

Atar Singh and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-13-2007

Reported in : 2007(3)AWC2704

Judge : Anjani Kumar and; Dilip Gupta, JJ.

Appellant : Atar Singh and ors.

Respondent : State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

ORDER

Anjani Kumar and Dilip Gupta, JJ.

1. This writ petition has been filed for quashing the notification dated 3rd January, 2007 issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') notifying for general information that the land mentioned in the Schedule was needed for a public purpose namely for Hi-Tech Township, Agra. It has further been mentioned in the said notification that the provisions of Section 17(1) of the Act were applicable since the land was urgently required for construction of the aforesaid Township and, therefore, in view of the pressing urgency as well as to eliminate the delay likely to be caused by an inquiry under Section 5A of the Act, the direction under Section 17(4) of the Act was also issued

for elimination of the inquiry under Section 5A of the Act.

2. We have heard learned Counsel for the petitioners, the learned standing counsel appearing for the respondent Nos. 1 and 2 and the learned Counsel appearing for the Agra Development Authority.

3. Learned Counsel for the petitioners submitted that the notification issued under Section 4 of the Act is without authority of law and de hors the provisions contained in the Act and that the entire proceedings for acquisition suffers from legal mala fides and that the right of the petitioner of filing of objections under Section 5A of the Act have been illegally dispensed with by invoking the provisions of Sections 17(1) and 17(4) of the Act.

4. Learned Counsel for the respondents on the other hand submitted that the petitioners have not stated that the declaration under Section 6 of the Act has been made and, therefore, the present petition for quashing the notification issued under Section 4(1) of the Act is premature since it is only a proposal.

5. We have carefully considered the submissions advanced by the learned Counsel for the parties.

6. We find considerable force in the preliminary objections raised by the learned Counsel for the respondents that the present petition should not be entertained at this stage the declaration under Section 6 of the Act has not been made. The State Government makes a declaration under Section 6(1) of the Act that the land is needed for the public purpose and, therefore, it is only upon issuance of such a declaration that the person whose land is sought to be acquired can have any cause of action. The notification under Section 4(1) of the Act is merely a preliminary notification that the land is likely to be needed for a public purpose. In our opinion, all the grounds that have been taken in the present petition can be taken after the issuance of the declaration under Section 6 of the Act is made.

7. In taking the aforesaid view, we find support in the decision of the Supreme Court in H.M.T. Ltd. and Anr. v. Mudappa and Ors. 2007 AIR SCW 1058. In this case, the Government had issued a notification under Section 28(1) of the

Karnataka Industrial Areas Development Act, 1966 (hereinafter referred to as the 'Karnataka Act') which is similar to the provisions of Section 4(1) of the Act. The High Court entertained the petition and quashed the preliminary notification under Section 28(1) of the Karnataka Act overruling the objections raised by the State Government regarding the maintainability of the petition. The Supreme Court observed that the High Court was not right in quashing the notification as it was a preliminary notification merely reflecting the intention of the State Government to acquire land for public purpose. It also observed that it is only at the stage when an appropriate order is passed that the objections raised by the petitioner can be considered.

8. The present petition is, therefore, premature and is, accordingly, dismissed.

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