

Gabbe Vs. Union of India

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Court : Delhi

Decided On : Feb-10-1981

Reported in : 1981RLR306

Judge : S.B. Wad, J.

Acts : Land Acquisition Act - Sections 4

Appeal No. : Civil Writ Appeal No. 789 of 1973

Appellant : Gabbe

Respondent : Union of India

Advocate for Pet/Ap. : Hari Shankar,; Rekha Sharma,; K. Dayal and;

Judgement :

S.B. Wad, J.

(1) Petitioner owns 28 big. 4 bis. of land in village Ghazipur. The lands were purported to be acquired by Noti. No. F.I 5 (iii)/59-LRG, dt. 13.11.59 published u/s 4 of Land Acquisition. Act in Govt. Gazette dt. 13.11.59. Petitioner's land formed part of Shahdra Circle for purposes of planned development of Delhi. Large number of lands in the villages of Delhi were intended to be acquired under the said notification for planned development.

(2) Notifications u/s 6 of the Act were published in June, 1966. The petitioner complains that no public notice was published in the locality as required by Section. 4 of the Act. She could not file a representation/objections u/s 5A as she had no knowledge of the acquisition. She further complains that order u/s 6 was passed in absence of the objections u/s 5A. | The petitioner further complains that the Land Acquisition Collector did not/ serve any public notices as required by Section 9(1) of the Land Acquisition Act nor did he serve any notice on the petitioner u/s 9(3) of the Act. In August, 1970 the Land Acquisition Collector rendered his awards. The petitioner alleges that after the awards were rendered there was some commotion in the village. That is how she came to know about the awards. Thereafter on 12th Oct., 1970 she claimed reference u/s 18 of the Land Acquisition Act. The petitioner challenges the entire land acquisition proceedings for non-compliance of the mandatory requirement of the said provisions of the Act. While admitting this writ petition the Bench passed an order for maintaining status quo in matters of possession of the lands. In spite of the order, the respondents took the possession of the land and put wire fencing around the land. By its order dated 19.9.1973 this Court directed that the possession be restored to the petitioner. Accordingly, the possession was restored and the petitioner is in possession of the lands.

(3) It was stated in the counter-affidavit that publicity in the locality regarding the intention to acquire the land was made. This statement was challenged by the petitioner. I gave an opportunity to Respondents to produce the evidence in their possession regarding the fact of publication/ announcement in the locality. At the end of the hearing the counsel for the respondents informed the Court that no such evidence was forthcoming. It is thus clear that although the Notification u/s 4 was published in the Official Gazette, no public notice in the locality as required by Section 4 of the Act was given. This has resulted into the deprivation of the valuable right to the petitioner to object to the acquisition u/s 5A of the Act. The Supreme Court has authoritatively laid down that the said requirement of Section 4 is mandatory and the Notification of Section 4 is vitiated if the provision is not complied with, *Khub Chand V. State of Rajasthan* : [1967]1SCR120 *State of Mysore V. Abdul Razak Sahib*, : [1973]1SCR856 and *Narinderjit Singh V. The State of U.P.* : [1973]2SCR698 . The notification in the present case in so far as it

relates to the petitioner, therefore, is bad in law and the entire land acquisition proceedings are vitiated and rendered illegal.

(4) The counsel for the respondents, however, submits that the petitioner had preferred a reference u/s 18 to the District Judge and, therefore, she cannot complain of any non-compliance of the Act. It is now well established that where the illegality of the proceedings goes to the root of the matter as in case of non-compliance of the mandatory requirements of Section 4 of the Act, subsequent participation in the proceedings would not cure the initial legal infirmity. *All Hasan Vs Lt. Governor* ILR 1976 Del 485. The contention of the respondents is, therefore, rejected.

(5) In view of the fact that Section 4 notification in relation to the petitioner is bad in law, all land acquisition proceedings are rendered illegal and are hereby quashed. In view of this, it is not necessary to refer to the other contentions raised by the petitioner. The writ petition is allowed. Since the petitioner's knowledge of Section 4 notification is not proved and Section 6 notification was illegal for non-compliance of Section 5A, no objection, on the ground of laches can be raised by the respondents. Rule is made absolute. As the petitioner is already in possession of the lands, no further direction is necessary. On the facts and circumstances of the case I make no order as to costs.