

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2626 OF 2013
(Arising out of SLP(C) No.17809 of 2011)

Gladwin Bella and others ..Appellants

versus

State of Uttarakhand and others ..Respondents

WITH
CIVIL APPEAL NO. 2627 OF 2013
(Arising out of SLP(C) No.23408 of 2011)
WITH
CIVIL APPEAL NO. 2628 OF 2013
(Arising out of SLP(C) No.35765 of 2011)

O R D E R

Leave granted.

These appeals are directed against orders dated 24.08.1998 and 24.02.2011 passed by the Division Benches of the Allahabad High Court whereby the writ petition and the review petition filed by the appellants questioning the acquisition of their land for constructing building and guard room for the Sub Treasury in District Dehradun were dismissed.

By notification dated 21.10.1986 issued under Section 4(1) read with Section 17(1)/(1-A) and (4) of the Land Acquisition Act, 1894 (for short, 'the Act'), the Government of Uttar Pradesh proposed the acquisition of the appellants' land for the public purpose specified hereinabove. The declaration made under Section 6(1) of the Act was published vide notification dated 22.1.1987.

The appellants challenged the acquisition proceedings in Civil. Misc. Writ Petition No.7476/1987 on the grounds that the decision of the State Government to invoke the urgency provisions contained in Section 17 was ex facie arbitrary and illegal and that there was no justification to acquire the land in question because residential building had already been constructed over it and large chunks of vacant land were available for construction of treasury, guard room, etc.

The Division Bench of the High Court relied upon the judgment of this Court in State of U.P. v. Pista Devi and others (1986) 4 SCC 251 and dismissed the writ petition albeit without properly considering the grounds on which the appellants had questioned the acquisition proceedings.

SLP(C) Nos. ___ CC 2466/1999 filed by some of the appellants was withdrawn by their learned counsel by stating that her clients would seek review of the impugned order because their challenge to the legality of the public purpose for which the land was acquired had not been considered by the High Court. Thereafter, the appellants filed Civil Miscellaneous Review Application No.50138/1999 which was dismissed by the High Court vide order dated 24.2.2011 without even

examining the point on which review was sought.

We have heard learned counsel for the parties and perused the record.

At the outset, we may mention that even though the declaration made by the State Government under Section 6(1) of the Act was published on 22.1.1987, possession of the acquired land was not taken by the competent authority till the High Court stayed the appellants' dispossession. This Court also passed interim order dated 31.10.2011 and directed the parties to maintain the status quo.

Learned counsel for the appellants stated that his clients are still in possession of the acquired land. This has not been controverted by learned counsel for the State of Uttarakhand (the acquired land now falls in the new State). Learned counsel also gave out that he does not have instructions in the matter.

The question whether land of the citizens can be acquired by invoking the urgency provisions for residential, institutional and industrial purpose was considered by three Judge Bench of this Court in Narayan Govind Gavate v. State of Maharashtra (1977) 1 SCC 133 and answered the same in negative. The relevant portions of that judgment are reproduced below:

"Now, the purpose of Section 17(4) of the Act is, obviously, not merely to confine action under it to waste and arable land but also to situations in which an inquiry under Section 5-A will serve no useful purpose, or, for some overriding reason, it should be dispensed with. The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 5-A which has to be considered.

All schemes relating to development of industrial and residential areas must be urgent in the context of the country's need for increased production and more residential accommodation. Yet, the very nature of such schemes of development does not appear to demand such emergent action as to eliminate summary enquiries under Section 5-A of the Act. There is no indication whatsoever in the affidavit filed on behalf of the State that the mind of the Commissioner was applied at all to the question whether it was a case necessitating the elimination of the enquiry under Section 5-A of the Act. The recitals in the notifications, on the other hand, indicate that elimination of the enquiry under Section 5-A of the Act was treated as an automatic consequence of the opinion formed on other matters. The recital does not say at all that any opinion was formed on the need to dispense with the enquiry under Section 5-A of the Act. It is certainly a ease in which the recital was at least defective. The burden, therefore, rested upon the State to remove the defect, if possible, by evidence to show that some exceptional circumstances which necessitated the elimination of an enquiry under Section 5-A of the Act and that the mind of the Commissioner was applied to this essential question. It seems to us that the High Court correctly applied the provisions of Section 106 of the Evidence Act to place the burden upon the State to prove those special circumstances, although it also appears to us that the High Court was not quite correct in stating its view in such a manner as to make it appear that some part of the initial burden of the petitioners under Sections 101 and 102 of the Evidence Act had been displaced by the failure of the State to discharge its duty under Section 106 of the Act. The correct way of putting it would have been to say that the failure of the State to produce the evidence of facts especially within the knowledge of its officials, which rested upon it under Section 106 of the Evidence Act, taken together with the attendant facts and circumstances, including the contents of recitals, had enabled the petitioners to discharge their burden under Sections 101 and 102 of the Evidence Act."

The issue was recently considered in *Radhy Shyam v. State of U.P.* (2011) 5 SCC 553. After taking cognizance of large number of precedents, the two-Judge Bench culled out 9 principles of which (iv) to (viii) are extracted below:

"(iv) The property of a citizen cannot be acquired by the State and/or its agencies / instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, can the State invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Sections 5-A(1) and (2) is not at all warranted in such matters."

In *Dev Sharan v. State of Uttar Pradesh* (2011) 4 SCC 769, the Court examined the concept of "public purpose" in the backdrop of the changing scenario and observed:

"Admittedly, the Land Acquisition Act, a preconstitutional legislation of colonial vintage is a drastic law, being expropriatory in nature as it confers on the State a power which affects person's property right. Even though right to property is no longer fundamental and was never a natural right, and is acquired on a concession by the State, it has to be accepted that without right to some property, other rights become illusory. This Court is considering these questions, especially, in the context of some recent trends in land acquisition. This Court is of the opinion that the concept of public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare State.

The concept of "public purpose" cannot remain static for all time to come. The concept, even though sought to be defined under Section 3(f) of the Act, is not capable of any precise definition. The said definition, having suffered several amendments, has assumed the character of an inclusive one.

It must be accepted that in construing "public purpose", a broad and overall view has to be taken and the focus must be on ensuring maximum benefit to the largest number of people. Any attempt by the State to acquire land by promoting a public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people, especially of the common people, defeats the very concept of public purpose. Even though the concept of public purpose was introduced by preconstitutional legislation, its application must be consistent with the constitutional ethos and especially the chapter under fundamental rights and also the directive principles.

In construing the concept of public purpose, the mandate of Article 13 of the Constitution that any preconstitutional law cannot in any way take away or abridge rights conferred under Part III must be kept in mind. By judicial interpretation the contents of these Part III rights are constantly expanded. The meaning of "public purpose" in acquisition of land must be judged on the touchstone of this expanded view of Part III rights. The open-ended nature of our Constitution needs a harmonious reconciliation between various competing principles and the overhanging shadows of socio-economic reality in this country.

Therefore, the concept of public purpose on this broad horizon must also be read into the provisions of emergency power under Section 17 with the consequential dispensation of right of hearing under Section 5-A of the said Act. The courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public purpose can be satisfied by not rendering the common man homeless and by exploring other avenues of acquisition, the court, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice.

While examining these questions of public importance, the courts, especially the higher courts, cannot afford to act as mere umpires. In this context we reiterate the principle laid down by this Court in *Authorised Officer v. S. Naganatha Ayyar* (1979) 3 SCC 466, wherein this Court held:

"1. ... It is true that Judges are constitutional invigilators and statutory interpreters; but they are also responsive and

responsible to Part IV of the Constitution being one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order. The judiciary, in its sphere, shares the revolutionary purpose of the constitutional order, and when called upon to decode social legislation must be animated by a goal-oriented approach. This is part of the dynamics of statutory interpretation in the developing countries so that courts are not converted into rescue shelters for those who seek to defeat agrarian justice by cute transactions of many manifestations now so familiar in the country and illustrated by the several cases under appeal. This caveat has become necessary because the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme."

By applying the ratio of the aforesaid judgments to the facts of these cases, we hold that the acquisition of the appellants' land by invoking Section 17(1)/(1-A) and (4) of the Act was ex facie illegal and unjustified. The construction of building and guard room for the Sub Treasury was not so urgent that it could not wait for few months within which the competent authority could have easily complied with the mandate of Section 5-A, which represents statutory embodiment of the rules of natural justice. By not holding inquiry in terms of that section, the respondents deprived the appellants of their legitimate right to be heard. This is the minimum expected of the public authorities before they take away the property of citizens.

In the result, the appeals are allowed, the impugned orders are set aside and the acquisition of the appellants' land is quashed. However, it is made clear that if the State of Uttarakhand requires the land for any public purpose, then it shall be free to acquire the same in accordance with law.

.....J.
[G.S. SINGHVI]

NEW DELHI;J.
MARCH 18, 2013 [KURIAN JOSEPH]
ITEM NO.47 COURT NO.3 SECTION XI
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).17809/2011
(From the judgement and order dated 24/02/2011 in CMWP No.7476/1987,CMA No.50138/1999 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

GLADWIN BELLA & ORS. Petitioner(s)

VERSUS

STATE OF UTTARAKHAND & ORS. Respondent(s)
(With prayer for interim relief and office report)

WITH
SLP(C) NO.23408 OF 2011
(with appln(s) for amendment of the petition and with prayer for interim relief and office report)
SLP(C) NO.35765 OF 2011 (with office report)

Date: 18/03/2013 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. Shantanu Singh, Adv.
Mr. Naresh Kumar Gaur, Adv.

Mr. K.K. Mohan, Adv.
For Respondent(s) Mr. K.K. Mohan, Adv.

for State of Mr. Prateek Dwivedi, Adv.
Uttarakhand
For State of UP Mr. C.D. Singh, Adv.
Mr. Raman Yadav, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

(Parveen Kr.Chawla)	(Phoolan Wati Arora)	
Court Master	Court Master	

[signed order is placed on the file]