

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 18526 of 2021

Reserved on: December 1, 2021

Delivered on: January 05, 2022

Smt. Prabha Shukla

...Petitioner

Through:- Mr. Udayan Nandan, Advocate

v/s

State of U.P. and others

...Respondents

Through:- Mr. Suresh Singh, Additional Chief Standing
Counsel for respondents no. 1, 3 and 5,
Mr. Pranjal Mehrotra, Advocate for respondents
no. 2 and 4.

**Coram: HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE PIYUSH AGRAWAL, JUDGE**

ORDER

RAJESH BINDAL, C.J.

1. The petitioner has filed the present writ petition praying for quashing of notification dated April 06, 2021 issued under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "2013 Act"), as published in newspaper on April 24, 2021 and notification dated July 16, 2021 issued under Section 19 of the 2013 Act.

2. The learned counsel for the petitioner submitted that the petitioner is owner and in possession of plot no. 293 measuring 0.0688 hectare. The same is being utilized for agricultural purposes. However,

off late, she intended to construct a house for residential purposes, for which pillars have been raised as foundation. For the purpose of acquisition of aforesaid land, notification under Section 11 of 2013 Act was issued on April 06, 2021. The land was sought to be acquired for the purpose of construction of a Railway over-bridge. The total area sought to be acquired was 0.5344 hectare. The petitioner filed objections to the aforesaid acquisition on May 26, 2021. However, without affording opportunity of hearing to the petitioner and also violating the mandate of Section 19(2) of the 2013 Act, notification under Section 19 was issued. Section 15 of the 2013 Act clearly provides that in case any objection is filed to the proposed acquisition of land, the aggrieved parties have to be afforded opportunity of personal hearing. Section 19(2) of the 2013 Act provides that rehabilitation scheme has to be published for the persons, who may be displaced.

3. The learned counsel for the petitioner referred to notification issued under Section 19 of 2013 Act, which mentions that as per the survey carried out, none of the land owner is required to be rehabilitated, whereas the case set up by the petitioner was that number of families will be displaced, hence, rehabilitation scheme was required. The petitioner has family of five persons. Unless the rehabilitation scheme is published, final notification under Section 19 of the 2013 Act for acquisition of the land could not be issued.

4. Further argument raised is that the Collector is not final authority to dispose of the objection. He has to merely send his report to the appropriate Government to take a final decision thereon. However, in the present case, the objections have been decided by Collector himself with no application of mind by appropriate Government. Right of hearing under *pari materia* provision, i.e., Section 5-A of the Land Acquisition Act, 1894 (hereinafter referred to as "1894 Act") has been held to be fundamental right, hence, for violation thereof, the acquisition

proceedings deserves to be quashed. In support of his argument, reliance is placed on **Kamal Trading Private Limited Vs. State of West Bengal and others (2012) 2 SCC 25**, **Usha Stud and Agricultural Farms Private Limited and others Vs. State of Haryana and others (2013) 4 SCC 210** and **Nareshbhai Bhagubhai and others Vs. Union of India and others (2019) 15 SCC 1**.

5. On the other hand, learned counsel appearing for the State submitted that the acquisition is for a total area of 0.5344 hectare of land. As per survey carried out, minimum possible land was acquired for construction of railway over-bridge, which is required to take care of traffic problem on the spot. It is to facilitate the people of the area and is in larger public interest. As should be the normal attitude, the development activities are not opposed by the inhabitants of the area when they are appropriately compensated. This happened in the present case also as none of the other owners objected to the acquisition. It is only the petitioner, who raised objection and the same was considered and with the opinion of the Collector, the entire record was sent to the Government, which finally issued the notification. It shows that there was proper application of mind by the appropriate Government before issuance of the notification under Section 19 of the 2013 Act.

6. He further submitted that it is admitted case of the petitioner herself that the plot in question, which is a small portion of the total land acquired, was merely being used for agricultural purposes. It is proposed to be used for residential purposes. However, there was no house existing thereon. Thus, it is not a case where petitioner or her family members are required to be rehabilitated as they already have a residence. Merely on account of some small discrepancy, if any, in the process of acquisition, where the same is not opposed to by 90% of the land owners, the acquisition proceedings should not be quashed as the entire project, which is being executed in large public interest, will be

put to a halt. He further submitted that award of entire land was announced by the Collector on September 13, 2021 except the land of the petitioner, as there was interim stay granted by this Court. The total cost of the project is about ₹ 38 crore. The project is expected to be completed in March, 2022. About 45% work has already been executed. Any interference by this Court at this stage in the writ petition filed by the petitioner will put the project on hold as a result whereof the entire amount spent on the project will go waste and it will be delayed unnecessarily. It is not the stage where even the alignment can be changed as the land on the site, except small portion for which petitioner has raised dispute, already stands acquired. The over-bridge is connected on both sides with road. Land of the petitioner was also lying vacant except that she claims that certain pillars of foundation had been raised for construction of a house. But the fact is that no one was residing there. The prayer is for dismissal of the writ petition.

7. Learned counsel appearing for respondents no. 2 and 4 submitted that the construction of over-bridge has already started. The pillars on the Karchhana side have already been erected upto the required height till the railway line. However, the side on which the land of the petitioner is located, pillars are yet to be raised.

8. Hon'ble the Supreme Court has time and again opined that projects of public importance should not be halted as the same would be against the larger public interest and the constitutional courts should weigh public interest vis-à-vis private interest, while exercising its discretion. The view could very well be gathered from the judgments of Hon'ble the Supreme Court in **Ramnijklal N. Bhutta and another Vs. State of Maharashtra and others**, reported as AIR 1997 SC 1236, **Pratibha Nema and others Vs. State of M.P. and others**, reported as AIR 2003 SC 3140. The same view has been expressed by Rajasthan High Court's in **Jaipur Metro Rail Corporation Limited Vs. Alok**

Kotahwala and others, reported as AIR 2013 CC 754. Relevant extracts from the aforesaid judgments are reproduced hereunder:

i) **Ramniklal N. Bhutta's case:**

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in Courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on

the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a Civil Suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceeding is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the Courts while dealing with challenges to acquisition proceedings." (sic) (*emphasis supplied*)

ii) **Pratibha Nema's case:**

"38. When no prejudice has been demonstrated nor could be reasonably inferred, it would be unjust and inappropriate to strike down the Notification under Section 4(1) on the basis of a nebulous plea, in exercise of writ jurisdiction under Article 226. Even assuming that there is some ambiguity in particularizing the public purpose and the possibility of doubt cannot be ruled

out, the constitutional Courts in exercise of jurisdiction under Article 226 or 136 should not, as a matter of course, deal a lethal blow to the entire proceedings based on the theoretical or hypothetical grievance of the petitioner. It would be sound exercise of discretion to intervene when a real and substantial grievance is made out, the non-redressal of which would cause prejudice and injustice to the aggrieved party. Vagueness of the public purpose, especially, in a matter like this where it is possible to take two views, is not something which affects the jurisdiction and it would, therefore, be proper to bear in mind the considerations of prejudice and injustice."

iii) **Jaipur Metro Rail Corporation Limited's case:**

"31. With respect to ecological balance, there has to be sustainable development and such projects of immense public importance cannot be halted. It is not the case that requisite permissions from the Central Government and the State Government have not been obtained, thus, objections were flimsy. In other petitions also pertaining to the same Project, this Court has held that such project of immense public importance should not be put to halt. Thus, flimsy and untenable objections were raised, which have been rightly rejected after due application of mind.

X X X X

48. On merits, we find the order of interim stay passed by the single Bench to be untenable, thus, we have no hesitation in setting aside the same. Suffice it to observe that in such cases of public importance of Metro Rail Project, there should not be any interim stay, rather an effort

should be made to decide the matter finally at an early date. Staying the land acquisition proceedings is not appropriate and would be against the larger public interest involved in such projects. Thus, relying upon the decision in the case of Ramniklal N. Bhutta (supra), we hold that in the matter of immense public importance like the present one, the power to grant interim stay under Article 226 of the Constitution should not be exercised in the normal course."

9. In the case in hand, respondents' stand is that 45 per cent work of railway over-bridge is already complete. On one side pillars have been erected whereas on the other side, where the land of the petitioner is situated, the same are yet to be erected. She otherwise owns small portion, i.e., about 10 % of the total acquired land, which at present, is lying vacant, though it is claimed that the petitioner sought to construct a house thereon for residential purposes. From the photographs placed on record it is evident that there exist certain pillars, that too only upto ground level.

10. Once a project of public importance, which is good in larger public interest, is being executed and has been completed about 45%, setting aside of acquisition in a petition filed by one of the land owners owning a small portion of the land, will not be in larger public interest. It is not the stage where alignment of over-bridge can be changed which otherwise could not have been possible as the railway over-bridge will be connecting the existing roads on both the sides. Private interest has to give way to the larger public interest. Even if there are some small discrepancies in the process of acquisition, in our opinion in the facts of the present case, the acquisition does not deserve to be set aside as otherwise the project will be delayed which will cause loss to the State besides suffering to the residents of the area, who may be deprived of using the railway over-bridge on account of delayed completion of the

project. In any case, the petitioner will be duly compensated for the land owned by her.

11. For the reasons mentioned above, we do not find any merit in the present petition. The same is, accordingly, dismissed.

(Piyush Agrawal)
Judge

(Rajesh Bindal)
Chief Justice

Allahabad
January 05, 2022
P. Sri.

Whether the order is speaking : Yes/No
Whether the order is reportable: ^v Yes/No