

PETITIONER:
THE STATE OF UTTAR PRADESH & ANR.

Vs.

RESPONDENT:
KESHAV PRASAD SINGH

DATE OF JUDGMENT 25/07/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
PARIPOORNAN, K.S.(J)

CITATION:
1995 AIR 2480 1995 SCC (5) 587
JT 1995 (6) 96 1995 SCALE (4) 783

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the Judgment of the Division Bench of the Allahabad High Court in Writ Petition No.1179/77 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 nos.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. 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. It was also found that since the Civil Court that the appellants have encroached upon the land and issued a mandatory injunction for demolition of the compound wall constructed thereon, the exercise of power under s.4(1) was colourable, since the appellants did not admit that the property belongs to the respondents and had carried the matter in appeal to the District Judge. Accordingly, the notification under s.4(1) and the declaration under s.6 came to be quashed. Thus, this appeal by special leave.

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.

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 respondents 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 arable land, the exercise of power under s.17(1) read with s.17(4) is clearly illegal.

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 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 reconstitute 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 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.