

Darshan Singh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jun-27-1991

Reported in : 1991WLN(UC)531

Judge : G.S. Singhvi, J.

Appeal No. : S.B. Civil Writ Petition No. 5395 of 89

Appellant : Darshan Singh

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

G.S. Singhvi, J.

1. In this writ petition, the petitioner has challenged notifications dated 16.2.1987 and 7.11.1989 issued by the Government in agricultural department for acquisition fo the land of the petitioner.

2. The petitioner has stated that he has got agricultural land in Khasra Numbers 47, 52, 53, 54, 55 and 56 in village Ramganjmandi disrtict Kota. He is also hold in 88 years lease in respect of Abadi land No. 53,54 and 55 measuring in all 8 biswas. These lands are actual situated Rosli (Ramganjmandi). The land of the petitioner was earlier acquired under Notification dated 31.5.1978 issued Under

Section 4 of the Rajasthan Land Acquisition Act, 1953 (hereinafter referred to as 1953 Act.) The petitioners filed objections against the acquisition and stated that a large tract has already been acquired for Krishi Upaj Mandi and there was no necessity for extra land. No hearing was given to the petitioner but a declaration under Section 6 of the 1953 Act was issued. However, further proceedings of acquisition were not taken because Secretary of Rajasthan State Agricultural Marketing Board wrote to the State Government on 5.4.80 that for another 15 years new market yard Ramganjmandi will not require additional land for expansion. The State Government considered the matter thereafter and dropped the acquisition proceedings by issuing a notification dated April 16, 1980 which was published in Rajasthan Raj Patra dated April 23, 1980. The earlier notification dated 12.6.1978 was cancelled.

3. The case of the petitioner is that Secretary of Krishi Upaj Mandi Samiti Ramganjmandi was bearing ill-will towards the petitioner and, therefore, he wrote a letter to the Secretary Rajasthan State Agriculture Marketing Board on 10.1.1985 that the decision to drop the acquisition may be withdrawn. The State Govt. issued a fresh Notification Under Section 4 of 1953 Act on 16.2.1987. After issuance of this notification, no public notice was issued by the State Government Under Section 4 of the Land Acquisition Act 1894 (hereinafter referred to as 1894 Act.) After more than 2 years, the petitioner received a notice dated 3.4.1989 from the SubDivisional Officer, Ramganjmandi who intimated the petitioner that his land falling in Khasra No. 52, 53, 54, 55 and 56 was going to be surveyed on 10.4.1989. He filed a representation before the Sub-Divisional Officer dated 19.4.1989 stating that the proceeding of acquisition has already lapsed and there was no justification for taking further action without having regard to the representation of the petitioner, the State Government has issued a notification dated 7.11.1989, which has been published in daily newspapers on 5.12.1989. By this notification a declaration and order u.s. 6 read with Section 17(1) and 17(4) of 1894 Act has been issued. Along with this notification declaration Under Section 6 of 1894 Act, a notification dated 7.11.89 has also been issued for acquiring petitioner's land in Khasra No. 47.

4. The petitioner has stated that after State Government had dropped the acquisition proceedings vide its notification dated April 23, 1980, he had applied for conversion of 881.11 sq yds. of and in Khasra No. 53,54 and 56 in village Rosli (Ramganjmandi) his application was accepted by the Sub-Divisional Officer (Land Acquisition), Ramganjmandi. A lease deed dated 6.3.84 was issued, the petitioner deposited development charges and with the permission of the Municipal Board, Ramganjmandi he has raised constructions and has developed a dairy farm cum Orchard. He has invested more than a lakh of Rupees in construction of houses, installation of pumping sets and making provision for Irrigation facilities.

5. The petitioner has challenged the acquisition proceedings on the ground that no notification Under Section 4 of 1953 Act could be issued in view of the repeal of Rajasthan Land Acquisition Act, 1953 by virtue of amendment dated 24.9.1984 made in the Central Land Acquisition Act, 1894. No public notice was given under the provisions of 1953 Act or even under the 1894 Act. It is alternatively submitted that no declaration Under Section 6 of the 1894 Act could have been issued after expiry of one year from the date of issuance of notification Under Section 4. The limitation prescribed in Section 6 of 1894 Act is one year in respect of acquisition proceedings after the commencement of Land Acquisition (Amendment) Act, 1984. The other ground of the petitioner is that the Krishi Upaj Mandi is in fact not in need of additional land and the acquisition has been made only with a view to harass and cause injury to the petitioner. Notification of urgency clause Under Section 17 has been assailed on the ground that the delay of 2 years and about 2 months in giving notice after 16.2.1987 shows that in fact there was no urgency for the acquisition of the land moreover issuance of the notification dated 7.11.1989 shows that the urgency clause has been invoked without application of mind.

6. Respondent No. 1 and 2 have not filed reply to the writ petition. Respondent No. 3 has, however, filed a reply. In its reply Respondent No. 3 has stated that in the revenue records the land in question is shown in village Rosli. The land which is said to be acquired is adjacent to the land of Krishi Upaj Mandi where its office and market yard is situated. Omission to make a mention of the village Rosli has not caused any prejudice to the petitioner. Regarding withdrawal of the acquisition proceedings in 1980 it has been asserted by the Respondent No. 3 that there is no

estoppel against the State from re-starting acquisition proceedings in the year 1987. The land in question is required by Krishi Upaj Mandi Samiti. The allegations made by the petitioner against the Secretary of the Krishi Upaj Mandi Samiti have been denied on the ground of vagueness and also on the ground that the Secretary of Krishi Upaj Mandi has not been impleaded as party to the petitioner. It has been stated that Krishi Upaj Mandi passed a resolution on 7.8.1989 for approaching the State Government for acquisition of the land in view of its additional need and requirement. It has also been stated in the reply that omission to issue a declaration on the part of the State Government upto 15.2.1988 does not have the effect of invalidating the whole acquisition proceeding. The land is urgently required by the Krishi Upaj Mandi and, therefore, the State Government has issued the notification for acquisition of the land in question.

7. From the pleading of the parties it is clear that notification dated 16.2.1987 has been issued under the provisions of Rajasthan Land Acquisition Act, 1983. The notice dated 3.4.89 and notifications dated 7.11.89 have been issued under the provisions of Land Acquisition Act, 1894. The provisions of Rajasthan Land Acquisition Act, 1953 ceased to be effective with effect from commencement of Land Acquisition (Amendment) Act, 1984 by which Land Acquisition Act, 1894 (Central Act) was made applicable to the State of Rajasthan Obviously after the commencement of the Amending Act, 1984, provisions of Rajasthan Land Acquisition Act 1953 were not available to the respondents for initiating the proceedings for acquisition of the land of the petitioner. Thus, in my opinion the first notification issued by the Respondent No. 1 on 16.2.1987 suffers from lack of jurisdiction and authority.

8. Moreover in my opinion, learned Counsel for the petitioner is justified in urging that a declaration Under Section 6 of 1894 Act could be issued within a period of one year only after issuance of notification Under Section 4 of that Act. Therefore, even if the notification dated 16.2.1987 is treated as one issued Under Section 4 of 1894 Act, declaration should have been issued Under Section 6 upto 16.2.1988. This has admittedly not been done. The declaration has been issued much after the expiry of period of one year. In these the period is more than 2 years. It has, therefore to be held that notification issued on 7.11.1989 for the purpose of

declaration Under Section 6 is intently unlawful, the entire acquisition proceeding suffer from serious legal infirmity.

9. So far as the question of need of Kirshi Upaj Mandi, Ramganjmandi is concerned the submission raised on behalf of the petitioner that once the acquits on proceedings had been dropped in 1980 on the ground that there was no additional need and, therefore, the Kirshi Upaj Mandi or the State Government is estopped from initiating proceedings for acquisition at a later point of time, cannot be accepted.

10. A period of about 7 years had elapsed in 1987 after the proceedings had been dropped in the year 1980. The activities of the Kirshi Upaj Mandi Samiti cannot remain static. With the expansion of activities of Krishi Upaj Mandi Samiti the growth of population and with the development in the field of agricultural and agriculture marketing, the demands, needs and requirement of Krishi Upaj Mandi Samities are bound to change. It cannot, therefore he said that the Krishi Upaj Mandi Samiti or the State Government cannot restart the acquisition proceedings because earlier acquisition proceedings had been dropped in the year 1980. The allegation of malafide levelled by the petitioner against the Secretary of Krishi Upaj Mandi Samiti, Ramganjmandi is absolutely vague and no enquiry into such allegation can be made under Article 26 of the Constitution of India on such vague allegation and also for the reason that the Secretary of the Krishi Upaj Samiti, against whom the petitioner has alleged malafide, is not even a party to the writ petition.

11. The result of above discussion is that the writ petition is allowed. The notifications dated 6.2.1987 and 7.11.1989 are quashed. The respondents will, however, be free to take fresh proceedings for acquisition in accordance with law.

Parties are left to bear their own costs.