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Court : Rajasthan

Decided On : Jul-06-1977

Reported in : 1977WLN(UC)497

Judge : M.L. Jain, J.

Appeal No. : S.B. Civil Writ Petition No. 1843/75

Appellant : Birma Ram

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

M.L. Jain, J.

1. The facts of this writ petition are that in village Ulasi, Tehsil Javal, District Nagaur, there is a public well the way to which lies there through the Nadi and the Dhani, but the villagers who reside on the northern side of the well do not appear to have a direct excess thereto and have to take a longer route. In order to provide a straight path for them, it was proposed that a portion of Khasra No. 115 in the Khatedari of the petitioner Birma Ram be acquired. Accordingly, a notification under Section 4 of the Rajasthan Land Acquisition Act, 1953 was issued by the State Govt. on 22-12-73. But no notice under Sub-section (5) of Section 4 thereof

in Form No. 1 A provided for the purpose in the Rajasthan Land Acquisition Rules, 1956 was issued. As a matter of fact, no notice of any kind under this subsection was ever issued. The S.D.M., Nagaur by his order dated 18-9-74, however, made a report to the Collector Nagaur that no one has presented any objection against the proposed acquisition, and he requested the Collector to move the State Govt. to issue a notification under Section 6 of the aforesaid Act for acquiring one Bighi of land out of the said Khasra No. 115. Thereupon, the State Govt. issued a notification under Section 6 of the said Act on. 26th July, 1975, which was published in the Rajasthan Rajpatra on 21st Aug. 1975.

2. The petitioner by this petition challenges the validity of the notification under Section 6 on the ground that he was given no opportunity for filing objections under Section 5A of the aforesaid Act, because no notice under Sub-section (5) of Section 4 thereof was ever issued. The learned Counsel for the petitioner in this connection relies upon Rajasthan Udyog v. State of Rajasthan and Ors. 1976 WLN 835, wherein towards the end of para 15 a Division Bench of this Court has observed that Section 4 was amended by the Rajasthan Act No. 22 of 1966 and the effect of the amendment in Section 4 of the Act No 24 of 1953 is that the provisions of Section 4(1) are directory and the provisions of Section 4(5) are mandatory.' The argument now is that since the mandatory provision of the Act was not complied with, the declaration under Section 6 is without foundation and illegal. Indeed Sub-section (1) of Section 4 of the said Act provides that such a declaration can be made only after the State Govt. had considered the report, if any, made under Section 5A and such a report could not legally be made without giving an opportunity to the petitioner to raise objections against the proposed acquisition.

3. The position of facts and Jaw in this respect appears, thus, to be beyond dispute and the learned Dy. Govt. Advocate found it difficult to support the procedure adopted by the State Govt. He, however, did make an attempt to defend the declaration under Section 6 by urging that even if no notice as required by Sub-section (5) of Section 4 was issued, then too, the declaration under Section 6 cannot be struck down because there has, in fact, been a substantial compliant of the provisions of Sub-section (5) of Section 4, in as much as the

petitioner knew about the acquisition and should be deemed to have had notice to file the objections, if he had any to make The basis for this contention is that at one time, the Panchayat had provided for a way to the well through the field of the petitioner, but upon appeal, the Collector quashed the order of-the Panchayat on 20-12 66 and held that the only proper course for the Panchayat to adopt was to secure acquisition of land in question. Facts of acquisition were, thus, within the full knowledge of the petitioner and it was also his duty to file objections if he had any, under Section 5A of the said Act, even if no notice under Sub-section (5) of Section 4 was issued. I have considered this contention of the learned Dy. Govt. Advocate, but I find that it cannot be sustained. As a matter of fact, Section 5A provides that any person interested in any land in respect of which a notice has been given under Sub-section (5) of Section 4 and which has been proposed to be acquired for a public purpose or for a company, may within 30 days after the service of the public notice in the manner provided under Section 45, object to the acquisition of the land or of any land in the locality as the case may be. This provision clearly indicates that a person interested can file an objection only when a notice as aforesaid has been issued.

4. The result of the aforesaid discussion is that the declaration under Section 6 is without proper legal authority being in disregard of the mandatory requirement of the Jaw and deserves to be quashed. It has resulted in substantial injury without any other remedy.

5. Accordingly, this petition is accepted and a writ of certiorari is issued against the State of Rajasthan directing that the impugned notification under Section 6 of the Rajasthan Land Acquisition Act, 1953, dated 26th July, 1975, shall be quashed and all proceedings subsequent thereto shall similarly be quashed. If the State wishes to pursue the proposed acquisition, it shall be at liberty to act further after following the procedure as provided in Sub-section (5) of Section 4 and other relevant provisions of the said Act. In the circumstances of the case, there shall be no order as to costs.

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