

THE STATE OF UTTAR PRADESH AND ANR.

v.

KESHAV PRASAD SINGH

JULY 25, 1995

[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.]

Land Acquisition Act, 1894: Sections 4(1), 5-A, 6 and 17(4).

State—Acquisition of land for construction of PWD office—Construction of building and wall for protection of building—Encroachment of land during construction—Suit by owner—Injunction by Civil Court—Direction to remove encroachment and delivery of possession to owner—State instead filing appeal and issuing Notification for disputed land and dispensing enquiry—Exercise of power of eminent domain by State—Held justified in view of the public purpose.

The appellants—State acquired certain lands for construction of PWD office in Azamgarh city. Accordingly, a building and a compound wall to protect the said building was constructed. Subsequently, in a suit filed by the respondent, it was found by the Civil Court that while constructing the building the respondent's land had been encroached upon. Consequently a mandatory injunction was issued to the PWD Department to demolish encroachment and give delivery of possession of the encroached land to the respondent. Instead of so doing, the State filed an appeal and simultaneously exercised its power of eminent domain and issued a Notification under section 4(1) of the Land Acquisition Act, 1894. Further exercising its power under section 17(4) of the Act the State dispensed with the enquiry under Section 5-A.

The respondent filed a writ petition before the High Court which quashed the Notification as well as the declaration on the ground that (i) the power exercised under section 17(1) was not justified since the land was neither waste nor arable land and that, therefore, the Notification dispensing with the enquiry under section 5(A) was illegal; and (ii) a mandatory injunction for demolition of the compound wall having been issued by the Civil Court, the exercise of the power under section 4(1) of the Act was colourable.

A In appeal to this Court, it was contended for the State that the view taken by the High Court was clearly unsustainable because (a) in the circumstances of the case the State was justified in exercising its power of eminent domain and issuing the Notification under Section 4(1) and (b) since the compound wall was already constructed and the mandatory injunction was operating against the appellant for its demolition, the
 B Government was justified in exercising its power under section 17(1) read with section 17(4) for dispensing with the inquiry under Section 5-A.

Allowing the appeal, this Court.

C HELD : 1. The conclusion of the High Court was clearly illegal. When the land in question was needed for a public purpose i.e. as part of public office, the State is entitled to exercise its power of eminent domain and would be justified to acquire the land according to law. Section 4(1) was, therefore, correctly invoked to acquire the land in dispute. It is true that
 D the State had not admitted that its officers had encroached upon the respondent's land and had carried the matter in appeal. The finding of the Civil Court was that the property belongs to the respondent. The factum of the action under the Act implies admission of the title of the respondent to the extent of land found by the civil court to be an encroachment. Though the State chose to file the appeal which was pending, better
 E judgment appears to have prevailed on the State to resort to the power of eminent domain instead of taking a decision on merits from a Court of Law. In view of the fact that the PWD office building was already constructed and a compound wall was needed to make the building safe and secure and construction was already made, which is a public purpose, the
 F exercise of power of eminent domain is perfectly warranted under law. It can neither be said to be colourable exercise of power nor an arbitrary exercise of power. [333-A-C]

G 2. In the facts and circumstances of the case, the Government was justified in exercising its power under section 17(4) invoking urgency clause and dispensing with the enquiry under section 5A. By no stretch of imagination it could be said that there was no public purpose, for which enquiry under section 5-A could be made and decision taken. In that view of the matter, the High Court was clearly in error in allowing the writ petition and it committed a manifest error of law in quashing the notification under
 H section 4(1) and declaration under section 6 of the Act. [333-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1317 of 1978. A

From the Judgment and Order dated 19.7.77 of the Allahabad High Court in W.P. No. 1179 of 1973.

K.S. Chauhan and R.B. Misra for the Appellants. B

Manoj Swarup and Ms. Lalita Kohli for the Respondents.

The following Order of the Court was delivered : C

This appeal by special leave arises from the Judgment of the Division Bench of the Allahabad High Court in Writ Petition No. 1179/73 dated the July 19, 1977. The facts lie in a short compass. The land comprising 205 links situated in plot No. 702 which comprises a total area of 580 links was acquired in the year 1963 for the construction of PWD office building in Sharjuddinpur in Azamgarh city. While making construction, it was indeed, as found by the Civil Court, at a suit of the respondent that the State had encroached upon 140 links of the land in the said plot No. 702 which was subsequently demarcated as plot No. 702/A and described as plot nos. 702/4 (68 links) and 702/5 (72 links). The Civil Court issued a mandatory injunction directing the PWD Department to remove the encroachment. D
The State while carrying the matter in appeal, simultaneously invoked its power of eminent domain and issued notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') which was published on October 26, 1972. The said notification came to be questioned in the High Court in this Writ Petition on two grounds and the High Court found, firstly, that the power exercised under s.17(1) was not justified since the land is neither waste nor arable land and that, therefore, the notification dispensing with the inquiry under s.5(A) was clearly illegal. The Government without admitting that the respondent was the owner and having filed the appeal to the District Judge on the basis of the finding that the appellants had encroached upon the respondent's land and a mandatory injunction for demolition of the compound wall having been issued, the exercise of the power section 4(1) of the Act was colourable. Accordingly, the notification under s.4(1) and the declaration under s.6 came to be quashed. Thus, this appeal by special leave. E
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A It is contended for the State that the view taken by the High Court is clearly unsustainable. When the State found that there is mandatory injunction issued by the Court holding that the respondent is owner of the land and that the construction was made on a land which is not part of the land acquired in 1963, the Government exercised the power of eminent domain and that, therefore, the State is entitled to issue the notification under s.4(1). It is also contended that since the compound wall was already constructed and as mandatory injunction was operating against the appellant for its demolition, the Government was justified to exercise its power under s.17(1) read with s.17(4) dispensing with the inquiry under Section 5A of the Act.

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D Sri Manoj Swarup, the learned counsel appearing for the respondent in his usual vehemence contends that this is a clear case of mala fide and colourable exercise of the power. In view of the fact that the Government had not admitted the right of the respondent and the State had taken a different stand that it was a mistaken identity of the property and since the Civil Court recorded a finding that the respondent is the owner of the land the Government, without surrendering possession or demolition of the compound wall, cannot justify its unlawful action by exercising the power of eminent domain. It cannot issue the notification under s.4(1) to nullify the decree of injunction of the Civil Court. Thus, it would constitute colourable exercise of power and this Court would be reluctant to justify such action under Article 136 to support such high-handed and illegal action on the part of the State. It is also contended that since land is not an arrable land, the exercise of power under s.17(1) read with s.17(4) is clearly illegal.

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G Having considered the respective contentions, we are of the considered view that the conclusion of the High Court was clearly illegal. It is seen that the land acquired was for a public purpose. Admittedly, the same land was acquired in the year 1963 for building a PWD office and after construction compound wall was also constructed to protect the building. As found by the Civil Court, on adducing evidence in a suit, that the Department had encroached into respondent's land which was directed to be demolished and delivery of possession to be given. It is seen that when that land was needed for a public purpose, i.e. as part of public office, the State is entitled to exercise its power of eminent domain and would be

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justified to acquire the land according to law. Section 4(1) was, therefore, correctly invoked to acquire the land in dispute. It is true that the State had not admitted that its officers had encroached upon the respondent's land and had carried the matter in appeal. The finding of the Civil Court was that the property belongs to the respondent. The factum of the action under the Act implies admission of the title of the respondent to the extent of land found by the civil court to be an encroachment. Though the State chose to file the appeal which was pending, better Judgment appears to have prevailed on the State to resort to the power of eminent domain instead of taking a decision on merits from a Court of Law. In view of the fact that the PWD Office building was already constructed and a compound wall was needed to make the building safe and secure and construction was already made, which is a public purpose, the exercise of power of eminent domain is perfectly warranted under law. It can neither be said to be colourable exercise of power nor an arbitrary exercise of power.

The next question is whether the Government would be justified in exercising its power under s.17(4) and dispense with the inquiry under s.5A of the Act. Mandatory injunction issued by the Civil Court to demolish the compound wall and to restitute possession to the respondent had to be complied with. There is thus urgency. The public purpose was obvious as the compound was required to be retained to protect the safety of the office. The object of s.5A enquiry was to show whether there was no public purpose or the land was not suitable or some other lands may be acquired. All these relevant and related facts are redundant due to the facts of the case.

So, on the facts and in the circumstances, the Government was justified in exercising their power under s.17(4) invoking urgency clause and dispense with the inquiry under s.5A. By no stretch of imagination it could be said that there was no public purpose, for which inquiry under s.5A. could be made and decision taken. In that view of the matter, the High Court was clearly in error in allowing the Writ Petition and committed a manifest error of law in quashing the notification under s.4(1) and declaration under s.6 of the Act.

In view of the fact that the matter is pending for a long time, the Land Acquisition Officer is directed to pass an award within six months

A from the date of the receipt of the order of this Court. It is open to the respondent to put forth his claim for compensation according to law and it would be decided by the Land Acquisition Officer according to law. The Appeal is allowed and the W.P. stands dismissed. No costs.

T.N.A.

Appeals allowed