

(2014) 03 PAT CK 0076

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12509 of 2013

Anju Devi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Citation : (2014) 3 BLJud 50

Hon'ble Judges : Mr. Navaniti Prasad Singh, J.

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Mr. Navaniti Prasad Singh, J.—Supplementary counter affidavit, as directed by the Court has been filed by the State. Shri Raj Kumar, learned counsel for the petitioner submits that in view of the averment made in the counter affidavit and the supplementary counter affidavit, petitioners do not seek time nor is there any necessity to file any rejoinder. With consent of both the parties, this writ petition has been heard for its disposal at this stage itself.

2. Petitioners are agriculturists and hold lands at Village - Karhaya Tole, PS - Rajnagar, District - Madhubani. By this writ petition, they challenge the land acquisition proceedings that were initiated for acquiring their entire lands for establishment of Headquarters of the 35th Batalion, Seema Suraksha Bal (SSB), Rajnagar. Petitioners assert that they are unaware of any notification issued under Section 4 of the Land Acquisition Act. They became aware of the proceedings only when Section 6 notifications were issued from which also they learnt that surreptitiously, the proceedings were taken under emergent process without complying with Section 5A of the Land Acquisition Act. It is stated that the petitioners are virtually marginal farmers, none of them having land more than 10 decimals. They are all to be uprooted with no rehabilitation insight. They all would be rendered landless, roofless and jobless with paltry amount of compensation.

3. First, a counter affidavit was filed by the State. In this counter affidavit, it was categorically stated that the Government proposed to withdraw from land acquisition proceedings and denotify the lands under Section 48. Recommendations had been made in this regard and possession had not been taken. Upon further orders of this Court, a supplementary counter affidavit has been filed which is revealing to some extent. The first thing to be noticed is there was no discussion between the requisitioning authority and the State Government or the district authorities as to availability of land for acquisition. Straightway, a requisition was made by SSB for a particular piece of land to be acquired under emergent proceedings. In that requisition, it was stated that as far as possible, efforts were made to avoid making recommendation for acquisition of land of persons having holding lands below 25 acres which was far from truth. This requisition seems to be a second set of requisition because from the requisition (Annexure D), it would appear that it was already in the year, 2008 that the entire value of the land proposed to be acquired had been deposited with the State. This requisition was sent on 08.05.2012 for urgently acquiring the land. The supplementary counter affidavit says that upon the requisition aforesaid, notification under Section 4 of the Land Acquisition Act was published. It was published in the District Gazette on 11.03.2013 and in two newspapers on 12.03.2013 and substance of these notifications was published for public notice on 14.03.2013. The supplementary counter affidavit further states that notification, as contemplated under Section 6 of the Land Acquisition Act, was then published in the District Gazette on 12.03.2013 and in two daily newspapers on 12.03.2013 and public notice on 15.03.2013. These two sets of notifications also disclose that the acquisition proceedings were deemed to be emergent proceedings and declared so under Section 17 (4) by the State dispensing with right to object under Section 5A. This is again of some significance because from this supplementary counter affidavit itself, it is clear that though approval of the State Government was sought for urgent proceedings for acquisition, the approval is granted only on 25.05.2013 that is long after the Section 6 notification was issued without approval of the State Government in regard to urgency proceeding and dispensing with objections which is a valuable right to every citizen granted under Section 5A of the Land Acquisition Act. Stating this fact in Section 4 notification itself was wrong because even then no approval of the State had been received for urgent proceedings. In my view, these facts clearly render Section 6 notification itself invalid.

4. There is yet another angle to the controversy. There has to be some justification for dispensing with the right of citizens to object under Section 5A of the Act. The facts here would show that apparently the first requisition was made in the year, 2008 when money was deposited by the SSB to the Government. Then the requisition was made on or about 08.05.2012. If the matter was of such urgency, steps ought to have been taken immediately. They were not. The notification under Section 4 was issued only on 12.03.2013 that is 10 months

thereafter. If there was any urgency, such delays ought not to have been committed. Heavens would not have fallen if citizens are given a right to object. Thus, dispensing with right to object itself, was not proper and not in accordance with law.

5. Moreover, as noticed earlier, this was not done with the approval of the State because the approval itself came three months after Section 6 notification whereas this approval ought to have been taken even before Section 4 notification was issued pointing out that it would be an emergent proceeding for acquisition dispensing with right to object under Section 5A. Even though it was an emergent proceeding where Sections 4 and 6 notifications had been issued in March 2013, we are in March, 2014. Till date, no effort has been made to take possession even under the emergent proceedings much less payment or tendering of any compensation much less 80% as contemplated under Section 17. Thus, the whole basis that it was to be an emergent proceeding is belied.

6. Therefore, I have no option but to set aside Section 6 notification as invalid and also to set aside Section 4 notification as being invalid to the extent right to object has been dispensed with.

7. In view of the aforesaid, the recommendation of the district authorities to the State for withdrawing from acquisition appears to be the correct recommendation. I may also notice that now the new Act that is the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has come into being with effect from 01.01.2014 and in view of Section 24 thereof even if State was to proceed from the stage of Section 4 notification, it would have to take care of the new law and abide by it. The State must decide the matter and take necessary action either to denotify in terms of Section 48 of the Land Acquisition Act withdrawing from acquisition or if they intend to acquire the lands, they can do so without dispensing objections and in accordance with the provisions of the new Act. These decisions, the Government must take within three months positively failing which it will be deemed that the entire acquisition proceedings have lapsed by itself.

8. Till further orders from the State Government, following any of the course as indicate above, no steps would be taken to dispossess the petitioners who have, admittedly, not being dispossessed in any manner till date which is evident from the counter affidavit and supplementary counter affidavit.

9. In that view of the matter, in view of the observations and directions contained above, the writ petition stands disposed of.