
(2001) 09 PAT CK 0032
In the Patna High Court
Case No : C.W.J.C. No. 2944 of 2001

Ashok Kumar Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0032

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—This writ petition has been preferred with the prayer to quash the letter dated 27.11.99 (Annexure 1), from the Superintending Engineer, Planning & Monitoring Circle II, Department of Water Resources, Patna (Respondent No. 6), to the Chief Engineer, Department of : Water Resources, Darbhanga (Respondent No. 2), to take steps to resume the construction work of the Dumariyahi Sub-distributor Canal (hereinafter referred to as the "Sub-Canal") as per the approved map and to take steps for removal of the tank on the line treating the same to be an encroachment. The further prayer is to quash the consequential letter dated 3.2.2000 (Annexure 2), from the Executive Engineer, West Kosi Canal Division, Jhanjharpur (Respondent No. 4), to the Petitioner to remove the encroachment.

2. The dispute in this case relates to Plot No. 1676, and Plot No. 1677, appertaining to Khata No. 128, of village Navnagar, which are side by side and cover a total area of about 2 bighas, 6 kathas, and 19 dhurs. A portion of the same (about 37 decimals) has been acquired for construction of the sub-canal. The plots are owned and possessed by the Petitioner, except the said 37 decimals which is the subject matter of the present writ petition and has been acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). According to the Petitioner, a tank exists in the two plots a portion of which is included in the said 37 decimals.

3. In order to harness the Kosi river and/or its tributaries, the Govt. of Bihar prepared a scheme to construct a net work of canal and sub-distributory canals,

and the sub-canal in question is one arm of the same. It was well before 1986 that steps were taken to prepare the blue-print of the canal and the net-work. In so far as the sub-canal is concerned, it appears that the concerned department of the State Government prepared a particular alignment and route which was finally approved by the appropriate authorities. The same is indicated in the sketch map marked Annexure 8 to the writ petition. The Petitioner objects to the alignment because his land and the tank seems to be falling on the way. Hence the writ petition. After the alignment was approved by the authorities, Department of Water Resources (which is represented by Respondent Nos. 1 to 6), sent requisition for acquisition of lands to Respondent No. 7 (the Special Land Acquisition Officer), Sakri, vide letter No. 208, dated 20.2.1986, from Respondent No. 4 (Executive Engineer, West Kosi Canal Division, Jhanjharpur). Respondent No. 7 took steps for acquisition of land and issued notice dt. 7.1.87 u/s 4 of the Act in the name of Chandra Mohan Jha, father of the Petitioner, in whose name the lands in question are recorded in the survey khatian, who duly received the same. The preliminary notification u/s 4 of the Act was published on 24.2.87 in the District Gazette of Madhubani, and was also published on 20.3.87 in Hindustan and Aryavart, two Hindi dailies published from Patna. Copies of the same are marked "F" series to the supplementary counter affidavit of the State Government. This was followed by the declaration u/s 6 of the Act which was notified in the District Gazette dt. 1.6.87, and was also published in two dailies including Aryavarta published from Patna on 9.6.87. Copies of the publication in the Aryavarta is marked Annexure "G" to the supplementary counter affidavit. The Petitioner or his father did not submit any objection to the same. This was followed by the notice dt. 3.8.87 u/s 9 of the Act. The Award was prepared on 23.7.88, and was issued on behalf of the Collector of Madhubani District u/s 11 of the Act, where after notices were issued to the father of the Petitioner and other awardees and the unpaid awarded amount has been deposited in the Govt. Treasury. The Petitioner's father was thereafter served with the notice dt. 15.1.1989 u/s 12(2) of the Act, which he had received on 19.1.1989. Copy of the Award is marked Annexure "H", and receipt of service of a copy of the same on Maheshwar Jha is marked T to the supplementary counter affidavit. Respondent No. 7 gave delivery of possession of the acquired land to Respondent 4 on 9.11.90, vide his letter No. 1141 (Annexure A to the counter affidavit), with which the title and possession of the lands vested in the State of Bihar. As stated hereinabove, the Petitioner or his father never filed objection u/s 5A of the Act or u/s 9 of the Act. The work of the sub-canal commenced and about one fourth of the same has already been constructed which, however, received a set-back for financial reasons.

4. According to the Petitioner, his father had much earlier addressed his letter dt. 23.9.88 (Annexure 3), to Respondent No. 4, requesting that the Petitioner's land should not be acquired in which case the tank will be destroyed, and also that there is a temple on its bank. The tank is used for bathing etc. If a portion of the land is acquired, it will destroy the entire tank. Letter dated 4.10.88 (Annexure

4), is from Respondent No. 2 (Chief Engineer of the Water Resources Deptt. Darbhanga), to Respondent No. 3 (the Superintending Engineer, West Koshi Sub-Canal Divn., Jhanjharpur), that the allegation made by the Petitioner is very serious and, therefore, the addressee should himself conduct a local inspection and fix the future course of action. According to the Petitioner's case, the letter dt. 15.1.89 (Annexure 5) is from Respondent No. 3 (Superintending Engineer, Jhanjharpur) to Respondent No. 4 (the Executive Engineer, Jhanjharpur), is the consequential letter directing the Executive Engineer to do local inspection and submit the report. Letter No. 789. dt. 21.9.89 (Annexure 5/E), from Respondent No. 3 to Respondent No. 4, is in the nature of a reminder. Letter No. 528, dt. 20.9.90 (Annexure 6), is from Respondent No. 4 to Respondent No. 3, informing that after the local inspection he found the tank on plot Nos. 1676 and 1677, and a temple also exists thereon and. therefore, it would not be right to build the sub-canal as per this alignment. The letter further states that Respondent No. 7 may be asked not to disburse the compensation amount. Letter No. 567, dt. 1.11.90 (Annexure 6/A), from Respondent No. 4 to Respondent No. 5 (Assistant Engineer, West Kosi Sub Divn., Jhanjharpur), is a direction to take steps to revise the alignment. Letter No. 770, dt. 20.5.90 (Annexure 7), from Respondent No. 3 to Respondent No. 4, and letter dated 20.12.90 (Annexure 7/A), from Respondent No. 2 to Respondent No. 4, are to the effect that responsibility may also be fixed for the mistake in preparing the alignment.

5. Much after the entire proceedings under the Act were complete and in fact construction of the sub-canal commenced, the Petitioner's father submitted; application dated 27.8.88 (Annexure D to the counter affidavit of Respondent Nos. 1 to 7), stating therein that the tank in question should not be acquired. It is of considerable importance in the* present context to state that the same does not state that a temple exists on the bank of He tank. Respondent No. 7 wrote the following note on the left hand margin of the lop of this letter:

6. Letter No. 2820, dt. 6.10.99 (Annexure 8), from Respondent No. 2 to Respondent No. 3, is to the effect that land acquisition proceedings have been concluded and three out of thirty-two awardees have taken payment of the compensation amount upto 22.12.88. It further stated that plot No. 1676 and plot No. 1677 are recorded in survey khatian as Dhanhar land. The letter also seems to suggest that the tank and the temple have been constructed after the land acquisition proceedings had concluded and are, therefore, encroachments. This led to Die impugned order dated 27.11.99 (Annexure 1), to take steps for removal of the encroachment. This was followed by lie consequential letter dated 3.2.2000 (Annexure 2) from Respondent No. 4 to tie Petitioner, to remove the encroachment, and impugned herein.

7. While assailing the validity of the Impugned orders, learned Counsel for the Petitioner submits that the present alignment and the route of the sub-canal is not the duly approved alignment. The duly approved alignment is of an earlier date, and has unauthorisedly been changed to the present one by the Executive

Engineer. He has placed before me various provisions of the Bihar Public Works Department Code which, in his submission are to the effect that such alignments can be changed only by the Chief Engineer with the approval of the State Government. He next submits that the impugned orders marked Annexure 1 and 2 are without jurisdiction, inasmuch as the directions have been issued without taking action in accordance with law, namely, removal of encroachment without initiating proceeding under the Bihar Public Land Encroachment Act. He also submits that the present route is technically unsound and has sharp curves. He next submits that the Respondent authorities have brought about a ridiculous situation by allowing a canal of lesser width to pass through a wider tank. The conspiracy being attributed to the Petitioner and the local Engineer, by Respondents is incorrect. He submits that the interveners, who are Respondent Nos. 8 and 9, are mere busy-body and have no interest of their own. They are opposing the writ petition to settle their private disputes. He lastly submits that the writ petition does not suffer from delay.

8. Respondent No. 8 is one Banshidhar Jha, and Respondent No. 9 is one Vidyanand Mishra, who are represented by different counsel before me. They are local residents, and have been impleaded as Respondents on the basis of the applications filed by them opposing the writ petition. They have submitted that the writ petition suffers from gross delay and laches. They also submit that the writ petition is actuated by mala fides. The Petitioner is in collusion with the local Engineer and are trying to alter the finally approved and concluded alignment. They next submit that the Petitioner has not approached this Court with clean hands who is guilty of suppression of material facts. They also submit that Respondent Nos. 8 and 9 are not mere busy-body. Their personal interest is involved in this case, inasmuch as their lands would fall in what is described by the Petitioner as the first alignment. They are local residents and are interested in early completion of the Canal. They lastly submit that the procedural irregularity, if any, on the part of the Executive Engineer in changing the alignment without the approval of the State Govt. has been cured by the order dt. 28.11.99 of the Minister (Annexure X/10 to the pleadings of Respondent No. 8).

9. Learned Govt. Pleader No. II has strenuously opposed this writ petition and submits that the writ petition is hit by delay and laches. He next submits that there has been no change in the alignment and the route of the sub-canal, inasmuch as what is described by the Petitioner as the first alignment was under the consideration of the Respondent authorities in the draft stages but was found unsuitable. It was only the present alignment, which is wrongly described by the Petitioner as the second alignment, was alone approved by the Respondent authorities, and the land acquisition proceedings had accordingly been undertaken and carried out. In other words, in his submission, the State Govt. has approved only one alignment and the land acquisition proceeding had taken place accordingly. He next submits that the contour map prepared on 24.3.85 does not show a tank on plot Nos. 1676 and 1677. He further submits that there

would be no sharp curves in the sub-canal and also technical details have been properly and effectively taken care of. He lastly submits that such technical matters relating to the question of alignment of canals cannot be raised and adjudicated in writ jurisdiction. He next submits that about one-fourth of the sub-canal has been constructed which could not make further progress because of paucity of funds. The Government is now determined to resume the construction and complete it. He further submits that once the land acquisition proceeding is complete, the same cannot be reopened or challenged in writ jurisdiction.

10. Having considered the rival submissions, I am of the view that this writ petition suffers from gross delay. It is manifest from the narration of events indicated hereinabove that the land acquisition proceedings concluded way back in 1988, and the present writ petition has been filed on 1.3.2001. The Petitioner had never raised any objection during the course of the land acquisition proceedings and had allowed it to conclude. Furthermore, the letters marked Annexure 3 to 7A were addressed to the authorities of the Water Resources Department or are their inter-departmental communications, and that too much after the alignment had been approved and the land acquisition proceeding had concluded. None of these letters are in the nature of objection before the authorities under the Act and were, therefore, wholly irrelevant then and before me also. Learned Govt. Pleader is right in placing reliance on the judgment of the Supreme Court reported in 199J (1) PLJR 68 (SC) Waste Products Reclaimer (P) Ltd. v. BCCL which is to the effect that validity of acquisition proceeding cannot be allowed to be questioned belatedly on technical grounds. The Supreme Court has held in its judgments reported in State of Orissa Vs. Dhobei Sethi and Another, and The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, Beig that land acquisition proceedings cannot normally be allowed to be challenged after its conclusion as ought to be dismissed on the grounds laches. The Division Bench judgments this Court reported in Smt. Mridula Chandra Vs. The State of Bihar and Others is to the effect that land acquisition proceedings cannot normally be challenged after its conclusion. The judgment of the Supreme Court reported in Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, and the judgment of a Division Bench of this Court reported in 1993 (2) PLJR 421 (Gyan Das Shaw v. The State of Bihar lays down to the effect that the lands vested in the State in terms of the provisions of the Act cannot be divested and challenge to the same cannot be entertained.

11. learned Counsel for the Respondents has rightly submitted that the letter dt. 6.10.99 (Annexure 8) states that plot Nos. 1676 and 1677 are recorded as Dhanhar lands in the survey khatian. It also states that the tank is a very recent construction, i.e. after the land acquisition proceedings were complete, the lands has vested in the State Government and possession thereof had been made over to Respondent No. 4 on 9.11.90 and is, therefore, encroachment. He has rightly invited my attention to the Petitioner's application dt. 27.8.88 (Annexure D), from the Petitioner to Respondent No. 7 (the Special Land Acquisition

Officer), wherein request was made that tank may not be acquired. It is relevant to state that this letter does not state that there is a temple on the plots. The same was rejected on the same date with the order recorded on the margin of this application itself, which is quoted in paragraph 5 hereinabove.

12. It is manifest from the pleadings of the parties and perusal of the original Records produced before me and inspected by learned Counsel for the parties that the contour map prepared on 24.3.1985, does not show that there is a tank on plot No. 1676 and plot No. 1677. Furthermore, only one alignment, i.e. one route of the sub-canal, has been approved by the authorities as per the prescribed procedure and what is incorrectly being described by the Petitioner as the second alignment. What is described by the Petitioner as the first alignment was one option considered by the Engineers in the draft stages and rejected. Therefore, the elaborate contentions advanced on behalf of the Petitioner for which reliance has been placed profusely on the various provisions of the Bihar Public Works Department Code that a change of alignment can be done only by the Chief Engineer with the approval of the State Government are wholly inapplicable to the facts and circumstances of the present case. Furthermore, as has been rightly submitted on behalf of the Respondents, the alignment has in any case been approved by the Minister which led to the impugned order. His note dated 30.10.99 in the concerned file (Annexure X/10) maintained by the Department of Public Works Department of the Bihar Government is set out herein below for the facility of quick reference:

13. learned Counsel for the Respondents are right in their submission that the Petitioner has not approached this Court with clean hands. The writ petition suffers from gross suppression of material facts. A false impression has been created in the writ petition that two alignments of the sub-canal had been approved by the Respondent-authorities, the first one as per the prescribed procedure and the second one in dereliction of the same. As found hereinabove, the correct position is that the first one was one of the options considered and rejected in the draft stage, and the latter one alone has been approved as per the prescribed procedure. Furthermore, writ petition does not disclose that the land acquisition proceeding concluded way back in 1990, lands vested in the State Government and possession made over to Respondent No. 4. Had those facts been disclosed in the writ petition, this Court would not have issued Rule by its order dated 2.3.2001, and the writ petition may have been dismissed in limine. The writ petition suppresses the proceeding relating to the Act which was to their full knowledge. The same is, therefore, liable to be dismissed on this ground alone. It has been held by the Court in England in the judgment reported in (1917) 1 KBD 486 *Rex v. The General Commissioners For the Purposes of the Income Tax* that there having been suppression of material facts by the Applicant in her affidavit, the Court would refuse a writ of Prohibition without going into the merits of the case.

14. The pleadings of the parties also create an impression that the Petitioner is in

collusion with the local Engineers and is trying to create confusion and have the alignment of the sub-canal altered. The Petitioner has failed to realise that land acquisition proceeding concluded, and the Petitioner has been divested of his title and possession, way back in 1990. The Petitioner or his father had never raised any objection- before the authorities concerned during the pendency of the land acquisition proceeding.

15. Learned Govt. Pleader has rightly submitted that the main issue raised by the Petitioner is regarding the question of alignment of the sub-canal. It is now settled by a long line of cases that such technical matters or policy matters or purely administrative matters cannot be subjected to judicial review in writ jurisdiction. Reference may be made to the judgment of the Supreme Court reported in J.R. Raghupathy and Others Vs. State of A.P. and Others,

16. In the result, this writ petition is dismissed with costs quantified at Rs. 10,000/-. The State Government would be well- advised to ensure that the project is completed without further loss of time. 11 would like to remind the State Government and its functionaries of the observations of Abraham Lincoln to the effect that if a nation wants to ensure prosperity to the countrymen, it should tame its rivers.