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Court : Jammu and Kashmir

Decided On : May-01-1989

Reported in : AIR1990J& K65

Judge : M.L. Bhat and; S.M. Rizvi, JJ.

Acts : Jammu and Kashmir Land Acquisition Act, 1990 Svt. - Sections 4, 5A, 6, 7, 8 and 9

Appeal No. : Writ Petn. No. 885 of 1987

Appellant : Ghulam Mohd Zargar and ors.

Respondent : State of J and K and ors.

Advocate for Def. : Z.A. Qureshi and; Gh. Mustaffa, Adv.

Advocate for Pet/Ap. : M.H. Beg, Adv.

Disposition : Petition allowed

Judgement :

Bhat, J.

1. Petitioners who are 143 in number are styled in the writ petition as Shopkeepers and House owners of Maharaja Bazar, Srinagar, have filed this writ petition for issuance of a writ of certiorari quashing the Notification No. SDA/ C-RD/2054-61

dt. 20-12-1982 issued under Section 4 of the Land Acquisition Act and its republication on 6-4-1984 in local newspaper the 'Daily Aftab' and for quashing the declaration made under Ss. 6 and 7 of the Land Acquisition Act issued under Notification No. RD 68 of 1985 dt. 12-4-1985 and for quashing the acquisition proceedings taken pursuant to the aforesaid Notification. Directions are also sought against the respondents restraining them from interfering with the lawful possession of the petitioners' properties. The facts lie in their compass.

2. Notification under Section 4 of the Land Acquisition Act was issued by respondent No. 4 on 20.12, 1982, copy whereof is Annexure P/1 to the petition. Same was published in the Government Gazette on 30-12-1982. The petitioners are said to have come to know about the said notification on 7-1-1983. They filed their objections before respondent No. 4 on 10-1-83 copy whereof is Annexure P/2 to the writ petition. It was stated in the objections that the alleged plan of slum clearance has not been made known nor shown in the plan. Therefore, the petitioners were not in a position to file detailed objections. As to what area of Goni Khan area was declared as slum area has not been detailed out. Therefore, said notification was bad. Petitioners' case was that no part of Maharaj Bazar area where the properties of the petitioners are situated has been declared a slum area. The said Bazar was properly planned bazar. Therefore, petitioners property may not be acquired for clearing the slum areas of Goni Khan. It was stated that Government also had raised new buildings in Goni Khan area. Therefore, it was not genuine or justified to acquire property of the petitioners from slum clearance. Some persons had stated in their objections that plan for clearance of alleged slum areas of Goni Khan had not been published or known to those persons. It was also stated that no such plan did exist. Even after Notification under Section 4 had been published various persons including Sanathan Dharam Sabha has been allowed to raise many buildings in Goni Khan locality. On receipt of these objections, respondent No. 4 did not act. However, a publication was published on 6-4-1984 in a local newspaper Daily Aftab. In the said notification, it was stated that papers pertaining to earlier notification under Section 4 of the Land Acquisition Act having gutted in fire, the affected persons were asked to refile their objections. Section 4 notice is said to have not been displayed in accordance with the requirement for its publication. In pursuance of second notification petitioners are

said to have filed again the objections and objected to the acquisition of their properties at Maharaja Bazar. Some of the petitioners, however, received communication asking them to attend the office of respondent No. 3. On visiting the office of respondent No. 3 petitioners are said to have been informed that declaration under Sections 6 & 7 of the Land Acquisition Act pertaining to the properties in question has already been made. Petitioners were asked to vacate the possession of their shops and houses in pursuance of the said notification. The respondents are said to be bent upon to dispossess the petitioners from the properties under their occupation. On the aforesaid facts petitioners challenge the acquisition proceedings and the notification for acquisition on the following grounds :

- i) Notice under Section 4 of the Land Acquisition Act is issued without application of mind;
- ii) There is no satisfaction that acquisition would serve any public purpose and in fact no public purpose is sought by acquiring petitioners' properties. In fact the properties of the petitioners are acquired to ensure that the shops and houses constructed by respondent No. 2 in Bandoq Chawni behind Maharaja Bazar assume importance and commanding position and is accessible;
- (iii) the acquisition proceedings are conducted for extraneous considerations, alien to law;
- iv) The notification is issued for purposes of freezing the price of the properties of the petitioners;
- v) The notification had not been issued in accordance with the procedure;
- vi) The slum clearance has neither been published nor made known to the petitioners;
- vii) The petitioners were not given personal hearing which is required under Section 5(a) of the Land Acquisition Act;

viii) Declaration made under Section 6 of the Land Acquisition Act is bad as it offends the principles of natural justice;

ix) The notification for acquisition and the acquisition proceedings have emanated from colourable exercise of powers by the respondents.

x) Some new buildings are allowed to be raised in the area such as River View Hotel, Sanalhan Dharam Sabha Trust. On AH Mohd Buja's shop in Goni Khan area was allowed to be constructed which would show that there is no public purpose sought to be achieved.

3. In their reply respondents have stated that the petitioners have not raised any objection to the acquisition till 1985. Therefore, the writ petition is not maintainable. Petitioners are said to have raised disputed questions of fact which cannot be gone into in the writ petition. It is stated that after the issuance of notice under Section 4 of the Land Acquisition Act, the interested persons filed their objections. It is stated that Master Plan is prepared by the Srinagar Development Authority which has been duly published and approved by the Government. The said Master Plan envisages clearance of slum areas including Goni Khan area which is known as Bandoq Chawni. The entire area of Maharaja Bazar has not been declared as slum area. A portion of the area is to be acquired for public purpose which is to be determined by the State Government. After the area is re-developed and constructions are raised, those of the petitioners who are dispossessed from the properties shall have a preferential right to ask for commercial or residential accommodation as the case may be. It is stated that objections were filed beyond time. Therefore, respondent No. 4 was within his right to deny hearing to the petitioners who were represented by their President. The area over which some properties are constructed, such as Sanathan Dharam Sabha is not included in the acquisition proceedings. Some of the petitioners are said to have been summoned by the Divisional Commissioner for discussion because he was a member of High level committee constituted in connection with the development of the area. It is stated that once the Govt. is satisfied that the property is to be acquired for public purpose, court has no jurisdiction to hold otherwise. It is submitted that 210 families will be relieved from the slum area and will be rehabilitated in some Govt.

Colony.

4. There are two aspects of the matter. First is whether it is for this court to Judge as to whether the land is acquired for the public purpose and the second is, as to whether the procedure for initiating the acquisition proceedings is followed by the respondents.

5. Within the ambit of public purpose would be included whether the respondents have been influenced by extraneous considerations in notifying the area under Section 4 of the Act.

6. Mr. ZA. Qureshi appearing for the respondents has relied on the Collector, Akolav. Ramachandra, AIR 1968 SC 244 to contend that it was none of the business of the court to go into the question of public purpose because the same was to be judged by the respondents. It was held by the Supreme Court that public purpose can be temporary or otherwise. It is for the requisitioning authority to Judge and not for the court of law to decide how best the land is to be used. Initiation of proceedings under the Land Acquisition Act after requisitioning the land under Section 5(1) of the Act does not and cannot mean the abuse of powers under the provisions of the Act.

7. Reliance is placed on Nandeshwar Prasad v. U. P. Government AIR 1964 SC 1217 on the basis of this authority it is convened that Development Act has no application. That Act may provide development of areas. The Govt. is competent to acquire the land under the Land Acquisition Act because acquisition of land is to be made in accordance with the provisions of Land Acquisition Act.

8. In Arnold Rodricks v. State of Maharashtra AIR 1966 SC 1788 it was held by majority that public purpose varies with the times and the prevailing conditions in localities. Where the main purpose in issuing the notification under Section 4 was not to give comfort to an individual but to a general public, notification is valid.

9. In Babu Barkya Thakur v. State of Bombay AIR 1960 SC 1203 it was held that purpose of the notification under Section 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if

necessary, digging or boring into the subsoil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under Section 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a company. What was mere proposal under Section 4 becomes the subject matter of a definite proceeding for acquisition under the Act. Hence, defect in the notification under Section 4 is not fatal to the validity of the proceedings, particularly when the acquisition is for a Company and the purpose has to be investigated under Section 5A or Section 40 necessarily after the notification under Section 4.

10. It was also held that requirement of law will be satisfied if it is found on investigation that appropriate Government is satisfied as a result of the investigation that the land was needed for a company which would amount to public purpose under the Act.

11. In *Government of Haryana v. Hakam Singh*, AIR 1979 Punj and Har 122 it was held by a Division Bench of Punjab and Haryana High Court that the expression 'Public purpose' has been used in a generic sense. It includes a purpose in which the general interest of the community as opposed to particular interest of individuals is directly concerned. It should serve the interest of the society. Acquisition of land for developing residential and commercial plots is for the public purpose.

12. The public purpose for which the properties of the petitioners are needed and for which notification under Section 4 is issued cannot be said to be imaginary or unrelated to the object which is sought to be achieved under the provisions of the Land Acquisition Act. If the appropriate Govt. is of the opinion that a particular area is needed for plan development or slum clearance with view to benefit the society at large, it can initiate the land acquisition proceedings notwithstanding the fact that some individuals are likely to be affected. Those who are likely to be affected are to be rehabilitated and respondents have given undertaking in their objections that they will be settled in a residential colony which is to be developed for those who will be rendered homeless as a measure of development of the area. Those whose commerce or trade is to be affected are to be given shops on priority basis.

13. Mr. M. H. Beg has also relied on a number of authorities and has submitted that unless public purpose is specifically stated, land cannot be acquired under the provisions of Land Acquisition Act. He has relied on *Munshi Singh v. Union of India*, AIR 1973 SC 1150. In the said authority property was sought to be acquired. The only purpose given was for 'planned development of area'.

14. For the other limb of his argument that petitioners were denied opportunity of being heard, he has relied on *Farid Ahmed Abdul Samad v. Municipal Corporation of the City of Ahmedabad*, AIR 1976 SC 2095. The Supreme Court has held that in case of compulsory acquisition right of personal hearing cannot be denied. Denial of hearing would render the notification invalid.

15. *State of Mysore v. Abdul Razak Sahib*, AIR 1973 SC 2361 is another authority where publication of notice was not done in accordance with the mandatory requirement of law.

16. It is true that the presumption of public purpose as given by the State Govt. in the Notification under Section 4 is rebuttable. But the presumption about public purpose cannot be displaced merely because the acquisition proceedings are inconvenient to a group of persons. If the acquisition proceedings are in the interests of the general community or society as opposed to particular individual the court will not be justified in judging the public purpose. The State Govt. has the competence to judge the public purpose and then issue notification under Section 4. If the power exercised by the State Govt. is colourable or amounts to benefit only an individual and does not serve any public purpose, the court may intervene in appropriate cases.

17. The only objection raised to the public purpose not being served by acquisition is that the land was to be used for slum clearance which was not detailed out in the notification and which prevented the petitioners from filing effective representation.

18. Section 4 of the Land Acquisition Act empowers the Collector to issue notification which is issued with view to hold preliminary investigation. The said notification is to be affixed at convenient place in the said locality where the

property is sought to be acquired and is to be published in a particular manner. Thereafter persons interested in any land which has been notified under Section 4 may within the specified time and in the manner prescribed object to the acquisition of the land or of any land in the locality as the case may be. Under Section 5(a) (2) the Collector is bound to give the objector an opportunity of being heard either in person or by pleader and after hearing the objections and making such further enquiry, if any, as he thinks necessary, submit the case to the Govt. with the record of the proceedings held by him and the report containing his recommendations on the objections. The decision of the Government on the objections is to be final. After this the State Government has to assume satisfaction on the basis of the report and the enquiry made by the Collector under Section 5(A)(2) and the declaration is to be made under the signatures of the Revenue Minister which shall determine the tentative compensation to be awarded for such property and then further proceedings in this regard, as regards taking the possession and determination of compensation, is to be taken by the Collector.

19. Mr. Beg's main contention was that public purpose mentioned in the Notification purported to have been issued under Section 4 of the Land Acquisition Act mentions slum clearance at Goni Khan as public purpose which is vague and cannot be held to be public purpose within the meaning of law. He submitted that it was not known which area of the Goni Khan locality was declared slum and by which authority slum clearance was proposed to be done for which land was sought to be acquired. Unless the term 'slum clearance' is made public with sufficient clarity, petitioners will not be in a position to file objections, if they do not know the area where the slum clearance is to be done.

20. It is true that purpose for which the land is acquired must be specified with clarity and there should be no ambiguity so far as the purpose for which the land is sought to be acquired is concerned. Mr. ZA. Qureshi has contended on the basis of counter that Master Plan under the Jammu & Kashmir Development Act has been prepared by the Srinagar Development Authority which has been duly published and approved by the Government and the Master Plan so prepared envisages clearance of slum areas including Goni Khan which has been shown as Bandoq Chawni area in the Master Plan. Master Plan has been duly published

and approved after inviting objections and suggestions from the Public. Therefore, petitioners cannot be heard to say that they have not understood the term 'slum clearance of Bandoq Chawni Area'. He has given details to show as to how many structures exist on a patch of land in which 210 families presently reside. The congestion in the area is enormous and Bandoq Chawni is a slum area which needs to be cleared and developed to enable the people to live in a healthy atmosphere.

21. The public purpose for acquiring the land, as stated already is to be judged by the State Government. The public purpose must be real and genuine and in the garb of public purpose State cannot acquire a property with a view to benefit an individual at the cost of public at large. Public purpose has a nexus with the object which is sought to be achieved. Where the land was needed for plan development of an area, the term was held to be ambiguous because plan development of that area was not defined anywhere. In the present case clearance of slums is provided in the Master Plan which is published after having been prepared by a duly constituted authority. Part of Bandoq Chawni is said to be a slum area which is envisaged to be cleared by the Master Plan. Master Plan cannot be published unless the objections are invited and considered by the authority publishing the same. Therefore, the purpose for which the land or the area is required in the present case cannot be said to be vague or irrelevant in the context of Section 4 of the Land Acquisition Act. It is borne out from the reply that on a piece of land measuring 17 kanals there are 156 structures and 180 shops. These shops are said to be partly in Goni Khan area and partly Maharaj Bazar area. With this description about the houses and structures existing on a small patch of land, it cannot be said that public purpose is not sought to be achieved by acquiring the area for clearance of slums.

22. Notification under Section 4 of the Land Acquisition Act seems to have been published in accordance with law and after following the procedure which is provided for publication of such notification. After publication of the notice under Section 4 as already stated a set procedure is to be followed before the land is finally acquired.

23. Section 5(A) mandates the authority to hear the objections and give a personal hearing to the objector. If the objector abandons the right of personal hearing, that may be a different matter, but the authority is required to afford him an opportunity of being heard in support of his objection. If the right to hearing is denied, the proceedings get vitiated. This principle is recognized by AIR 1976 SC 2095 (Supra). Therefore, it needs to be examined whether compliance with Section 5(A) of the Land Acquisition Act was made by the Collector or not and whether without complying with that section a declaration under Section 6 of the Land Acquisition Act could be made or not.

24. Respondents have stated that reasonable opportunity of being heard was afforded to the petitioners before the report was submitted to the Government but the petitioners did not present themselves at the time of hearing of the objections. This contention does not seem to be correct. The copies of Annexures II and III which are said to have been submitted by few of the affected persons to the Collector are not denied in the counter. This would mean that the petitioners had all along been objecting to the Notification under Section 4 which was issued for purposes of acquiring the land in the area. The first notification was issued in 1982 and the petitioners had been pressing their demand to withdraw the notification. Thereafter second notification was issued on 6-4-1984. In the said notification objections under Section 5 of the Act were also invited and objections to the said notification seem to have been filed on 14-4-1984 through one A A Zargar President of Public of Maharaj Bazar and Traders Federation. After they had filed the objections, petitioners were required to be given personal hearing as envisaged under Section 5(A) of the Land Acquisition Act which was denied to them and the notification under Section 6 of the Land Acquisition Act was issued without following the mandate of Law. A declaration was made under Sections 6 and 7 of the Land Acquisition Act on 12-4-1985.

25. Sections 6 and 7 of the Land Acquisition Act have some import. Section 6 provides that if the Govt. is satisfied on consideration of the report made under Section 5(A)(2) that a particular land is needed for public purposes a declaration is to be made to the effect that the land is required for public purpose. That declaration is to be published in official gazette and is conclusive proof that the

land is needed for public purpose. Section 7 envisages that if the land is declared to be needed for public purpose, the Revenue Minister shall direct the Collector to take order for the acquisition of the land. Then the land is to be marked, measured and planned in terms of Section 8. Then declaration is to be made under Section 9 so on and so forth. But all the proceedings after the publication of notification under Section 4 of the Land Acquisition Act are to be taken only after complying with Section 5(A) of the Land Acquisition Act. It gives twin rights to the interested persons; first they have a right to file objections against Section 4 notification and raise objections that the public purpose for which the land was sought to be acquired was not real and could demand withdrawal of the notification. If they demand withdrawal of the notification under Section 4 of the Land Acquisition Act and raise objection to the public purpose which was sought to be achieved, the Collector is bound to give them personal hearing and if personal hearing is not given to them subsequent proceedings under Sections 6, 7, 8 and 9 cannot be taken and if taken, are rendered useless.

26. From the record of the case we are satisfied that the petitioners were not given personal hearing in support of their objections which they had filed on 14-4-1984 pursuant to second notification dt. 6-4-1984. The first notification and objections thereto seem to have got burnt. Therefore, for the purposes of this case Section 4 notification will be deemed to have been issued on 6-4-1984. By virtue of that notification objections under Section 5(A) of the Land Acquisition Act were invited. Objections were filed within time and thereafter notification under Sections 6 and 7 was issued by the respondents. Between the date of filing of the objections and issuance of notification under Sections 6 and 7 of the Land Acquisition Act there is a stage which was to be surmounted by the respondents. After raising the objections a notice under Section 5(A)(2) was required to be given to the petitioners asking the petitioners that they are afforded an opportunity of being heard either in person or through pleader. The Collector was then to consider the objections, statement of the petitioners and made such further enquiry, if any, as he would think necessary, submit the case to the Government. This has not been done. This omission would render the subsequent proceedings bad. In *Farid Ahmad Abdul Samad v. Municipal Corporation of the City of Ahmedabad*, AIR 1976 SC 2095, Supreme Court has said the following with regard to the mandatory

nature of Section 5(A)(2):

'The heart of Section 5A of the Land Acquisition Act is the hearing of objections and under Sub-section (2) of that section a personal hearing is mandatory provided for, when, therefore, Section 5A of the Land Acquisition Act is applicable under Appendix I of the Bombay Act and there is nothing to show expressly or by necessary implication that the said section or any part of it is excluded under Section 284-N or under any other provision in Chapter XVI as a whole the right to personal hearing under the Bombay Act cannot vanish or be defeated.'

27. As a result of our discussion and on the basis of the law discussed by us we hold that there is no defect in the Notification under Section 4 of the Land Acquisition Act. The public purpose with regard to slum clearance in the Bandoq Chawni area is genuine and real and we cannot say that the area is not required for public purpose. However, while saving the Notification under Section 4 of the Land Acquisition Act, we have noticed serious omissions committed by the respondents with regard to compliance with the mandatory provisions of law. Section 5(A) has not been complied with and the petitioners have been denied the opportunity of being heard which is necessary to be given to them if they object to the acquisition of the land. Petitioners have not obtained their right to be heard. Therefore, notifications under Sections 6 and 7 issued by the respondents without following the mandate of Section 5(A) of the Land Acquisition Act is to be struck down. Petitioners or any other interested person is entitled to be heard and must be provided an opportunity of being heard under Section 5(A)(2) of the Land Acquisition Act.

28. As a result of our discussion we quash the Notification No. :RD-65 of 1985 dt. 12-4-1985 and acquisition proceedings taken pursuant to the aforesaid notification with respect to the properties in question. However, notification under Section 4 of the Land Acquisition Act first issued on 20-12-1982 and subsequently re-issued on 6-4-1984 is held valid. If the respondents choose to pursue the land acquisition proceedings, they are bound to follow the mandate of Section 5(A) of the Land Acquisition Act, and thereafter take further proceedings under the said Act. Without following the procedure laid down in Section 5(A) of the Land Acquisition

Act, the subsequent proceedings with regard to the acquisition proceedings are non-existent.

29. The writ petition succeeds to the extent indicated above and is partly allowed.

30. No costs.

Rizvi, J.

31. I agree.

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