

Smt. Tulia Vs. State of U.P. and Others

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SooperKanoon Citation : sooperkanoon.com/474487

Court : Allahabad

Decided On : Nov-25-1997

Reported in : 1998(2)AWC1399

Judge : D.S. Sinha and ;O.P. Jain, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 3, 4, 5A, 6, 17, 17 (1), (1A) and (4); Land Acquisition (Companies) Rules, 1963; [Constitution of India](#) - Article 226; Indian Companies Act, 1882; [Societies Registration Act, 1860](#); Co-operative Societies Act, 1912

Appeal No. : C.M.W.P. Nos. 15173 of 1982 and 15175 of 1982

Appellant : Smt. Tulia

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : A. Kumar, Adv.

Judgement :

D. S. Sinha, J.

1. Heard Sri Ram Kishun Mishra, holding brief of Sri A.Kumar, learned counsel appearing for the petitioners and Sri A. N. Shukla, learned standing Counsel

representing the respondent Nos. 1 and 2. Nobody has appeared for the respondent No. 3.

2. Notifications dated 19th November, 1981 and 30th November, 1981, under Sections 4 and 6 respectively, of the [Land Acquisition Act, 1894](#) (hereinafter called the 'Act') are under challenge in these two writ petitions under Article 226 of the [Constitution of India](#).

3. It appears that for the public of Varanasi, the Varanasi Development Authority, Varanasi, the respondent No. 3, has framed Habibpura Planned and Developed Housing Scheme in the locality--Habibpura within the limits of Varanasi Nagar Nigam and for this purpose, the land is being acquired through impugned notifications. The provisions of Section 17 of the Act have also been invoked for dispensing with the requirement of an opportunity to interested persons to file objection under Section 5A of the Act.

4. To assail the proceeding of acquisition of land, contention raised on behalf of the petitioners is that the land is neither waste nor arable and as such, the provisions of Section 17 of the Act have been applied wrongly, arbitrarily and without application of mind ; and thereby the petitioners have been illegally deprived of the right to file objections under Section 5A of the Act. The contention of the learned counsel is wholly misconceived and untenable. Even if the land is other than waste and arable and if it is required for planned development, the provisions of Section 17(1) can be invoked as envisaged in sub-section (1A) of Section 17 of the Act which was added to the Act by U. P. Act No. 22nd of 1954. The contention of the learned counsel is, therefore, based on utter ignorance of the said statutory provisions. Section 17 of the Act is clearly applicable. Sub-section (4) of Section 17 empowered the Government to dispense with the application of Section 5A and make declaration under Section 6 without giving an opportunity to the affected person to file objection under Section 5A of the Act. The first contention of the learned counsel, therefore, fails.

5. The next contention of the learned counsel of the petitioners is that Varanasi Development Authority, for and on whose behest land is being acquired, is a Company and as such the acquisition could not be done without following the

procedure prescribed in the Land Acquisition (Companies] Rules, 1963. This contention of the learned counsel also is based on misconception of provisions of the Act. It appears that the learned counsel has not paid attention to Section 3(e) of the Act which defines the expression 'Company'. A bare perusal of the said provisions leads to an irresistible conclusion that Varanasi Development Authority is not a company as defined in the Act. According to the definition provided in Section 3(e) of the Act, as it stood at relevant time, the expression 'Company' means a Company registered under the Indian Companies Act, 1882, or under the (English) Companies Acts. 1862 to 1890, or incorporated by an Act of Parliament (of the United Kingdom) or by an Indian Law, or by Royal Charter or Letters Patent (and includes a society registered under the Societies Registration Act. 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912) (or any other law relating to co-operative societies for the time being in force in any State).

6. Obviously, the Varanasi Development Authority is not covered by the expression 'Company' as envisaged in the Act. Otherwise also, there is no factual foundation in the petition to hold that the said authority is a Company. Thus, there was no obligation for the State to follow the procedure prescribed in the Land Acquisition (Companies) Rules, 1963 as contended by the learned counsel. Therefore, this contention also fails.

7. No other contention has been raised by the learned counsel.

8. All told, in the opinion of the Court, these are frivolous petitions having no force and merit dismissal. Accordingly, the petitions are dismissed with costs. The interim order dated 24th December. 1982, confirmed by the order dated 18th July. 1984, shall stand discharged.