the law. Section 5A does not require the Collector to pass any positive order accepting or rejecting the objection.

6. Sri Zaidi then urged that the notification dated April 2, 1959 issued under Section 4 of the Act did not fulfil the requirement of law as it does not specify the plot number of the land intended to be acquired and for that reason the entire acquisition proceedings are vitiated. Section 4(1) lays down that whenever it appears to the appropriate Government that the 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 give public notice of the substance of such notification. The issue of notification under Sub-section (1) of Section 4 is, therefore, a condition precedent to the exercise of powers under the Land Acquisition Act. The purpose of the notification under Section 4(1) is to inform the public of the locality wherein land may be situated so that the affected persons may have knowledge of the land acquisition proceedings enabling them to place their viewpoint before the Collector regarding the public purpose and the suitability of the land for that purpose. After the issue of notification under Section 4(1) of the Act, Officers authorised by the Government are entitled to enter upon and survey the land and to do all other acts necessary to ascertain whether the land is suited for public purpose and to mark boundaries etc.. Land acquisition proceedings commence with the issue of notification under Section 4(1) of the Act

and if there is illegality in that notification, the entire land acquisition proceedings would be vitiated. Section 4(1) of the Act, however, does not lay down that plot numbers of the land intended to be acquired should be specified in the notification. Section 4(1) merely requires that the notification should specify the locality where the land is situated so that the affected persons may file objections under Section 5A of the Act. Unlike the notification issued under Section 6 of the Act, plot numbers or other details of the land are not necessary to be mentioned in the notification issued under Section 4 of the Act. In *Narendra Jeet v. State of U.P.*, (AIR 1971 SC 306), it was held, that Section 4(1) does not require that the identity of the land which may ultimately be acquired, should be mentioned but it enjoins upon the Government to specify the locality in which the land is needed. In the instant case the name of the district, pargana, village and approximate area of the land is mentioned in the notification under Section 4(1) of the Act. The locality of the land was thus clearly specified in the notification. The notification further contains a note that the plan of the land proposed to be acquired, could be inspected in the office of the Collector. The impugned notification is in accordance with Section 4(1) of the Act. Absence of plot number does not vitiate the notification issued under Section 4(1) of the Act. We, therefore, hold that the impugned notification issued under Section 4(1) of the Act is valid.

7. Lastly, Sri Zairi urged that the State Government's declaration under Section 6 of the Act that the land was needed for public purpose, was made after a period of about 8 years from the date of issue of the notification under Section 4(1) of the Act. No such declaration could legally be made after the expiry of three years from the date of publication of notification under Section 4(1) of the Act in view of the first proviso to Section 6(1) of the Act. It is true that the said proviso to Section 6(1) of the Act prescribes a period of limitation within which the appropriate Government shall make the requisite declaration that the land is needed for a public purpose. Section 6(1) provides that if the appropriate Government is satisfied after considering the report, if any, made to it under Section 5A of the Act that any particular land is needed for public purpose, it may make declaration to that effect. Every such declaration is required to be published in the Official Gazette under Section 6(2) of the Act. The proviso lays down, that the appropriate Government must make the requisite declaration under Section 6(1) of the Act

within 3 years period from the date of publication of notification under Section 4(1) of the Act, provided the notification is published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967. The first proviso to Sub-section (1) of Section 6 was inserted by the Land Acquisition (Amendment and Validation) Ordinance, 1967 promulgated on Jan. 26, 1967. The restriction of 3 years period for making declaration under Section 6(1) of the Act applies only in respect of the land, covered by a notification published under Section 4(1) of the Act after Jan. 20, 1967. But the limitation of 8 years, is not applicable in relation to a notification issued under Section 4(1) of the Act prior to Jan. 20, 1967. Clause 4 of the Ordinance (which was later on converted into the Central Act 13 of 1967) provided that no declaration under Section 6 of the Act shall be made in respect of any land notified under Section 4(1) of the Act prior to the commencement of the Ordinance after the expiry of 2 years from the commencement of the Ordinance. The Legislature, thus provided that in case of notification issued under Section 4(1) of the Act after Jan. 20, 1967 (the day Ordinance came into force) no declaration shall be made after the expiry of 3 years. But in the case of notification published prior to Jan. 20, 1967, the appropriate Government could make declaration within 2 years of the commencement of the Ordinance (Jan. 20, 1967).

8. In the instant case, the notification under Section 4(1) of the Act was published in the Gazette in 1959 but no notification under Section 6 had been issued or published when the Ordinance came into force. The State Government could, therefore, make declaration under Section 6 of the Act within 2 years period from the date of commencement of the Ordinance. The requisite declaration under Section 6(1) was made by the State Government on Feb. 19, 1967 and the notification under Section 6(1) of the Act was published in the Gazette on Feb. 25, 1967. Therefore, the notification under Section 6 was issued well within time as contemplated by Clause 4 of the Ordinance.

9. For the reasons stated above, we are of the opinion that the impugned notifications are valid and the land acquisition proceedings do not suffer from any legal infirmity. The petitioner is, therefore, not entitled to any relief. The petition fails and is accordingly dismissed. There will be no order as to costs. Interim order stands discharged.

