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Court : Rajasthan

Decided On : Dec-15-2006

Reported in : 2007(1)WLN211

Judge : Bhagwati Prasad, J.

Appeal No. : S.B. Civil Writ Petition No. 1798/2001

Appellant : Manoj Kumar Garg

Respondent : State and ors.

Judgement :

Bhagwati Prasad, J.

1. The present writ petition is filed by the petitioner alleging that they are the purchasers of 3 bighas and 4 biswas of land together falling in Khasra No. 216 from Bhanwar Lal, Kalu Ram, Buxa Ram and Chena Ram sons of Shri Shambhu Ram vide registered sale deed dated 17.01.1995. Petitioners have filed the copy of the registered sale deed as Annexure-I Petitioners' claim is that pursuant to sale of the land in their favour, the same came to be mutated in the revenue record in the name of the petitioners. The copy of revenue record has been produced as Annexure-2.

2. Petitioners claim that in the month of April, 2001, they came to know that the proceedings for acquiring the land in question has been undertaken at the instance of the U.I.T. Jodhpur (hereinafter referred to as 'the Trust'). Petitioners state that they made inquiries and collected relevant documents and found that a notification under Section 4 of the Land Acquisition (Amendment) Act, 1984 (hereinafter referred to as 'the L.A. Act') dt. 26.07.2000 was issued, copy of which has been submitted as Annexure-3. Petitioners claim that the land belonging to the petitioners has been shown in this notification. Petitioners further stated that the notification has been published in two daily newspapers but claimed that the public notice of the substance of the notification dt. 26.07.2000 has not been pasted at the convenient places in the locality where the land in question is situated. Apart from the fact that the notification has not been pasted either on any conspicuous part of the land in question, no personal notice was given to the petitioners.

3. Petitioners further claim that under Section 5A of the L.A. Act, no inquiry was held and a declaration under Section 17(4) and Section 6 of the L.A. Act was issued on 12.03.2001. The declaration has been submitted alongwith the writ petition as Annexue-4 and it has not been disputed by the petitioners that the same was published in the gazette and also in the newspapers 'Rajasthan Patrika' and 'Dainik Bhaskar'.

4. Petitioners further state that a notice under Section 9 of the L.A. Act has also been issued in the newspapers on 17.04.2001 which has produced with the writ petition as Annexure-5. Further claim of the petitioners is that none of the relevant notifications and declarations viz. under Section 5, under Section 6, under Section 74 and under Section 9 have been personally served on the petitioners or other Khatedars.

5. Petitioners have filed the present writ petition reserving their right to challenge the acquisition proceedings before the Land Acquisition Officer.

6. On the basis of the aforesaid facts, the petitioners have raised the following ground; that compliance of Section 4 of the L.A. Act has not been made by the respondent Land Acquisition Officer by pasting the substance of the notification at the convenient places of the locality and at any public place. Further ground of the

petitioners in the writ petition is that the notification under Section 4, declaration under Section 6 and notice under Section 9 of the L.A. Act does not specify the names of the persons interested. Thereby, they have been deprived of their right of hearing. The declaration under Section 6 and Section 17(4) of the Act have been challenged on the ground that conditions necessary for exercise of powers conferred by Section 17(4) do not exist in the case. Section 17(4) of the L.A. Act can only be resorted to when the requirement of land is not urgent. It is contended that there is a total non-application of mind by the respondent and in that background, enquiry under Section 5A has been dispensed with, without there being any justification. The powers conferred under Section 17(4) of the Act have been sought to be exercised arbitrarily and un-reasonably. Petitioners in the writ petition have made the following prayers:

(1) by an appropriate writ, order or direction, the notification dt. 26.07.2000 (Annex.3) and the declaration dt. 12.03.2001 (Annex.4) be declared illegal and be quashed and all the proceedings undertaken by the respondents be also declared illegal and be quashed;

(2) by an appropriate writ, order or direction, the respondents may be restrained from interfering with the possession of the petitioners over the land measuring 3 bighas and 4 biswas falling in Khasra No. 216 of village Sangariya, Tehsil and District Jodhpur.

(3) any other appropriate writ, order or direction, which the Hon'ble Court deems fit and proper in the facts and circumstances of the case may also be passed.

(4) the costs of the writ petition may also kindly be awarded to the petitioners.

7. The writ petition was contested by the respondents and a reply was filed to the grounds raised in the writ petition. Subsequent to the filing of the first reply, another reply was filed by the respondents which was taken on record under the orders of the Court. Respondent U.I.T. submitted that the land in question said to have been purchased by the petitioners forms part of Khasra No. 216, out of which 9 bighas and 6 biswa of land was recorded in the name of Khatedari of Bhanwar Lal, Kalu Ram, Buxa Ram, Chena Ram Sons of Shimbhu Ram. Out of these lands,

16 biswas was sold to Moolchand and 13 biswa was sold to Keshri Mal. Jamabandi in this regard has been filed with the reply as Annexure-R1 and R2. After the aforesaid sale, only 17 bighas and 17 biswas remained with the original Khatedar Shri Bhanwar Lal. The Land Acquisition Officer of P.W.D. Circle I acquired 4 bighas and 16 biswas land out of the remaining 7 bighas and 17 biswas for Jodhpur-Jaisalmer Bypass road on 23.04.1993. An award in this regard has been filed as Annex. R/3. Thus, only 3 bighas and 1 biswa land remained with Bhanwarlal etc., for sale. Petitioners could only purchase 3 bighas and 1 biswa land. These facts have been concealed.

8. Petitioners claim that after the issuance of notice under Section 9(1) of the L.A. Act on 17.04.2001, petitioner filed their claim and ultimately an award was passed on 26.02.2003. Respondents have claimed that alongwith the declaration under Section 17, declaration under Section 6 was also issued and therefore, Section 11A of the Act has no application. In terms of Section 9(1) of the L.A. Act, after publication of notice under Section 17(1), the land vested in the Government, free of all encumbrances. The provisions of Section 11A of the L.A. Act only apply when the declaration under Section 6 is made and provisions of Section 17 of the Act are not invoked.

9. Respondents apart from raising the aforesaid preliminary objections, have submitted that process of acquisition was started with the objective of establishing a residential colony to meet the growing demand of residents. To achieve this objective, the U.I.T. Jodhpur had put up a proposal for acquiring 3095 bighas of land and in this connection, the State Government issued a notification under Section 4(1) of the L.A. Act on 26.07.2000 which was published in the newspapers 'Jaltesy Deep' and 'Dainik Bhaskar'. The substance of the notification was also affixed on 25.10.2000. A copy of the report has been submitted with the reply as Annexure-R5. Respondents have also relied upon a Division Bench decision of this Court in the matter of Mahendra Lodha v. State of Rajasthan and Ors. D.B. Civil Writ Petition No. 6073/93 dt. 13.04.2001 which has been filed with the reply as Annex. R6.

10. Respondents further submitted that a notice under Section 9(1) of the L.A. Act was published in the newspapers 'Dainik Bhaskar' and 'Rajasthan Patrika' as delineated in the reply and claims have been submitted by the petitioners. Having submitted their claims, Land Acquisition Officer proposed a draft award which was ultimately approved by the State Government and finally the award has been published. The acquisition proceedings have culminated into a final shape. Petitioners have also filed their claim before framing award. Thus, for all practical purposes, it should be deemed that the petitioners have acquiesced to the making of the award.

11. Respondents have further placed on record Annex. R/8, by virtue of which the acquisition not only got culminated after the award having been made, the possession of land has also been taken on 11.02.2003. Annexure- R8 has been placed on record showing that the possession has been taken. Petitioners have also raised a question that while there was a stay order by this Court, the possession of the petitioner's land could not have been taken. Respondents submit that the stay order was not brought to the notice of the Land Acquisition Officer and therefore, it was not a conscious dis-obedience of the orders of this Court and the acquisition was subjected to taking of possession and taking of such possession are symbolic in nature, as has been held by the Courts. The action of the respondents would not tantamount to disobedience of the orders of this Court.

12. Petitioners have also filed written submissions and in the written submissions, it has been alleged that the entire proceedings are illegal and void as they are in breach of the provisions of Section 4 of the Act of 1984. In support of this argument, the petitioners have relied upon the aspect that the public notice of substance of notification has not been made. The same was neither pasted on any of the convenient places or the locality and personal notice was given to them.

13. Petitioners have further submitted that the notification under Section 17(4) & 6 of the L.A. Act was issued in breach of principles of natural justice. Those who were interested persons were not served with the notices and their names were also not shown in the notification. Petitioners further submit that the conditions necessary for the exercise of powers under Section 17(4) of the Act did not exist

and dispensation of the Enquiry under Section 5A was illegal. Learned Counsel for the petitioners has relied on the following judgment of the Hon'ble Supreme Court:

(i) : [1980]1SCR1071 State of Punjab v. Gurdial Singh

(ii) : [1998]3SCR643 Om Prakash and Ors. v. State of U.P.

(iii) : AIR 2004 SC3582 Union of India v. Krishan Lal Arneja.

(iv) : AIR 2004 SC4307 Union of India v. Mukesh Hans.

14. It has further been said that substance of the notification under Sections 4, 6 & 9 have not been pasted at convenient places. Therefore, the notices are bad. Learned Counsel for the petitioners has relied on the following judgments:-

(i) : [1973]1SCR856 State of Mysore v. Abdul Rajjak Saheb.

(ii) : AIR 1992 SC131 Nutakki Shesharatnam v. Sub-Collector, Land Acquisition, Vijaywada.

(iii) : [1985]3SCR995 Collector, Allahabad v. Raja Ram Jaiswal.

(iv) : [1967]1SCR120 Khubchand v. State of Rajasthan.

15. Respondents per-contra, contested the claim of the petitioners and have submitted that substance of notification was published and proceedings in this regard have been submitted with the reply. Respondents have further stated that declaration under Sections 6 and 17 cannot be held illegal as alleged because the law is settled that such declarations are on the subjective satisfaction of the Government concerned. In declaration under Section 6 read with 17(4), it is not required to be specifically recited and described being of urgent nature. The answering respondent has relied on a case of Union of India and Ors. v. Ghanshyam Dass Kedi and Ors. reported in (1996) 2 SCC 285. The same case has been relied for the ground that the opinion formed by the appropriate Government is final. Hon'ble Supreme Court in the said case has held as under:

The main question canvassed before the Division Bench in W.P. No. 3084 of 1987 was that the Government was not justified in invoking Section 17(1) read with Section 17(4) of Land Acquisition Act, 1894 (for short 'the Act') dispensing with the enquiry under Section 5-A. The High Court following its earlier decision has quashed the notification on the ground that the notification did not recite the nature of the urgency. Planned Development of Delhi is not urgent and, therefore the exercise of the power under Section 17(4) was illegal. In *Aflatoon v. Lt. Governor of Delhi*, the Constitution Bench of this Court had upheld the exercise of power under Section 17(4) dispensing the enquiry under Section 5-A. It was for planned development of Delhi which would take long time for development. Yet this Court upheld the exercise of the power of urgency. It is subjective satisfaction of the Government based on the material on record. The High Court is not a Court of appeal over subjective satisfaction and the opinion of the Government is entitled to great weight.

16. Learned Counsel for the respondent further relied on a decision of Hon'ble Supreme Court in the matter of *First Land Acquisition Collector and Ors. v. Nirodhi Prakash Gangoli and Ors.* Reported in : [2002]2SCR326 wherein, Hon'ble Supreme Court has held as under:

The question of urgency of an acquisition under Section 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. Therefore, when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Section 17(1) and (4) of the Act, and issues notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision taken by the appropriate authority was mala fide.

17. Learned Counsel for the respondents has also relied upon the following judgments:

(i) : AIR 1997 SC170 *Union of India and Ors. v. Praveen Gupta and Ors.*

(ii) : [1997]1SCR210 A.P. Sareen and Ors. v. State of U.P. and Ors.

(iii) : [1993]1SCR269 Raj. Housing Board and Ors. v. Shri Kishan and Ors.

(iv) : [1986]3SCR743 State of U.P. v. Smt. Pista Devi and Ors.

18. I have heard the learned Counsel for the parties and have given my thoughtful consideration. The challenge to the notification under Section 4 of the L.A. Act was made by the petitioners on the ground that substance of the notification was not published at the convenient places of the locality. Respondents have filed document Annex. R/5 showing that on 25.10.2000, the substance of the notification was published. Once the respondents take a stance that the notification has been published, then in absence of any malafides being alleged of fabrication being brought to the notice of the Court, the Court has to presume that the substance was published and in that respect, the argument of the learned Counsel for the petitioners is held meritless.

19. The publication of declaration under Section 6 and under Section 17(4) of the L.A. Act was made in the gazette and newspapers. The challenge of the petitioners that it was not affixed in the locality further stands repudiated by the stands of the respondents that on 11.05.2001, the publication was made and in proof thereof, Annex. R/7 has been filed. Thus, the requirement of Sections 4 & 6 of the L.A. Act stood complied with. Thus, the notification under Section 4 and declaration under Section 6 cannot be invalidated on the ground that the substance was not published in the locality. The notifications having been published in the gazette and newspaper, the requirements were complied with. This now takes the Court to the question whether the requirement of hearing under Section 5A of the Act could be dispensed with by issuance of notification under Section 17(4). Reference in this regard can be made to a decision in the matter of State of T.N. and Ors. v. L. Krishnan and Ors. reported in : (1996)1SCC250 wherein, Hon'ble Supreme Court held as under:

40. There is yet another and a very strong factor militating against the writ petitioners. Not only did they fail to file any objections in the enquiries held under Section 5-A, they also failed to act soon after the declarations under Section 6

were made. As stated above, the declarations under Section 6 were made in the year 1978 and the present writ petitions were filed only some time in the year 1982-83 when the award were about to be passed. It has been pointed out in Aflatoon that laches of this nature are fatal. Having held that the public purpose specified in the notification concerned therein is not vague, Mathew, J. made the following observations: (SCC pp. 290-91 paras 9-12).

Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under Section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them.

20. Thus, the law relied upon by the respondents overwhelmingly makes this Court to hold that once, when a subjective opinion has been framed by the State Government, the same is not justiciable. The case of Krishan Lal Arneja reported in AIR 2004 SC 2582 relied upon by the learned Counsel for the petitioner is distinguishable on facts. Hon'ble Supreme Court in the very judgment has held that judgments are not to be read as statutes. Relevant para is reproduced hereinbelow:

13. It is needless to repeat that a judgment need not be read and interpreted as a statute and that a judgment should be read and understood in the context of the facts of the case and looking to the ratio....

21. In the said judgment, the question of subjective satisfaction was taken to have already been decided by the Court in the cases of Shakuntala Gupta and Banwarilal, therefore, the Court observed that the satisfaction is bad in the eye of law. In case of Union of India and Ors. v. Mukesh Hans reported in : AIR 2004 SC4307 , the question of holding 'Foolwalon ki Sair' was the public purpose regarding which acquisition proceedings had already failed earlier and those were second proceedings in which the Hon'ble Court held that urgency Clause could not

have been invoked. Therefore, the cases relied upon by the learned Counsel for the petitioner are not held to be sufficient to invalidate the acquisition on that ground. In any case, the reliefs claimed by the petitioners in the writ petition falls short of the requirement of the challenge in the writ petition because the final award has not been challenged by amending the writ petition and only by way of rejoinder, the same has been done. The petitioners have tacitly given consent to the award by filing their claim before the Land Acquisition Officer and in that light, when the award has not been specifically challenged, then also, the petitioners right to invoke extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India is on wrong footing. No case for interference is made out. The writ petition having no force is hereby dismissed.

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