

(2007) 08 GAU CK 0004
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 345 0/2006

Anil Plantation (P.) Ltd.

APPELLANT

Vs

State of Tripura and Ors.

RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 17, 5A, 5A

Citation : (2008) 2 GLR 760

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : D.B.Sengupta, D.Dutta, Advocates appearing for Parties

Judgement

1. The challenge made in this writ petition is the land acquisition proceeding initiated and completed in respect of the land belonging to the petitioner on ground of procedural irregularity contrary to the provisions of the Land Acquisition Act, 1894

2. The petitioner is a private limited company incorporated under the provisions of the Indian Companies Act, 1956. It is the owner of the Tea Industry called Harishnagar Tea Estate which is carrying on the business of tea plantation, manufacturing and selling of finished products. The Tea Estate is comprised of about 950 acrs of land. The petitioner company received the Annexure1 special notice under Clauses (3 and 4) of Section 9 of the Act notifying that 5.06 acrs of land are about to be taken over by Government for establishment of Camp for Bypass under L.A. Act, 1894 in accordance with a declaration dated 13.6.2006 and published in the newspapers on 18.6.2006. The petitioner was asked to appear personally or by agent before the issuing authority in case of having any interest in the land. The date was fixed as 8.8.2006 asking the petitioner to state the nature of such interest in the land supported by necessary documents and particulars of claim and the amount of compensation, it would like to prefer and also objections if any to the measurement made under section 8 of the Act.

3. The Manager of the Tea Estate by his Annexure2 letter addressed to the Land Acquisition Collector intimated about purported nonreceipt of notice or intimation prior to issuance of the aforesaid notice. In the letter the Manager also expressed ignorance about the proposed acquisition of the land. A request was made to furnish the copies of the notifications and declarations under sections 4 and 6 of the Act.

4. According to the petitioner, in response to the said letter dated 31.7.2006 the Land Acquisition Collector supplied the Manager a copy of the notification dated 13.6.2006 under section 4 of the Act. From the notification, the said Manager came to know that the land was sought to be acquired at the instance of the pro forma respondent. It was also revealed from the notification that section 17 of the Act has been invoked by the Government of Tripura to take over the land on urgent need. According to the petitioner, the Manager of the Tea Estate upon further enquiry also came to know that the demarcation of the land in question was made without, however, any knowledge of the said Manager. The Manager of the Tea Estate by his letter dated 7.8.2006 addressed to the pro forma respondent requested for acquiring alternative plot of land as the land in question is very important from the view point of overall interest of the Tea Estate.

5. On 7.8.2006, a request was made on behalf of the petitioner for adjourning the hearing of the matter and accordingly, the matter was adjourned to 25.8.2006. According to the petitioner, on 9.8.2006, an officer of the requiring department, i.e., the pro forma respondent visited the garden and he was taken to 4 alternative sites, seeing which, the officer purportedly expressed his opinion that at least three sites are suitable for the purpose. By letter dated 20.8.2006, the petitioner requested the L.A. Collector to draw up fresh proceeding taking into account the alternative sites and for withdrawal of the proceeding already initiated in respect of the land in question. Similar letter was issued on 20.8.2006. However, by Annexure8 letter dated 22.8.2006, the pro forma respondent expressed his inability to accept the alternative sites.

6. According to the petitioner, the proceeding initiated towards acquiring the land is wholly arbitrary and illegal. In support of such plea it has been urged that the procedure as envisaged under the relevant provisions of the Act has not been followed. It is the case of the petitioner that there was no proper publication of the notices. In this connection it has been stated that the newspaper in which, the notifications were published having had no wide publication, particularly in the locality in question, such publication is no publication as envisaged under the provisions of the Act. It has also been contended that the notification under section 4 of the Act has not been published in the official gazette. Further ground urged is that the invocation of the emergency provision under section 17 of the Act was unwarranted and the procedure envisaged having not been complied with, entire action on the part of the respondents is liable to be interfered with.

7. The respondent Nos. 1 and 2 and the respondent No. 3 have filed individual

counter affidavits to which the petitioner has also submitted rejoinder affidavit. In the affidavits, the respondents have denied the contentions raised in the writ petition. It has been stated that on the basis of the requisition made by the GREF "for establishment of Camp for Bypass" under Bishalgarh SubDivision, West Tripura, the L.A. Collector considered the proposal and prepared the land plane showing proposed land map of the boundary of the land indicating plot Nos. with description schedule of boundaries. Thereafter the matter was referred to the Government of Tripura in the Revenue Department for approval. The Revenue Department upon examination of the matter and being satisfied issued the notification under section 4 of the Act on 13.6.2006.

8. In the affidavit, it has further been stated that the Revenue Department being satisfied to the proposal and the materials on records invoked the urgency clause in section 17 of the Act. It has been contended that the subjective satisfaction of the Government of Tripura towards invocation of the urgency clause cannot be put to objective test as has been claimed by the petitioner. The respondents have annexed the copies of the notification dated 18.3.2006 and 18.6.2006 issued under sections 4 and 6 of the Act respectively as was published in the newspaper called "Ganadoof and "Vivek" and "Manas" and "Jagaran" respectively. It has further been stated that both the notifications were pasted in the notice board of the jurisdictional office namely Vikramnagar Tahashil Cachari for wide publication to the local people. Similarly notification under section 9 of the Act was issued and was also displayed.

9. The respondents have annexed the copies of the notifications as well as the newspaper publications to their counter affidavits and it has also been stated that there was publication of the notifications in the official gazette. It has also been stated that due procedure was followed following the provisions of the Act. A categorical statement has been made about publication of the notices under section 4 and 6 of the Act in the official gazette. Thus, in a nutshell, it is the case of the respondents that the appropriate authority being satisfied with the emergency nature of the matter, has acquired the land and that the public purpose must prevail over the private interest.

10. In the affidavit filed by the respondent No. 3 it has been stated that the land has been acquired for construction of Agartala Sabroon road (Agartala Bypass) in double lane specification for the development of the State of Tripura and in the interest of the Nation. The affidavit indicates that an amount of Rs. 65,00,000 has been sanctioned and the same has been deposited with the L.A. Collector. It has also been stated that the other sites indicated by the petitioner are not at all suitable for the purpose. In the rejoinder affidavit filed by the petitioner against the affidavit in opposition of the respondent Nos. 1 and 2, the pleas raised in the writ petition have been reiterated.

11. Mr. D.B. Sengupta, learned senior counsel assisted by Mr. D. Dutta, learned counsel for the petitioner in his elaborate submissions supported by case laws has also taken me to the grounds urged in the writ petition. His main thrust

of arguments is the purported procedural irregularity in the entire proceeding. On the other hand, Mr. T.D. Majumdar, learned State Counsel referring to the stand in the affidavit in opposition has submitted that since the land is required for public purpose of emergent nature and the due procedure as envisaged under the Act has been followed, the writ court exercising its power of judicial review under article 226 of the Constitution of India will not sit on appeal to judge the requirement of the authorities. Mr. Majumdar, has also placed reliance on certain decisions.

12. The decisions on which, Mr. Sengupta, learned senior counsel for the petitioner has placed reliance are as follows :

State of Punjab v. Gurdial Singh & Ors., AIR 1980 SC 319 ; Madhya Pradesh Housing Board v. Mohd. Shaf & Ors., (1992) 2 SCC 168; Khub Chand & Ors. v. State of Rajasthan & Ors., AIR 1967 SC 1074 ; State of Mysore v. Abdul Razak Sahib, AIR 1973 SC 2361; The Collector (Dist. Magistrate) Allahabad & Anr. v. Raja Ram Jaiswal, AIR 1985 SC 1622 ; Lakxmi Devi v. State of Orissa & Ors., AIR 1990 Orissa 196; Narayan Govind Gavate v. State of Maharashtra & Ors., AIR 1977 SC 183; Union of India & Ors. v. Mukesh Hans Etc., AIR 2004 SC 4307; Jai Gurudev Dharam Pracharak Sangh & Ors. v. State of U.P. & Ors., AIR 1985 All 158; Bemi Employees House Building Cooperative Society Ltd. v. State of Karnataka & Ors., (2005) 9 SCC 248.

13. Mr. T.D. Majumdar, learned State Counsel has placed reliance on the following decisions :

New Riviera Coop. Housing Society & Ors. v. Special Land Acquisition Officer & Ors., (1996) 1 SCC 731; Chameli Singh & Ors. v. State of U.P., (1996) 2 SCC 549; Union of India v. Praveen Gupta & Ors., (1997) 9 SCC 78 ; First Land Acquisition Collector & Ors. v. Nirodhi Prakash Gangoli & Anr., (2002) 4 SCC 160; Hindustan Petroleum Corpn. Ltd. v. Dariaus Shapur Chenai & Ors., (2005) 7 SCC 627.

14. The decisions on which, learned counsel for the petitioner has placed reliance are to buttress the arguments that the respondents proceeded with the matter in gross violation of the provisions under the Act and that the procedure envisaged under section 17 of the Act is not a mere formality. In some of the decisions, when it was found that there was total nonapplication of mind, the acquisition proceedings were interfered with. Similarly, in some cases, it was noticed that there was violation of article 14 of the Constitution of India towards exercising the discretionary power. On the other hand, the decisions on which, Mr. Majumdar, learned State Counsel has placed reliance are all to emphasis that the appropriate authority is the best judge to act in the particular manner and in absence of any arbitrary exercise of power and violation of the provisions of the Act, the writ court would be reluctant to interfere with the acquisition proceeding.

15. The petitioner has questioned the validity of acquisition by the State exercising its power of eminent domain. It is the case of the petitioner that the

land in question is very important for the Tea Estate and the respondents could have acquired the alternative sites indicated by it. This court cannot circumscribe the State's power of eminent domain even if a person whose land is being acquired compulsorily for the public purpose is rendered shelter less. If that contention is given credence and for that matter the contention of the petitioner that the State could have acquired the land alternatively provided, no land can be acquired under the Act for any public purpose since in all such cases the owner/interested person would be deprived of his property. It will have to be born in mind that he is deprived of it according to law.

16. It is settled law that the opinion of urgency formed by the appropriate Government to take immediate possession, is a subjective conclusion based on the material before it and it is entitled to grant weight unless it is vitiated by mala fides or colourable exercise of power. There is nothing to show that the invocation of urgency clause under section 17 dispensing with enquiry under section 5A of the Act is arbitrary or is unwarranted. In *Chameli Singh (supra)*, the Apex Court overlooked the delay on the part of the officers to finalize and publish the pre and post notifications, as the facts were present before the Government when it invoked the urgency clause. The State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield to the larger public purpose.

17. In *Darius Shapur Chenai and Praueen Gupta (supra*)*, the Apex Court observed that, the notification containing declaration need not contain reasons. It is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the materials available on record. Therefore, as has been held by the Apex Court in the said decision, there is no need to pass any reasoned order to reach the conclusion that there is urgency towards exercising the power under section 17 of the Act.

18. In *Nirodhi Prakash Gangoli (supra)*, the Apex Court observed that so long as the purpose of acquisition and urgency to acquire continues to exist, exercise of power under section 17 of the Act cannot be held to be mala fide. Any delay on the part of the Government subsequent to its decision to dispense with enquiry under section 5A by exercising power under section 17 would not invalidate the decision itself. In that case although the notification under section 4 and 6 had earlier been quashed twice by the High Court, the Apex Court held that exercise of power under section 17 cannot be said to be illegal or mala fide.

19. In the instant case, while emphasizing on ground of procedural irregularity in the acquisition proceeding, learned counsel for the petitioner also contended that the notifications were not published in the official gazette. Although, such contention has been denied in the affidavit in opposition stating that the notifications were duly published in the official gazette, but the copies thereof having not been enclosed, learned State Counsel was requested to produce the

same. Accordingly, the learned State Counsel has produced the copies of the notification dated 13.3.2006 and 13.6.2006 as published in the official gazette (Tripura Gazette). Thus, this ground so vehemently argued by the learned counsel for the petitioner falls through.

20. Further grounds urged in the writ petition are that there were no proper newspaper publications inasmuch as the newspaper in which the notices were published does not have wide publication, more particularly in the locality in question. Another ground urged is that the interested parties were not given intimation by due publication of the notice in the jurisdictional office. Both the grounds are not sustainable. The newspaper publications have been indicated in the counter affidavit and copies thereof have also been annexed to the counter affidavit. The newspapers may not be to the liking of the petitioner, but once it is established that the procedure of publication of the notices in the local newspaper was duly followed, such contention of the petitioner cannot be accepted. It is not the case of the petitioner that the said daily newspapers do not have any circulation.

21. In the counter affidavit, it has been clearly stated that the requisite notice was pasted in the notice board of the local Tahashil Cachari, to which there is no denial on the part of the petitioner. However, in the rejoinder affidavit, it has been contended that the said office is located at a distance of 5 kilometers from, the locality of the land. The distance of the office from the locality of the land cannot form the basis of the argument that there was no publication of the notice in the jurisdictional office. The petitioner cannot have the luxury of having the jurisdictional office nearer to the land and force the respondents to establish the same nearer to its land. Thus, this ground also falls through.

22. In the notifications, it has been clearly stated that due to the emergent nature of acquisition, section 17 of the Act is applicable and that the provision of section 5A will not be applicable to the case. Due satisfaction of the competent authority having been recorded in the notifications, the subjective satisfaction arrived at by the competent authority cannot be put to challenge in absence of any plea of mala fide exercise and/or colourable exercise of power. The plea of the petitioner that the land in question is most essential for the Tea Estate and that the alternative plots of land offered by it ought to have been considered by the respondents is wellanswered by the decisions of the Apex Court referred to above.

23. For all the foregoing reasons, I am of the considered opinion that the writ petition is devoid of any merit and merits dismissal, which I accordingly do. The interim order passed in C.M. Application No. 453/2006 is vacated.

24. Writ petition is dismissed, without, however, any order as to costs.