REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6419 OF 2019
(Arising from SLP(C) No. 9811/2018)

Union of India and another ..Appellants

Versus

Mohiuddin Masood and others ..Respondents

J U D G M E N T

M.R. SHAH, J.

Delay condoned. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.04.2017 passed by the High Court of Judicature at Allahabad in Writ Petition No. 2069 of 2010, by which the High Court has allowed the said writ petition and has quashed and set aside the notifications issued under Sections 4 & 6 respectively of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') with respect to the land in question on the ground that the urgency clause was illegally and wrongly invoked, the Union of India and the acquiring

body, i.e., Director General of ITBP have preferred the present appeal.

3. That a request for providing about 75 acres of land for establishing one Battalion Headquarter of ITBP at Kanpur Nagar was made to the Government of Uttar Pradesh by the Director, Police Finance, ITBP as due to increasing Counter Insurgency Operations, Law and order duties of ITBP, VVIP security duties and Disaster Management Operations, it was decided to establish Battalion headquarter of ITBP at Kanpur Nagar, Uttar Pradesh and it was requested to urgently acquire the land by finding out suitable pieces of land. It appears that thereafter on 5.2.2009, the Special Secretary, State of Uttar Pradesh wrote a letter to the District Magistrate, Kanpur Nagar and Lucknow for identifying 72 to 75 acres of land for being provided for establishment of the Battalion headquarter of ITBP.

3.1 That thereafter, notification under Section 4 of the Act came to be issued on 2.9.2009 for urgent acquisition of the land in order to facilitate the accommodation of the troops and for ITBP headquarter. That immediately on issuance of notification under Section 4 of the Act, respondent nos. 1 & 2 herein filed writ petition No. 54836 of 2009 before the Allahabad High Court challenging the Section 4 notification. The aforesaid petition came to be dismissed by the High Court as pre-mature vide order dated 3.11.2009. That thereafter the State

Government issued notification under Section 6 of the Act invoking the urgency clause and invoking Section 17 of the Act, vide notification dated 11.12.2009 and directed the Collector to take possession of the land. That thereafter again and on issuance of notification under Section 6 of the Act on 11.12.2009, respondent nos. 1 & 2 herein filed another writ petition No. 2069 of 2010 before the Allahabad High Court. Before the High Court, number of submissions were made on merits as well as on invoking the urgency clause and dispensing with the procedure under Section 5A of the Act. The said writ petition was opposed by the appellants justifying the invocation of urgency clause. It appears that thereafter the State Government acquired the land in the month of December, 2010 by adjudging the amount of compensation to the tune of Rs.6,33,09,176.41 inclusive of solatium for the land in question. 3.2 That by the impugned judgment and order and following and relying upon the decision of this Court in the case of *Radhy Shyam v. State of U.P., reported in (2011) 5 SCC 553*, the High Court has observed and held that the State Government was not justified in invoking the urgency clause and dispensing with the enquiry under Section 5 A of the Act. The High Court has observed and held that there was no immediate urgency and no facts existed before the State Government for invoking the

power under Section 17(1) and Section 17(4) of the Act and consequently has held the notifications under Section 4 & 6 of the Act respectively as bad. However, taking note of the development of the acquired land and investment of public money for development of acquired land running into crores of rupees, subsequent to the acquisition notifications, after considering and following the decision of this Court in the case of *Sahara India Commercial Corporation Limited v. State of Uttar Pradesh, reported in (2017) 11 SCC 339*, the High Court has observed and held that the notifications under Section 4 & 6 respectively of the Act are bad. The acquiring body should not return the possession of the land in question, however, the High Court has directed that the land owners be paid the compensation under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition & Rehabilitation and Re-Settlement Act, 2013 (hereinafter referred to as the '2013 Act') and compensation to be determined on the basis of the date of the order passed by the High Court as the date of the acquisition notification, i.e., 22.12.2016.

3.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, holding and declaring Sections 4 & 6 notifications with respect to the land in question as bad by holding that the invocation of the urgency clause and the provisions of

Section 17(1) and 17(4) of the Act were bad, the Union of India and another – ITBP have preferred the present appeal.

4. Ms. Madhavi Divan, learned Additional Solicitor General has appeared on behalf of the appellants and Shri Ajit Kumar Sinha, learned Senior Advocate has appeared on behalf of respondent nos. 1 & 2 herein – original writ petitioners.

4.1 Ms. Madhavi Divan, learned Additional Solicitor General has vehemently submitted that in the facts and circumstances of the case and considering the purpose for which the land in question was acquired, the High Court has materially erred in observing and holding that there existed no facts before the State Government for invoking the powers under Section 17(1) and Section 17(4) of the Act.

4.2 It is further submitted by Ms. Madhavi Divan, learned Additional Solicitor General that there was no delay at all in invoking the urgency clause and issuance of the notification under Section 4 of the Act by the State Government invoking the urgency clause.

4.3 It is further submitted by Ms. Madhavi Divan, learned Additional Solicitor General that the High Court has failed to appreciate that the land was urgently required by the appellants, due to increase in Counter Insurgency Operations, Law and order duties of ITBP, VVIP security duties and Disaster Management Operations, there was

urgent need to establish Battalion headquarter of ITBP at Kanpur Nagar. It is submitted that for establishing such Battalion headquarter approximately 72 to 75 acres of land was required and therefore it might have taken some time in identifying the land, preparing the plan and thereafter issuing the notification under Section 4 of the Act. It is submitted that the High Court has held the invocation of the urgency clause bad on the ground that there was much time gap between the proposal by the ITBP and issuance of the notification under Section 4 of the Act. It is submitted that while holding so, the High Court has not properly appreciated the true and correct facts, more particularly the time taken from the proposal till the issuance of the notification under Section 4 of the Act.

4.4 It is further submitted by Ms. Madhavi Divan, learned Additional Solicitor General that the High Court has failed to appreciate the fact that between notifications under Sections 4 & 6 respectively, the time gap was only three months, which clearly indicates that there was an urgency in the matter requiring dispensing with the enquiry under Section 5A of the Act. It is submitted that had the Section 5A compliance not been dispensed with, it would not have been possible to publish Section 6 notification within three months.

4.5 It is further submitted by Ms. Madhavi Divan, learned Additional

Solicitor General that from the very beginning the land was required urgently for the aforesaid public purpose, more particularly for establishment of the Battalion headquarter of ITBP and in the facts and circumstances of the case, there was no delay/inordinate delay in issuance of the notification under Section 4 of the Act. It is submitted that therefore the finding recorded by the High Court that no facts existed for invocation of the urgency clause cannot be sustained as the same is contrary to the material on record.

4.6 It is further submitted by Ms. Madhavi Divan, learned Additional Solicitor General that even the High Court has also wrongly observed in the impugned judgment and order that so far no award has been made by the Special Land Acquisition Officer with reference to the notification under challenge. It is submitted that as such and in fact the adjudgment of the compensation was pronounced after the sanction of the District Magistrate on 27.12.2010 by the Land Acquisition Officer.

4.7 Ms. Madhavi Divan, learned Additional Solicitor General has further submitted that in the facts and circumstances of the case, the decisions relied upon by the learned counsel appearing on behalf of respondent nos. 1 & 2, more particularly the decision of this Court in the case of *Radhy Shyam (supra)* shall not be applicable to the facts of

the case on hand, more particularly with respect to the public purpose for which the land is acquired.

4.8 Making the above submissions and further submitting that on the 95% of the land acquired, by now the development has already taken place and public money to the tune of crores of rupees have been spent, it is prayed to allow the present appeal.

5. The present appeal is vehemently opposed by Shri Ajit Kumar Sinha, learned Senior Advocate on behalf of respondent nos. 1 & 2. Taking us to various dates and events right from the date of proposal by the ITBP till the notification under Section 6 of the Act was issued, it is vehemently submitted by Shri Ajit Kumar Sinha, learned Senior Advocate that in the facts and circumstances of the case, the High Court has rightly observed and held that the State Government was not justified in invoking the urgency clause and dispensing with the enquiry under Section 5A of the Act.

5.1 It is further submitted by Shri Ajit Kumar Sinha, learned Senior Advocate that in fact invoking the urgency clause was not explained and/or justified by the State Government and therefore considering the material on record, the High Court has rightly observed that there was no real and substantive urgency which could justify invoking the urgency clause under Section 17(1) of the Act and excluding the

application of Section 5A of the Act.

5.2 It is further submitted by Shri Ajit Kumar Sinha, learned Senior Advocate that as held by this Court in catena of decisions that enquiry under Section 5A of the Act is a valuable statutory right available to the land owners and unless there are compelling circumstances warranting invocation of the urgency clause under Section 17(1) of the Act, such statutory right cannot be taken away. In support of his submission, learned Senior Advocate appearing on behalf of respondent nos. 1 & 2 herein has heavily relied upon the decisions of this Court in the cases of *Radhy Shyam (supra); Prabhawati v. State of Bihar, reported in (2014) 13 SCC 721; and Sahara India Commercial Corporation Limited (supra).*

5.3 It is further submitted by Shri Ajit Kumar Sinha, learned Senior Advocate that as such in the present case and by passing the impugned judgment and order, the High Court has tried to strike the balance and instead of directing to return the land acquired, the High Court has directed to pay the compensation as per the provisions of the 2013 Act and the compensation to be determined on the basis of the date of order as the date of the acquisition notification, i.e., 22.12.2016.

5.4 It is further submitted by Shri Ajit Kumar Sinha, learned Senior

Advocate that even till date the land owners have not received any compensation of the land acquired. It is submitted therefore that there is a non-compliance of Section 17(4) of the Act.

5.5 Making the above submissions, it is prayed to dismiss the present appeal.

6. We have heard the learned counsel appearing on behalf of the respective parties at length.

6.1 We have gone through and considered in detail the impugned judgment and order passed by the High Court. We have also considered the chronological dates and events leading to the issuance of the notification under Section 4 of the Act and thereafter issuance of the notification under Section 6 of the Act invoking the urgency clause. At the outset, it is required to be noted that by the impugned judgment and order the High Court has held invocation of urgency clause and invocation of Section 17 of the Act as bad by observing that there were no justifiable reasons to invoke the urgency clause and dispensing with the enquiry under Section 5A of the Act. However, considering the chronological list of dates and events and the object and purpose for which the land was sought to be acquired, we are of the opinion that the High Court has materially erred in holding that invocation of the urgency clause was bad. The High Court has failed

to appreciate and consider the fact that there was a time gap of only three months between the notification under Section 4 and notification under Section 6 respectively of the Act.

6.2 Even there was not much delay in considering the request made by the ITBP to acquire the land. Right from the very beginning the ITBP requested to acquire the land urgently as the land was urgently required by the ITBP to establish Battalion headquarter due to increase in Counter Insurgency Operations, Law and order duties of ITBP and Disaster Management Operations. It is required to be noted that for establishing such Battalion headquarter a large chunk of land approximately 72 to 75 acres of land was required. Such a huge land was required to be first identified at suitable places. Therefore, some time is bound to be consumed between the proposal and issuance of the notification under Section 4 of the Act. The said aspect has not at all been considered by the High Court. Therefore, merely that some time had been taken in identifying the land and in issuing actual Section 4 notification, the High Court is not justified in observing that there was no urgency at all and/or there were no grounds to invoke the urgency clause. Therefore, in the facts and circumstances of the case and considering the material on record, we are of the opinion that the High Court has erred in observing and holding that invocation of

the urgency clause was bad. We are more than satisfied that there was a real urgency and therefore the urgency clause and Section 17 of the Act was rightly invoked dispensing with the enquiry under Section 5A of the Act. Therefore, in the facts and circumstances of the case, the decisions of this Court relied upon by the learned Senior Advocate appearing on behalf of respondent nos. 1 & 2, referred to hereinabove, shall not be applicable to the facts of the case on hand, more particularly in the relied upon cases the acquisitions were either for private parties and/or companies and in the present case the acquisition was for establishing ITBP Battalion headquarter.

6.3 It is also required to be noted that on the land in question total admeasuring 28.1398 hectares (19.7548 + 8.3850 hectares = 28.1398 hectares) there is a development on 90 to 95% of the land acquired and 90 to 95% of the land has been put to use by the ITBP. It is also required to be noted that so far as respondent nos. 1 & 2 herein are concerned, out of the total land acquired, they were the owners/tenure holders of plot nos. 2348 area 1.138 hectares, 2353 area 1.2800 hectares and 2354 area 0.2970 hectare only. As observed hereinabove, the total land acquired was 28.1398 hectares and other land owners have not questioned the acquisition. Therefore also, the High Court ought not to have set aside the notifications under

Sections 4 & 6 respectively of the Act which were with respect to the acquisition of large chunk of land admeasuring 28.1398 hectares, which was not under challenge by the other land owners except respondent nos. 1 & 2 herein – original writ petitioners.

6.4 Now so far as the submission on behalf of the original writ petitioners that there is a non-compliance of Section 17(4) of the Act as 80% of the estimated amount of compensation was not deposited is concerned, at this stage, counter affidavit filed by the Tehsildar before the High Court is required to be considered. In the counter affidavit, it has been specifically stated that after the notification under Section 4 of the Act was issued, the ITBP has deposited 10% of estimated compensation amounting to Rs.3026675.00 vide treasury challan dated 17.06.2009, 70% of estimated compensation amounting to Rs.23674225.00 vide treasury challan dated 05.01.2009 and rest of 20% of estimated compensation amounting to Rs.6053350.00 vide treasury challan dated 22.01.2010. In the counter affidavit, it is also stated that notice dated 16.03.2010 was issued to the tenure holders to take 80% of the estimated amount of compensation but they did not come to take the compensation. Therefore, it cannot be said that there is a non-compliance of Section 17(4) of the Act and the tenure holders/land owners were not paid the 80% estimated amount of

compensation as required.

6.5 Considering the aforesaid facts and circumstances of the case and in the peculiar facts and circumstances of the case, we are of the opinion that the High Court is not justified in setting aside the notifications under Sections 4 & 6 respectively of the Act and/or observing and holding that the invocation of Section 17 of the Act and urgency clause was bad.

7. Now so far as submission on behalf of the original writ petitioners that they have not been paid any compensation is concerned, it is required to be noted and as observed hereinabove, in fact, ITBP had deposited the estimated amount of compensation in the year 2009/2010 itself and the land owners/tenure holders were served with the notice to withdraw and/or take 80% of the estimated amount of compensation but they refused to take the compensation. Therefore, thereafter it is not open for the original writ petitioners to make the grievance that they have not been paid any compensation. Still, it will be open to them to withdraw the amount of compensation. At this stage, it is required to be noted that in the year 2010 itself, final award directing adjudgment of the compensation to the tune of Rs.63309176.41 inclusive of solatium was published before that writ petition was filed and compensation was not accepted.

8. In view of the above and for the reasons stated above, the present appeal is allowed. The impugned judgment and order passed by the High Court is hereby quashed and set aside. Consequently, the writ petition filed before the High Court by respondent no. 1 & 2 herein stands dismissed. There shall be no order as to costs.

.....J.
[ARUN MISHRA]

.....J.
[M.R. SHAH]

NEW DELHI;
AUGUST 19, 2019.

.....J.
[B.R. GAVAI]