

SCINDIA EMPLOYEES UNION
v.
STATE OF MAHARASHTRA AND ORS.

MAY 9, 1996

[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAIK, JJ.]

Land Acquisition Act, 1894 :

Ss. 3(d), 4(1), 5A, 6—Acquisition of land on which a work shop was situated for expansion of Dockyard for defence purposes—Workers' Union challenging Notification under s. 4(1) and declaration published under s. 6 as also the award claiming themselves to be 'person interested'—Held, a person entitled to compensation or by implication bound by award of compensation or excess compensation is an interested person—Petitioner Union is not a person interested—Notice and hearing of it u/s. 5A(2), is not mandatory—Scope of inquiry u/s. 5A is whether the land sought to be acquired is needed for a public purpose and whether the land is suitable for the purpose or is an arable land—Expansion of dockyard for defence purpose is public purpose—The very object of compulsory acquisition is in exercise of the power of eminent domain by the State—So long as public purpose subsists exercise of power of eminent domain cannot be questioned—Publication of declaration u/s. 6 is conclusive evidence of public purpose—Claims for arrears of salary of employees and for their rehabilitation are not germane for disposal of this case.

Words and Phrases : 'Eminent domain', 'person interested' and 'public purpose'—Explained.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 11043 of 1996.

From the Judgment and Order dated 19.3.96 of the Bombay High Court in A. No. 74/91 in W.P. No. 3305/90, 3308/89.

Ms. Indira Jaisingh, Ms. Amita Shenoy and Sanjay Parikh for the Petitioner.

The following Order of the Court was delivered :

A We have heard Ms. Indira Jaisingh, learned senior counsel for the petitioner. Notification under Section 4(1) of the Land Acquisition Act, 1894 (1 of 1894) (for short, the 'Act') was published on May 17, 1988 acquiring land over which the workshop was situated for public purpose, namely for the expansion of dockyard for defence purpose. The petitioner had challenged the validity of the said notification and the declaration published under Section 6 on May 25, 1989 on diverse grounds. Subsequently, the award came to be passed on January 15, 1991 and the same also came to be challenged by the petitioner-Union. The main controversy raised by the petitioner is that they are the 'persons interested' within the meaning of Section 3(d) of the Act and in conducting enquiry under Section 5(A), the Land Acquisition Officer had not given any notice under sub-section (2) of Section 5A. Issuance of notice and hearing of it is mandatory and the failure to comply with the mandatory requirement vitiates the declaration published under Section 6 of the Act. We find no force in the contention.

D The only scope of the enquiry under Section 5A is whether the land sought to be acquired is needed for a public purpose and whether the land is suitable for the purpose or is an arable land. Besides these questions, the *inter se* claim of the employer and the workmen of payment of wages and extent thereof are alien to the enquiry, sub-section (3) of Section 5A makes the scope beyond pale of doubt. If the interested person is entitled to compensation or by implication bound by award of compensation or excess compensation is an interested person. Therefore, the petitioners cannot claim to be persons interested for the purpose of an enquiry under Section 5A.

F Obvious, therefore, the petitioners have contended that the acquisition is not for a public purpose; it is a *mala fide* acquisition and a vague public purpose of defence and so acquisition is not valid in law. Precedents have been copiously cited in the High Court in that behalf. The learned single Judge and the Division Bench elaborately considered them and held that acquisition for defence purpose is a public purpose. *Rodrigue* case to *Tamil Nadu Housing Board* case settled the controversy holding that acquisition for housing development is not a vague purpose. Expansion of dockyard for defence purpose is a public purpose. Publication of declaration under section 6 accords conclusiveness to public purpose. It is for the appropriate Government to take a decision whether a particular land is

needed for a public purpose or not and the Court cannot substitute its opinion on the public purpose to that of the appropriate Government. We wholly agree with the view taken by the High Court in that behalf. As regards person interested this Court dealt with the controversy from *Himalayan Tiles to Neively Lignites Corporation* case and the Constitution Bench decision, per majority. The petitioner, therefore, is not a person interested. Notice and hearing of it under Section 5A(2) is not mandatory.

It is next contended that since the management has gone before the appropriate Government under the Industrial Disputes Act for closure of the workshop and the Government had refused to give such permission, in the absence of such a permission, the acquisition cannot be proceeded with. While the Industrial Disputes Act permits the workshop to be continued in operation, the Act deprives the workmen of that right and, therefore, the petitioner is entitled to be heard in that behalf. We find that the contention is wholly misconceived and the petitioner has chartered out a mistaken course of action. It is true that as a consequence of the acquisition of land, the workshop was likely to be closed. The material circumstance to be considered is whether the State is entitled to acquire the land over which the workshop stands. The very object of compulsory acquisition is in exercise of the power of eminent domain by the State against the wishes or willingness of the owner or person interested in the land. Therefore, so long as the public purpose subsists the exercise of the power of eminent domain cannot be questioned. Publication of declaration under Section 6 is conclusive evidence of public purpose. In view of the finding that it is a question of expansion of dockyard for defence purpose, it is a public purpose. The Government have exercised the power of eminent domain and had got published notification under Section 4(1). After conducting the enquiry under Section 5A, declaration under Section 6 was published which is conclusive evidence of public purpose. The question of their disabilities due to acquisition is collateral to the enquiry under Section 5A. Therefore, there was no need to give notice under Section 5A(2) nor to hear the petitioners.

It is next contended that the petitioners are entitled to the salary and the arrears are getting mounted up. If the proper compensation is not determined and the payment be made, they would stand to lose. We find no force in the contention. The compensation is required to be determined as provided under Section 23(1) of the Act. It is the function of the Land

A Acquisition Officer to determine the compensation. If the person is aggrieved of the compensation so determined, procedure of reference under Section 18 and a further appeal under Section 54 of the Act have been provided for and the aggrieved person is only to pursue the remedies provided under the Act.

B It is then contended that since the petitioner/employees already had the order for recovery of the arrears from the owner of the property, they are interested persons and that, therefore, they should be heard. It is seen that an award has already been made by the Land Acquisition Officer under Section 11. If the owner or the person interested refused to receive the compensation, the procedure as contemplated under Section 31 of the Act requires to be followed. We are informed that the petitioners have approached the Land Acquisition Officer for being impleaded as a party interested for compensation in the award enquiry under Section 11 which request was rejected. If that be so, appropriate remedy is elsewhere or to have the compensation attached and to recover as arrears of revenue. But in an enquiry under Section 5A such a question does not arise.

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E It is then contended that on account of the acquisition, the petitioners have lost their jobs and since the Government of India is acquiring the property for public purpose, the Government have got a corresponding public duty to rehabilitate the workmen in any appropriate industry particularly in Mazgaon Docks Ltd. which also is a public undertaking. They require to be rehabilitated therein. That question is not germane for the disposal of this case. It may be open to the petitioners to pursue the appropriate remedy, if available.

F The special leave petition is dismissed accordingly.

R.P.

Petition dismissed.