

PETITIONER:
THE GEN. MANAGER TELE-COMMUNICATION AND ANR. ETC.

Vs.

RESPONDENT:
DR. MADAN MOHAN PRADHAN & ORS. ETC.

DATE OF JUDGMENT 08/11/1995

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

CITATION:
1995 SCC Supl. (4) 268 JT 1995 (8) 193
1995 SCALE (6) 387

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

A notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was published in January, 1973 acquiring Ac.3.589 of land situated in Cuttack for Telecommunication Department for residential quarters of the staff, Telephone exchange, Post office etc. In exercise of the power under Section 17(4) read with 17(1) enquiry under Section 5A was dispensed with. Before the declaration under Section 6 could be published a representation was made by the wife of the respondent No.1 i.e. Dr. Sarojini Pradhan requesting to delete 24 decimals of land for construction of Nursing Home etc. In the meanwhile, Cuttack Development Authority declared the area to be commercial zone. In consequence, the appellant made an application requesting to permit construction upto 90 ft. and rest of the land may be permitted to be released for residential purposes. In the meanwhile, the representation made by Dr. Sarojini was pending declaration under Section 6 was published on June 30, 1975. A notice under Section 9 was served on November 1, 1975, possession of the land was also claimed to have been taken on April 12, 1976 and was handed over to the Union of India. The Land Acquisition Officer made his award on November 2, 1976 and paid the amount to all persons who had accepted the award or those who received under protest and it is said that as regards the amount awarded to Dr. Sarojini Pradhan, it was kept in deposit.

On August 18, 1979 the respondent No.1, since his wife died in the meanwhile, filed W.P. No.1139/79, challenging the validity of the notification under Section 4(1) and Section 6 declaration. The High Court by order dated March 16, 1982 disposed of the writ petition with a direction to the Government to consider the representation of the respondent for exclusion of the land from acquisition. After an elaborate consideration and scrutiny of the necessary material, Union of India rejected the representation on June

3, 1987. Thereafter the respondents filed W.P. No.435 of 1988 challenging the notifications. In the meanwhile the headquarters of the Telecommunication Department was shifted from Cuttack to Bhubaneswar but it was decided that the existing staff would remain at Cuttack. The High Court by the impugned order dated October 31, 1990 quashed the notification under Section 4(1) on the ground that the exercise of the power under Section 17(4) was invalid. Since the declaration was made after the amendment to Section 6 has come into existence, the notification under Section 4(1) was held to be invalid. Thus these appeals by special leave.

The crucial question that arises for consideration is whether the High Court was right and justified in interfering with the acquisition. It is seen that out of the extent of Ac.3.589, the claim of the respondents is only Ac.o.240 dec. In other words, only around 1162 sq. yards. All others had accepted the award, a few of them under protest. It is common knowledge that possession would always be taken under a memo and handing over also would be under a memo. It is a recognized usual practice in all the acquisition proceedings. By operation of Section 17(1) even before award could be made, the Land Acquisition Officer is entitled to take possession of the land. He did so. The time mentioned in Section 9 stood expired by then. Even otherwise, award was made on November 2, 1976. By operation of Section 16 of the Act right, title and interest in the land vested in the Government absolutely free from all encumbrances. Thereby the Government became the absolute owner with effect from April 12, 1976. This Court in the case of Satendra Prasad Jain & Ors. Vs. State of U.P. & Ors. [(1991) 4 SCC 531] had held that once possession has been taken validity of the notification under Section 4(1) and declaration under Section 6 cannot be gone into and Section 11 A does not apply.

It is already seen that the possession having already been taken on April 12, 1976 and vested in the Government free from all encumbrances and many others having accepted the award and some had received the compensation under protest, the High Court was wholly unjustified in interfering with the acquisition. We have seen the plan produced before us which would indicate that the land acquired comprises the establishment of Officers' building and 2000 electronic exchange. Under these circumstances, it would be highly inconvenient to exclude this land from acquisition. The purpose of enquiry under Section 5A is only to show that any other convenient and suitable land would be available other than the land sought to be acquired, or there is no public purpose. This issue would become an academic, once the construction started and was in progress. The ratio in the case of Oxford English School v. A. Hastings Hope reported in [(1995) 5 SCC 206] has no application to the facts of these appeals. In that case, neither the award was made before the amendment act has come into force nor was possession taken. In these circumstances, this Court held that declaration under Section 6 was invalid and direction given by the High Court to conduct enquiry under Section 5A, after three years had expired, is illegal. Section 4(1) also stood lapsed by operation of proviso to Section 6 of the Act. Therefore, the ratio is clearly inapplicable to the facts of these appeals.

In these circumstances, the High Court was wholly unjustified in interfering with the acquisition and quashing the notification and declaration under Section 6 of the Act.

The appeals are allowed. No costs.

JUDIS