
(1979) 08 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jur. Case No. 1772 of 1976

Achhelal Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-08-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : AIR 1980 Patna 49

Hon'ble Judges : Chaudhary Sia Saran Sinha, J;Birendra Prasad Sinha, J

Bench : Division Bench

Advocate : Ugra Singh, Kameshwar Deo and A.H. Motiur Rahman, for the Appellant; Chhatrapati Kumar Sinha and Veena Rani Prasad, for the Respondent

Final Decision : Allowed

Judgement

Ch. Birendra Prasad Sinha, J.—By this application under Articles 226 and 227 of the Constitution of India the petitioners, eleven in number, all residents of village Itahri, P. S. Moffasil, District Monghyr, have challenged Annexure 1 series and 2 and have prayed for issuance of a writ of certiorari quashing the same Annexures 1 to 1 (f) are notices dated 22-7-76 u/s 4 of the Land Acquisition Act hereinafter referred to as the Act for Acquisition of 9.65 acres of land appertaining to Kheera Nos. 1393 to 1395, part of Kheera 1474, 1495 to 1505 and 1816 situate in village Itahri, Thana No. 109, District Monghyr, for rehabilitation of some flood affected families of village Pairu Mandal Tola. The operation of Section 5A of the Act has been dispensed with. Annexure 2 is the gazette notification dated 22-7-76, u/s 6 of the Act, published in the extraordinary issue of the Monghyr District Gazette dated the 24th of July, 1976.

2. From the writ application and the various affidavits counter-affidavits and reply to the counter-affidavits, the following facts emerge. It appears that village Pairu Mandal Tola was eroded toy flood in the month of July, 1975 and the affected families of this Tola were temporarily settled on the flanks of the Monghyr Bhagalpur P. W. D. Road. Quite a larga number of families were living

on the flanks since then and were exposed to the hazards of speeding vehicles and weather. It was found necessary to acquire suitable land for the re-settlement of these families. The necessity for taking recourse to emergency provisions of the Act, it appears, arose because the affected families of Pairu Mandal Tola were precariously stranded on the P. W. D. highway and the land under acquisition was found by the authorities to be most suitable for the purpose.

3. The petitioners state that the villagers of Itahri have been very often subjected to land acquisition proceeding and have been deprived of a considerable area of land. The population of village Itahri is about five thousand and the total area of land about 1300 acres, some of which go under water during the floods. In the past, about 100 acres of land of village Vijaynagar were acquired, out of which 25 acres belonged to the villagers of Itahri. Moreover, the flood affected people of Sonu Mandal Tola, Udaypur Budhwa Diara Tola have also been re- habilitated in up land by the side of the P. W. D. road due to which the villagers of Itahri have already lost hundreds of acres of up and fertile lands. Due to frequent acquisition of lands of this village, the villagers of Itahri feel greatly concerned (vide Annexure 3 which is a report of the Block Development Officer), Petitioners further state that the lands proposed to be acquired form a small strip close to their houses and they have no other land where the growing population of the village can settle in future. During the rainy season when the lands are inundated, this strip of land is the only place where the petitioners keep their cattle. In fact, some of the petitioners have their cattle-sheds on the lands proposed to be acquired. About 100 acres of land in Vijaynagar Tola of village Itahri have been previously acquired out of which 75 acres of land have actually been used for constructing houses for the flood affected people of different villages. Twenty-five acres of land remained vacant when sometime back the Tataa undertook to construct model houses, The flood affected families of village Pairu Mandal Tola could be settled there but they were insisting for the lands proposed to be acquired. The petitioners and other villagers even offered alternative sites suitable for settling the flood affected families of Pairu Mandal Tola and were still prepared to offer 16 acres of land appertaining to Khata No. 211. plot Nos. 1750 and 1751, belonging to Ram-sarup Singh.

4. Shri Ugra Singh appearing on behalf of the petitioners very emphatically contended that the entire land acquisition proceeding was mala fide and must be quashed.

5. This writ application was placed for admission before a Bench of this Court on 6-8-76. It was submitted on behalf of the petitioners that there was open unutilized land near the Tata Colony and the petitioners were prepared to offer their land which was further west of the land proposed to be acquired. The case was adjourned to enable the Government to consider the alternative offer of the petitioners in respect of which they had already made representations to various authorities from time to time. A copy of the order was handed over to Govern

ment Pleader III for communication to the Government. Several adjournments were prayed for on behalf of the State and granted for consideration of this matter. On 3-12-76 when again the case was placed for admission, it was stated on behalf of the State that plots Nos. 1750 and 1751 of Khata No. 211 offered as alternative site for acquisition could not be acquired as the owner Ramsarup Singh did not agree for their acquisition in place of the lands sought to be acquired. At this stage, an affidavit sworn by the said Ramsarup Singh was filed on behalf of the petitioners stating, inter alia, that Ramsarup Singh had never objected to the acquisition of lands of plots Nos. 1750 and 1751 and, in fact, had offered these plots for acquisition instead of the plots sought to be acquired. It was further stated that plots Nos. 1750 and 1751 were available for acquisition on lesser cost. This court directed the Collector to consider the matter within two months and the case was ordered to be placed for admission in the first week of March 1977. After two adjournments, when the case again came up for admission before the Bench on 13-5-77, the learned Advocate General stated that in spite of reminders he had not received instructions from the Government. The application was then finally admitted by this Court for hearing.

6. It appears that the Block Development Officer, Jamalpur, presumably, on representation by the villagers of Itahri, had been asked to enquire about the advisability of acquiring the lands under the proposed acquisition. On 2-4-75, he submitted a report which has been made annexure 3 to this writ application. He stated that this land was very fertile and the villagers keep their cattle thereon during the rainy season. Some of them had also their cattlesheds. Several acres of land belonging to these petitioners had already been acquired in the past for the re-settlement of the flood affected people of other villages. The population of the village was about five thousand and, in fact, the total area of the land in the village was not even sufficient for their purpose. He further stated that if the lands proposed to be acquired were finally acquired, some of the villagers would become landless and poor. On account of the frequent acquisition of then land, the villagers were aggrieved. He recommended that the proposal to acquire these lands should be withdrawn, because if the people of Pairu Mandal Tola were re-settled on these lands, there shall constantly be apprehension of breach of the peace in future. This report does not seem to have been considered by the authorities. On 22-10-75, the Additional Collector, Monghyr, wrote to the Government in the Revenue Department, that the flood-affected people of village Pairu Mandal Tola had expressed their desire and anxiety to be settled on these lands. He recommended for acquisition of sixteen acres of land, 9.65 acres for 193 indigent families and 6.35 acres of land for 134 well-to-do families, at the cost of Rs. 12,000/- per acre. It was further stated that there was no cheaper land in the vicinity.

7. A counter affidavit was filed on behalf of the State on 26-7-77. It was stated therein that before selecting the land in question it was inspected by the Sub-Divisional Officer, Sadar, and two local M. L. A.'s and only after thorough deliberation action u/s 17 of the Act was taken to acquire the land. In respect of

plots Nos. 1750 and 1751, the alternative site given by the petitioners, it was stated that this land did not belong to any of the petitioners and was only 12 acres in area. It was further stated that the lands of plots. Nos. 1750 and 1751 were hilly and situate in a remote jungle area which was not at all suitable for rehabilitation purpose, as the affected families after rehabilitation would be denied all human amenities being far away from habitation. The said land, according to the counter-affidavit, was an old remains of a fort encircled by low lands. It appeared that in order to save the fort ditches were excavated around it. During rainy season the ditches were full of water. It was also stated in the counter-affidavit that after the supplementary affidavit was filed by the petitioners, the Additional Collector, Mon-ghyr, made a spot enquiry of the area and reported that the land proposed to be acquired, and not the lands of plots. Nos. 1750 and 1751, were suitable for rehabilitation. In response to the order passed by this Court before the admission, it appears, the Collector of Monghyr sent a report to the Government on 21st of July, 1977, on the basis of the enquiry held by the Additional Collector. That report has been annexed as Annexure A to the counter-affidavit. It was stated in the said report that plots Nos. 1750 and 1751 were not suitable for rehabilitation purpose and the lands proposed to be acquired were most suitable.

8. On 21-9-77, the petitioners filed a reply to the counter-affidavit of the State. In paragraph 11 of the writ petition it had been stated that there were only 161 families in Pairu Mandal Tola and not 327 families as stated on behalf of the State. This version was denied in the counter-affidavit and it was asserted that there were 327 families in Pairu Mandal Tola. In their reply to the counter-affidavit, the petitioners annexed the voter's list of Pairu Mandal Tola prepared in the year 1975. They have asserted that the figure 327 is a cooked up figure for the purpose of acquiring 16 acres of land including 9.65 acres proposed to be acquired in the present proceeding. The voter's list is marked Annexure 6 and shows that the number of houses in Pairu Mandal Tola was 137. There is nothing to indicate that more than one family resided in one house. This was not controverted on behalf of the State and learned counsel appearing for the State in face of this voter's list, did not place any material before us to show that there were more than 137 families in Pairu Mandal Tola. It appears from the various reports that each family was to be allotted five decimals of land for settlement. It has been asserted in paragraph seven of the reply to the counter-affidavit that at least 100 families could be rehabilitated in the five acres of land already been settled in the colony. Thus, leaving only 34 families for which the land was required. The petitioners state that for this remaining 34 families a smaller area of land could be acquired near about Vijay-nagar Colony. Some of the Revenue authorities including the Additional Collector, who happened to be a member of the Scheduled Caste, wanted to harass the petitioners belonging to the upper castes and, therefore, were out to deprive the petitioners of their valuable land and the future possibility of constructing houses for their expanding families. In this respect the petitioners brought on record a report of the Circle Inspector and

the Karmachari which are marked as Annexures 7 and 7 (a) to the reply to the counter-affidavit. This was in pursuance of the order passed by this Court on 3-12-76. Annexure 7 is a letter dated 20-4-77 by the Anchal Adhikari forwarding the inspection report of the Karmachari. Annexure 7 (a) is the report of the Karmachari dated 13-3-77 in which it was stated, inter alia, that the alternative site belonging to Ramswarup Singh was an up land and there was no jungle over it. It was further stated that it was free from the ravages of flood and was quite fit for the purpose of rehabilitation. The report further states that the land proposed to be acquired in village Itahri was sometimes inundated by water during the rainy season but the alternative site was never inundated by flood water. Ram-swarup Singh, who was the jamabandi raiyat of his land, had absolutely no objection to the acquisition of this land. This report, unfortunately, does not seem to have been considered by the Collector while writing to the Government on 21-7-77 (vide Annexure A) and asking for acquisition of the land in question in village Itahri. It would further appear that the petitioners represented the matter also before the Government and one Shri M. P. Singh, Additional Secretary in the Directorate of Land Acquisition, was directed to visit the place and report to the Government before the writ petition was taken up for hearing. On 5-8-77, Shri M. P. Singh visited the place along with the Additional Collector and some other concerned officers in the presence of the villagers of village Itahri and those of village Pairu Mandal Tola. He found that some land of village Itahri had been acquired in the past and about four or five acres of land was still vacant in village Vijaynagar Tola. As regards plots Nos, 1750 and 1751, the alternative site, he found that it was an up land and houses could be constructed over it but it was not correct to say that during the rainy season there was water-logging and people could not go out. He had inspected the place when it had sufficiently rained and had found that there was no ditch in the west. South of this land was the railway line and there was a strip of low land 100 ft. in length and if a katcha bundh was constructed, there would be no difficulty in going to and coming out of the village. He also found that if sixteen acres of land proposed to be acquired were acquired, the condition of the villagers of Itahri will be adversely affected. He also talked to the villagers of Pairu Mandal Tola, who insisted for the land under acquisition because, according to them, it was more suitable for them. It is stated by Shri Singh in his notes that there was no doubt that the land proposed to be acquired was more suitable for the flood affected people of Pairu Mandal Tola in comparison to plots Nos. 1750 and 1751, but it could not be said that plots Nos, 1750 and 1751 were not fit for rehabilitation. It was only a question of comparative convenience. He, ultimately, recommended that some persons could be settled in the four or five acres of vacant land in Vijaynagar Tola and an equal area should be released from the proposed acquisition. The proposal was approved by the Revenue Minister on 25-8-77. The petitioner filed a supplementary affidavit on 4-1-79 and stated that they were ready to construct a road or bundh on the 100 ft. long strip of land near the alternative site at their own costs. It may well be stated here that the alternative site is situate near the railway line and at a short distance from the railway

station Bariarpur in the east and Ratan-pur railway station on the west. The writ petition came up for hearing before us on 9-5-79. On 11-5-79, in view of the proposal of the Government contained in Annexure 8, we directed the learned Government Pleader IV to furnish us with the following informations on affidavit :--

(a) What steps were taken by the Government for implementation of the order contained in Annexure 8 for excluding five acres of land from acquisition, and

(b) What decision the Government had finally taken with regard to the offer of the petitioners for an alternative site for acquisition.

Although the case was fixed up again for hearing on 16-5-79, it could not be taken up on that date and the State filed an affidavit only on 5-7-79, It was stated, inter alia, that the proposal for land acquisition for re-settlement had not yet been notified nor any step taken in that direction and as such the question of release of five acres of land did not arise. It was further stated that the Minister's order for the release was not made in respect of the land meant to be acquired for re-settling the indigents. As such the question of releasing any land in accordance with the Hon'ble Minister's proposal did not arise. In all 192 indigent families had to be re-settled and 9.65 acres of land was required. That there was no alternative site for the indigents suitable from the point of view of the Government or from the point of view of the poor people "who have considered and expressed their preference for the proposed site". It was further stated that the alternative site suggested by the petitioners was most unsuitable for human habitation inasmuch as the area comprises "hilly lands with a number of shrubs and trees on them". In reply to the said counter-affidavit, the petitioners have stated that in fact 137 families only as per the voter's list are to be re-settled, who could be rehabilitated in the five acres of vacant land in Vijaynagar Tola. It is further stated that the statements made in the counter-affidavit are contrary to the reports contained in Annexures 7 (a) and 8 and that the Government had sur-rendered its decision to the dictates of the residents of Pairu Mandal Tola. It has been further stated that the alternative site will be fifty per cent cheaper and, according to the Government's standing orders and directions, the cost involved in the acquisition proceeding should be the minimum.

9. The Government in the Revenue Department, in a circular dated 23rd January, 1959 (Annexure 16), had emphasised that efforts should be made to avoid lands of small holders having not more than 25 acres in all and also to select the cheapest land as far as possible for the purpose of acquisition. In another earlier circular, dated 17th September, 1958, it was stated that the requiring authorities should make sure that the poor people are not harassed. Besides, the human aspect should be taken into consideration and as far as possible the acquisition should not result in deprivation and thus frustrate the very object of acquisition. The requiring authorities must adopt the right attitude of justice and generosity which can be achieved by the proper selection of land. The Board of Revenue issued some executive instruction for the purposes of land acquisition (as

contained in Bihar Land Acquisition Manual, (1952) at page 53). In paragraph five thereof it is stated:

"It is the duty of the Collector of the district to see that the interest of the Government, of the public and of private individuals are duly considered and that the land to be acquired is so selected as to cost the minimum of expenditure, annoyance and loss compatible with the attainment of the object for which the land is required."

10. I have taken pains to state in some greater details the facts and circumstances connected with the acquisition proceeding in the present case. The object of law is to empower the Government to acquire lands for public purposes. Whenever there shall be an acquisition of a land it will naturally annoy the persons whose lands are acquired and put them to some amount of inconvenience. It is for that reason that the Government from time to time appears to have reminded its officers to cause the least of annoyance to the persons affected. Many a time, as in this case also, the compensation has to be paid by the Government and for that reason the instructions provided that cheaper lands should be acquired. Land acquisition proceedings are never meant to be a weapon in the hands of the executive authorities to wield it according to their whims and caprices. It is never meant to result in deprivation of the land-holders of their properties and putting them and causing them more injuries than it is absolutely necessary. A balance has to be struck between the injury and inconvenience that may be caused to the land holders due to acquisition of the land and; the good that it may do to those to whom the land may be re-settled. From the narrative of the facts of the case given above, it is clear that a substantial area of the land of village Itahri has already been acquired in the past for re-settlement with the people of other villages and that they have not much land left for settlement of their expending families. In very few cases it will be found that the villagers have themselves offered an alternative site and have further offered to construct a road 100 ft. long for enabling the settlees going out of and coming into the village as in the present case. The attitude of some of the authorities appears to be vindictive and guided by extraneous considerations. That appears to be the reason why in spite of the reports from some of the subordinate officers as well as the notes of the Additional Secretary (contained in Annexure 8) and the decision of the Government to exclude at least five acres from acquisition, the authorities at the lower level have been insisting on the acquisition of the land in question. It may not be necessary always to find out the ill-will and grudge of a particular officer to prove the mala fides; if the authorities are found acting otherwise than in accordance with law, the act will be mala fide. Even according to the report of the officers, majority of the families could be settled in the five acres of vacant land of village Vijaynagar Tola. It is not understandable why those lands are kept vacant and people are not settled there when a colony has already developed in the vicinity. A particular land cannot be acquired only because the families to be settled insist on being settled on that land. The Government has no doubt a duty and an obligation to

rehabilitate families who have been uprooted from, or have lost their hearth and home and who are in distress, but it never means that the Government must be dictated by such persons in the matter of acquisition or that the persons whose lands are required are, in the alternative made beggars. The beggars are no choosers. The alternative site proposed in the present case even according to the reports of the officers concerned, is a good site and the Government can very well settle the uprooted families over there. It is surprising that even after this Court's direction to consider the suitability of the alternative site, and the officers' reports finding it suitable the authorities have been maintaining a rigid attitude and insisting for the acquisition of the land in question. It is not their business or scope to suggest which lands should be acquired and which lands should not be acquired. But from the facts and circumstances of this case, it is apparent that the authorities have thrown to the winds all the Government orders and circulars in this regard and have even come to this Court with incorrect affidavits. The petitioners have shown that there are a total number of 137 families according to the voter's list but the State is insisting that there are 327 families, without any basis. The large number of affidavits filed on behalf of the State including the one dated 5-7-79 are also not consistent with the report of the Additional Secretary to the Government (contained in Annexure 8). One simply wonders why the State has been adopting such an attitude. The reasons, if I may say so, are extraneous to the object to be achieved by the acquisition and not far to seek. I have tried to consider the various allegations in this regard and they are, in my opinion, sufficient to prove malice on the part of the officials. Considered separately, they may not lead to an inference of mala fide, but when all the allegations are taken together, then there is no option but to hold that the acts of the respondents smack of malice.

11. Shri Ugra Singh further contended that the acquisition was not for a public purpose and that recourse to Section 17(4) of the Act is illegal as there was no urgency. It has been found above that there were only 137 families in Pairu Mandal Tola. The respondents have not been able to establish that there were 327 families in Pairu Mandal Tola as stated by them. The assertion in this regard of the petitioners, based on a public document prepared under the Representation of the People Act, 1950, viz., the voter's list, must be accepted. Acquisition of land for the purposes of rehabilitating the uprooted families by itself is nothing but a public purpose. In view, however, of my findings above on the first question that the proceedings have been initiated mala fide as also in view of the fact that the figure of the families sought to be rehabilitated has been exaggerated, it is difficult for me to hold that the acquisition in the present case is for public purposes. There can be no reason to deny the need of rehabilitating the uprooted families but the insistence on the part of the Government officials to acquire a particular land at the dictates of the families to be rehabilitated, and not to go in for an almost equally suitable land offered by the villagers as an alternative site, indicates that the action of the officers concerned with the acquisition is a colourable exercise of power and cannot be said to be in the

interest of public. In such a situation, it must be held that the land acquisition proceedings in the present case are not bona fide and for public purposes.

12. The result is that this application succeeds and Annexures 1 series and 2 are quashed. Hearing fee Rs. 500/-.

13. However, in the facts and circumstances of this case and the need to rehabilitate the uprooted families of Pairu Mandal Tola, I must observe that it shall be open to the Government to acquire the alternative site offered by the villagers of Itahri themselves, appertaining to plots Nos. 1750 and 1751, belonging to Ramswarup Singh.

Sia Saran Sinha, J.

14. I agree.