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Court : Allahabad

Decided On : Apr-22-2010

Judge : Sunil Ambwani and; Kashi Nath Pandey, JJ.

Appellant : Davendra Singh and ors.

Respondent : State of U.P. Thru. P.S. Home Dept. and ors.

Advocate for Pet/Ap. : Shri. Zafeer Ahmad

Disposition : Petition dismissed

Judgement :

1. Heard Shri Zafeer Ahmad, learned Counsel for the petitioners. Learned Standing Counsel appears for the respondents.
2. The petitioners have prayed for quashing notification dated 5.3.2010 issued under Sub-section (1) of Section 4 read with Sub-section (1) of Section 17 of the Land Acquisition Act, 1894 (in short, the Act) notifying plots No. 16, 17 and 18 of Village Dulhapur Santprasad District Jyotiba Phuley Nagar along with other plots for a total area 20.870 for the purposes of construction of district Jail.
3. It is admitted to the parties that the notification under Sub-section (1) of Section 6 read with Section 17 of the Act has not been published, so far.

4. Learned Standing Counsel has raised a preliminary objection to the maintainability of the writ petition against the proposal to acquire the land by notification under Section 4 (1)/17 (1) of the Act. It is stated that the notification under Section 6 (1) has not been published so far and that the petitioners have not alleged any grounds with regard to competence of the State Government to issue the notification, or vagueness in the substance of the publication. There are no allegations of malafides and that the purpose for acquisition of land for construction of jail is a public purpose for which the State can acquire the land exercising the powers of eminent domain. The notification under Section 6 (1) of the Act has not been published, and thus on the grounds taken in the writ petition, the petitioners have not acquired cause of action to file this writ petition.

5. In Writ Petition No. 65200 of 2009 Smt. Santosh Singh and Ors. v. State of UP and Ors., decided on 1.12.2009, the Court had considered the same question and held that the writ petition challenging the notification under Section 4 (1) of the Act is not maintainable unless there are allegations of total vagueness in regard to the property to be acquired incurable irregularity or to the public purpose for acquisition.

6. In Chakresh Sharma and Anr. v. State of U.P. and Ors. : 2008 (1) AWC 206; Kamal Singh v. State of U.P. and Ors. : 2007 (3) AWC 3005; Balaji Shiksha Vikas Samiti v. State of U.P. (Writ Petition No. 47907 of 2008) decided on 15.9.2008; Smt. Deoki v. State of U.P. and Ors. (Writ Petition No. 13440 of 2009) decided on 13.3.2007; Smt. Pushpa Gupta v. State of U.P. and Ors. (Writ Petition No. 37591 of 2005) decided on 09.5.2006; Progressive Shoe India Pvt. Ltd. v. State of U.P. and Ors. (Writ Petition No. 53636 of 2008) decided on 17.10.2008 and Bhagwan Das Sharma and Ors. v. State of U.P. and Ors. (Writ Petition No. 54705 of 2008) decided on 21.10.2008. In all these cases the Court had refused to entertain the writ petitions challenging notifications under Sub-section (1) of Section-4 proposing to acquire the land before the notification under Section 6 is published.

7. In Kanpur Development Authority v. Mahabir Sahkari Avas Samiti Ltd. (2005) 10 SCC 320 and Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors. (2007) 1 SCC 641 the Supreme Court held that the notification of

proposal to acquire land can be challenged only on the ground of ambiguity, indefiniteness and vagueness of public purpose.

8. In the Collector (District Magistrate), Allahabad and Anr. v. Raja Ram : AIR 1985 SC 1622 the Supreme Court held that the validity of notification under Section 4 can be examined on limited grounds such as good faith, which means 'for legitimate reasons'. If power of proposal to acquire the land is exercised for extraneous or irrelevant considerations and is unquestionable a colourable exercise of power or fraud, the exercise of power is vitiated. In the present case there are no pleadings with regard to lack of good faith malafides, irregularity and vagueness in regard to the acquired property. The petitioners have also not established that there is no public purpose whatsoever in acquiring the land.

9. In Smt. Gunwant Kaur and Ors. (Supra) the Supreme Court reversed the decision of the Punjab High Court and held that where no order under Sub-section (4) of Section 17 was issued by the Government of Punjab, the owners of the land could not be deprived of opportunity of making their representations under Section 5A of the Act and by satisfying the Collector that their lands were not acquired. The notification under Section 6 in Gunwant Kaur's case was issued on January 6th, 1960 and published on January 15th, 1960.

10. In Chakresh Sharma v. State of U.P. (Supra) this Court held as follows:

9. While deciding the said case, the Hon'ble Supreme Court placed reliance upon its earlier judgment in State of Punjab and Anr. v. Gurdial Singh and Ors. : AIR 1980 SC 319. A Division Bench of this Court in Kashama Sahkari Avas Samiti v. State : (2006) 7 ADJ 133 : 2007 (1) AWC 327, has taken the same view.

10. However, there are large number of Division Bench judgments of this Court e.g. Kamal Singh v. State of U.P. : (2007) 3 ALJ 146 : 2007 (3) AWC 3005; Civil Misc. Writ Petition No. 13440 of 2007, Smt. Deoki v. State of U.P. and Ors. decided on 13.3.2007 and Writ Petition No. 53329 of 2006, Sukhbir Singh v. State of U.P. and Ors. decided on 15.3.2007, wherein, the petitions have been dismissed being premature, giving opportunity to the petitioners therein to approach the Court after publication of declaration under Section 6 of the Act, for

the reason that in case the Declaration is not made within stipulated period, the proceedings would lapse, and entertaining the petition at this stage would render in futility. Such a view had been taken following the judgments of the Hon'ble Apex Court in H.M.T. Ltd. and Anr. v. Mudappa 2007 AIR SCW 1058, wherein while considering a similar issue, the Apex Court held that the High Court had erred in quashing the preliminary, Notification under Sub-section (1) of Section 28 of the Karnataka Industrial Areas Development Act, 1966 (hereinafter called the Act, 1966), observing as under:

To us, therefore, the parties were right in raising a preliminary objection that the petition was premature, as by issuance of Notification under Sub-section (1) of Section 28 of the Act, an intention was declared by the State to acquire the land for public purpose, i.e. For developing industry..... The Court further held that Section 28 (1) of the said Act, 1966 was synonymous to Section 4 (1) of the Act and raising objections against acquisition at that stage and not to have been interfered and a preliminary Notification ought to have been quashed overruling well-founded objections as to the maintainability of the petition raised by the State.¹¹ In Kanpur Development Authority v. Mahabir Sahkari Avas Samiti Ltd. (2005) 10 SCC 320, the Apex Court held as under:

It is well-settled that notification issued under Section 4 (1) of the Act normally cannot be quashed unless there are exceptional circumstances, like the one where the notification issued under Section 4 (1) of the Act suffers from incurable irregularity, such as total vagueness in regard to the property to be acquired and in regard to the public purpose.¹² In Daulat Singh Surana and Ors. v. First Land Acquisition Collector and Ors. (2007) 1 SCC 641 : 2007 (1) AWC 524 (SC), the Hon'ble Supreme Court held that validity of such a notification can be challenged only on the ground of ambiguity, indefiniteness and vagueness of public purpose.

11. The apprehensions, that there will be no time left after the notification under Section 6 (1) is published and that the State Government will demolish the constructions, and take over possession forcibly, are not well founded. The publication of the notification under Sub-section (1) of Section 6 may authorise the State Government to take possession but that notice under Section 9 has to be

given before possession is taken. There are no allegations of total vagueness, absence of public purpose or malafides to challenge the proposed acquisition.

12. The Courts are overburdened with the cases and have consistently declined to interfere in the cases, which have not matured. In the present case, the notification under Section 6 has not been issued so far and thus the adjudication made by the Court will be academic in nature.

13. The writ petition is accordingly dismissed as premature without deciding any point on merits, with liberty to the petitioners to raise all the grounds, which have been taken in the writ petition or such ground, which may become available to the petitioners to challenge the acquisition of the land, if the State Government issues notification under Sub-section (1) of Section 6 of the Act, including the applicability of Sub-sections (1) and (4) of Section 17 of the Act.

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