

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

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Court : Allahabad

Decided On : Jul-11-2003

Reported in : (2003)2UPLBEC1817

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 3, 4(1), 5A, 6, 7 and 48; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition Nos. 29029, 29031, 29033 and 29152 of 2003

Appellant : Amar Singh and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Vinod Misra, Adv. for the NOIDA and ;S.C. for the respondents Nos. 1 and 2

Advocate for Pet/Ap. : K.K. Arora, Adv.

Disposition : Writ petition dismissed

Judgement :

M. Katju, J.

1. This writ petition and Writ Petition Nos. 29029, 29033 and 29152 of 2003, are being disposed off by a common judgment.
2. Heard learned Counsel for the petitioners, learned Standing Counsel, and Shri Vinod Misra for NOIDA.
3. On 30.3.2002, a notification Under Section 4(1) read with Section 17(1) of the Land Acquisition Act was issued proposing to acquire 779.55 Acres of land in Village Sadarpur, Tahsil Dadri, District Gautam Budh Nagar (NOIDA) for the benefit of New Okhla Industrial Development Area (hereinafter referred to as the NOIDA). True copy of the notification is Annexure 1. The petitioners have alleged that they have their abadi in that area. It is alleged in Para 6 that although one year has passed no notification has been issued Under Section 6 and this shows that there was no urgency. It is also submitted that the District Magistrate, Ghaziabad has issued a letter dated 29.12.81 to the Chief Executive Officer, NOIDA requesting him not to acquire abadi plots as desired in the order the dated 29.8.78. True copy of the said letter dated 29.12.81 is Annexure-3. In Para 18 it is stated that the petitioners have their constructions over the land in dispute. It is alleged in Para 19 of the petition that a policy decision has been taken not to acquire the abadi land vide Annexure-4, and some plots have been exempted vide Paragraphs 19 to 21 of the writ petition. Hence, this writ petition.
4. In our opinion, there is no merit in this petition. From a perusal of the notification Under Section 4 read with Section 17 of the Act (Annexure 2 to the petition), it is evident that the land is needed for a public purpose, viz., for planned industrial development in District Gautam Budh Nagar through NOIDA. In our opinion, this need is clearly for a public purpose, as held by this Court in *Kunwar Lala v. State of U.P.*, (1989) 1 UPLBEC 772, wherein it was held that setting up of industries is clearly in the national interest. In *Aflatoon v. Lt. Governor, Delhi* : [1975]1SCR802 , planned development of Delhi was held to be for a public purpose.
5. As regards the question of urgency it was held by a Division Bench of this Court in *Ram Narain Rai v. UP.*, 1991 (1) AWC 340, (Per G.P, Mathur, J.) that the question of urgency is matter for the subjective satisfaction of the Appropriate Government, and it is not open to the Court to examine the propriety or

correctness of the satisfaction on an objective considerations of facts.

6. As regards the submission that the land is abadi and hence cannot be acquired, it has been held by a Division Bench of this Court in *Manvir Singh v. State of UP.* : 2003(1)AWC116 , that abadi land can also be acquired. The definition of land in Section 3(a) of the Land Acquisition Act is a deeming provision. By a legal fiction even buildings and trees standing on the land are deemed to be land. Abadi land is merely land in rural areas set apart for residential and other non-agricultural purpose. There is nothing in the Land Acquisition Act which says that abadi land cannot be acquired. The same view was also taken in another Division Bench of this Court in *Horam Singh v. State of U.P.*, in Writ Petition No. 24670 of 2003, decided on 2.7.2003.

7. In *Kashi Nath v. State of U.P.*, 1993 ALT 154, a Division Bench of this Court following the Supreme Court decision in *Bai Malimabu v. State of Gujarat* : AIR 1978 SC515 , held that the word 'land' in Section 3(a) includes the superstructures on the land. In *Damodar Das v. State*, AIR 1939 Alld. 104, a Division Bench of this Court held that the word 'land' includes a bungalow. Thus, we are of the firm view that abadi land can be acquired and so can land on which there are structures. Of course, compensation must be paid for there structures, but that cannot mean that the land cannot be acquired.

8. Learned Counsel for the petitioner then submitted that a policy decision has been taken to exempt abadi land. In this connection he has invited our attention to a letter of the D.M., Ghaziabad dated 29.12.81, Annexure 3 to the petition, which refers to an order dated 29.8.78 for exempting abadi land and land on which there are constructions. Copy of the order dated 29.8.78 has not been annexed to the petition. However, in our opinion, such an order cannot help the petitioner, since it is at best an administrative instruction and not a statutory provision. There can be no legitimate expectation in such matters, as held by the Supreme Court in *J.P. Bansal v. State of Rajasthan* : [2003]2SCR933 .

9. Learned Counsel for the petitioners has relied on the decision of this Court in Writ Petition No. 17141 of 2002, *Rama v. Mukhya Karya Palak Adhikari*, decided on 25.4.2002, and the decisions of this Court which have followed the aforesaid

decision being Writ Petition No. 32578 of 2000, Ram Chandra v. Mukhya Karya Palak Adhikari, decided on 18.8.2000 (Annexure 8 to the petition) and the order in Writ Petition No. 23994 of 2003, Amar Singh v. State, decided on 2.6.2003 (Annexure 10 to the petition.)

10. A perusal of these judgments and orders shows that these cases have not been decided on merits. All that had been directed therein is that the petitioners have been permitted to make a representation to NOIDA for exempting the land. Hence, these judgments or orders cannot be said to have laid down any principle of law, which can operate as a precedent.

11. In Jage Ram v. State of Haryana : [1971]3SCR871 , the Supreme Court held that unless it is shown that there was colourable exercise of power, the Court cannot go behind the declaration of the Government and find out in a particular case, whether the purpose for which the land was needed was a public purpose or not. In State of U.P. v. Smt. Pista Devi and Ors. : [1986]3SCR743 , the Supreme Court held that even if there are some superstructures standing on the land, they cannot be left out from the acquisition. In Ajay Krishan Shinghal and Ors. v. Union of India and Ors. : AIR 1996 SC2677 , it was held that acquisition for planned development is a public purpose. In Bal Krishan Gulati v. State of U.P. and Ors., 1991 (2) AWC 1210, it was held that where there is a recital of urgency, the Court should not ordinarily interfere. In Garg Farms and Ors. v. State of U.P. and Ors., 1989 (2) AWC 1137, this Court held that if the Government formed the opinion that the matter was one of urgency Under Section 17 and it had some material for this opinion, the Court should not interfere. In Kunwar Lal and Ors. v. State of U.P. and Ors., (1989) 1 UPLBEC 772, it was held that dispensation of enquiry Under Section 5A depends on subjective satisfaction of the State Government. It was also held that where the declaration has been made by the State Government that a particular land is needed for a public purpose, the said declaration shall be conclusive evidence of the fact, that it is so needed. The same view has been taken by this Court in Ram Narain Rai v. State of U.P., 1991 (1) AWC340.

12. Whether to grant exemption from the acquisition proceedings or not, in our opinion, is a purely administrative matter and it is not for this Court to interfere in

such administrative matters. In such matters, the Court has a very limited scope for interference vide *Tata Cellular v. Union of India* : AIR 1996 SC11 , Whether to grant exemption from acquisition proceedings or not would require consideration of various factors and that is for the administrative authorities to decide. In such matters, the entire scheme of acquisition may be jeopardized and disrupted if the Court starts interfering. As observed by the Supreme Court in *State of U.P. v. Pista Devi* : [1986]3SCR743 . 'The Government was not acquiring any property which was substantially covered by buildings. It acquired about 412 acres of land on the outskirts of Meerut city, which was described as arable land by the Collector. It may be true that here and there were a few superstructures. In a case of this nature where a large extent of land is being acquired for planned development of the urban area it would not be proper to leave the small portions over which some super-structures have been constructed out of the development scheme. In such a situation where there is real urgency, it would be difficult to apply Section 5A of the Act, in the case of few bites of land on which some structures standing and to exempt the rest of the property from its application.'

13. We may mention that when some land is acquired for planned development a scheme is originally prepared by the concerned authority providing for levelling the land, making internal roads, providing for sewerage, water supply, electricity etc. No doubt hardship may be caused to some person within the area of the scheme, but on that account the entire scheme cannot be disturbed. The Court should exercise self restraint in such matters and should not ordinarily interfere with the administration. We have already held in Civil Misc. Writ Petition No. 34022 of 2002, *XL-IIT Forum and Ors. v. State of U.P. and Ors.*, and Civil Misc. Writ Petition No. 43985 of 1997, *Kanpur Aloo Arhati Association and Anr. v. State of U.P. and Ors.*, that the judiciary should exercise self restraint, and not encroach on the spheres of operation of the executive or the legislature.

14. As observed by the Supreme Court in *G.B. Mahajan v. Jalgaon Municipal Council* : AIR 1991 SC1153 , the Courts are kept out of the lush field of administrative policy, except where the policy is inconsistent with the statute. In *Federation of Railway Officers Association v. Union of India* : [2003]2SCR1085 , the Supreme Court observed that a policy matter, unless inconsistent with the

Constitution or the statute, is not subject to judicial review. In *Union of India v. International Trading Co.* : AIR 2003 SC3983 , the Supreme Court observed that in administrative matters public interest has to prevail over private interests.

15. In the present case, the scheme of planned industrial development is clearly in the national interest. Our country can overcome its great problems like poverty, unemployment, disease etc., only when it rapidly industrializes and becomes a modern, Industrial State. Hence, whatever promotes industrialization is undoubtedly, in the national interest. The scheme of planned industrial development should certainly not be interfered with by this Court, and it will prevail over the individual interests of persons who may suffer hardship thereby.

16. In our opinion, the Court should not hamper the State with problems at their point of pressure. All schemes of the Government, including schemes for industrial development, are essentially adhoc and experimental. Since, social problems nowadays are extremely complicated, the State should be left with wide latitude in devising ways and means of social control and development, and the Court should not, unless compelled by the law, encroach into this field.

17. In the words of Chief Justice Neely :

'I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the Administrator.'

18. In *New State Ice Co. v. Liebman*, 285 US 262 (1932), Mr. Justice Brandies, the celebrated Judge of the U.S. Supreme Court, observed that the Government must be left free to engage in social experiments. Progress in the social sciences, as in the physical sciences, depends on a 'process of trial and error' and Courts must not interfere with necessary experiments.

19. Justice Brandies observed :

'To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation.'

(See also : 'The Legacy of Holmes and Brandeis by Samuel Konefsky).

20. It may be mentioned that land acquisition falls within the ambit of Entry 42 of List-III of the VIIth Schedule to the Constitution which states :

'Acquisition and requisition of property.'

21. Hence, the State Legislature or its agency and delegates certainly have the power to acquire the land in question (the power of eminent domain).

22. Section 48(1) of the Land Acquisition Act states :

'Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.'

23. It may be seen that the power to exempt is with the State Government and not with the Court. Hence, this Court cannot direct the State Government to exempt any land from acquisition as that power is in the sole domain of the State Government and this Court should not encroach into that domain and embarrass the administrative authorities.

24. Learned Counsel for the petitioners has urged that we should direct the State Government to consider the petitioner's prayer for exemption Under Section 28. In our opinion, it would not be proper for us to give any such direction as such directions often have the effect of putting pressure on the executive authorities, and such orders are often used as a handle to harass and threaten the administrative authorities, and/or to procrastinate and delay implementation of the scheme, often for years and years. If this Court starts directing the Government to exempt, or even to consider for exemption, any land covered by the scheme of acquisition the effect directly or indirectly will be that the scheme of planned development may well be disrupted or jeopardized or delayed. The Court should, therefore, exercise restraint in such matters and not give such directions as prayed

for by the learned Counsel for the petitioners.

25. No doubt in some decisions directions have been given by the Court to decide the petitioner's application for exemption but in our opinion, a mere direction without laying down any principle of law is not a precedent. A case is an authority for the principle of law, it lays down vide : [1991]188ITR402(SC) , Goodyear India Ltd. v. State of Haryana : 1999(2)AWC1470 ; Committee of Management v. Gorakhpur University : (1996)6SCC44 ; Union of India v. Dhanwanti Devi : [1985]2SCR72 , Amar Nath Om Prakash v. State of Punjab etc. It is only the statement of law laid down in a decision which is binding vide : [1975]3SCR914 , Municipal Committee v. Hazara Singh. A mere direction in a judgment is not a binding precedent vide AIR 2002 SC 3898, Delhi Administration v. Manoharlal.

26. In view of the above, it is obvious that directions in some decisions directing petitioner's application for exemption to be decided do not lay down any precedent, and hence are not binding on us. In our opinion, the Court should not embarrass the Government by issuing directions to it to consider and decide the application Under Section 48, as such directions are often misconstrued and only lead to further delay in implementation of the acquisition scheme for planned development. If such direction is given, and the State Government rejects the exemption application without giving reason, another writ petition is usually immediately filed alleging that the order is arbitrary, as no reason has been given. On the other hand, if reasons are given by the State Government in rejecting the application Under Section 48, then again a writ petition is usually filed and the matter contested upto the Supreme Court alleging that the reasons were arbitrary or misconceived and once again the matter drags on for years on end, thus, frustrating the scheme for several years.

27. For the reasons given above, this writ petition and the connected writ petitions are dismissed. Interim orders, if any, are vacated.