

(2001) 11 PAT CK 0024
In the Patna High Court
Case No : L.P.A. No. 1171 of 2001

Ashok Kumar Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Citation : (2001) 11 PAT CK 0024

Final Decision : Dismissed

Judgement

1. By this appeal under Clause 10 of the Letters Patent, the Appellant seeks to impugn the correctness, validity and propriety of the judgment dated 20.9.2001 passed in CWJC No. 2944 of 2001 Ashok Kumar Jha Vs. The State of Bihar and Others where under the writ application filed by the Petitioner-Appellant has been dismissed with cost.

2. The facts which have been elucidely detailed in the judgment of the learned Single Judge are not required to be detailed in this judgment, but the facts necessary for disposal of this appeal are as under:

The dispute in this case relates to portion of land which has been acquired by the Respondent-State for construction of a sub-canal. According to the Appellant, a tank exists in the said plot, therefore, the said land could not be acquired. It was also contended by the Appellant that the original alignment of the canal was different but without any authority of law and contrary to Rules 126 and 127 of the Bihar Public Works Department Code (for short, PWD Code), the Executive Engineer without taking the Chief Engineer into confidence has changed the alignment to favour certain persons and cause unnecessary loss to the Appellant and his property. It is to be seen from the record that vide letter No. 208 dated 20.2.1986, the Respondent No. 4 (Executive Engineer, West Kosi Canal Division, Jhanjharpur) sent requisitions for acquisition of certain lands to Respondent No. 7 (the Special Land Acquisition Officer). The Respondent No. 7 after being satisfied that there was public purpose behind the proposed acquisition issued necessary notification and also issued notice on 7.1.1987 to one Chandra Mohan

Jha (father of the Appellant) in whose name, the land in question was recorded in the survey khatian. The primary notification u/s 4 of the Act was published on 24.2.1987 in the District Gazette of Madhubani and was also published in two Hindi dailies on 20.3.1987. Thereafter a declaration u/s 6 of the Land Acquisition Act was issued in the District Gazette dated 1.6.1987 and was also published in two daily newspapers on 9.6.1987.

3. There is no dispute before us that the Appellant or his father did not submit any objection to the said notification or declaration. A notice u/s 9 of the Act was also issued on 3.8.1987. Later on, the land acquisition award was prepared on 23.7.1988 and was issued on behalf of the Collector of Madhubani u/s 11 of the Act. The land oustees were again noticed for receiving the award amounts but as some of the awardees did not receive the amount, the same was deposited in the Government Treasury. The Appellant's father was served with a notice dated 15.1.1989 u/s 12(2) of the Act which was received by him on 19.1.1989. It is note worthy that after the acquisition proceedings were over and award was delivered, the Respondent No. 7 being the statutory authority delivered the possession of the acquired land to the Respondent No. 4 on 9.11.1990 vide his letter No. 1141. As a consequence of the acquisition, passing of the award and delivery of the possession of the property, right, title and interest of the erstwhile owner vested in the State of Bihar with the possession of the land. It is to be noted that the Appellant or his father never took an objection either to the notification issued u/s 4, proceedings u/s 5A of the Act or to the notice issued u/s 9 of the Act.

4. It is contended before us that on 23.9.1988, the Appellant through his father had sent a letter to the Respondent No. 4 requesting that the Appellant's land should not be acquired as the said acquisition would lead to destruction of the tank on bank of which a temple situates. The Appellant-Petitioner relies upon the letter dated 4.10.1988 issued by Respondent No. 2 to the Respondent No. 3 wherein it was said that the allegations made by the Appellant were of serious nature, therefore, the Respondent No. 3 should conduct a local inspection and chalk out the future course of action. The Appellant says and submits that subsequent to the first letter, series of letters were exchanged, but all of a sudden the file became-untraceable, though the Respondent No. 7 was asked by the higher authority not to disburse the compensation amount. From the records it appears that after completion of the acquisition proceedings and delivery of the award on 23.7.1988, the Appellant's father submitted an application on 27.8.1988 submitting inter alia that the tank in question should not be acquired. The Respondent No. 7 made the remark on the said letter saying "the land has already been acquired, therefore, at this level no action is possible". It appears that the Appellant after 1990 did not do anything, but all of a sudden started raising his objections before the authorities that he cannot be divested of his property nor the sub-canal can be constructed over or through the tank. On 6.10.1999 vide letter No. 2820 (Annexure-8), the Respondent No. 2 wrote to the Respondent No. 3 that land acquisition proceedings stood concluded, some of the

land oustees have received payment, the land in dispute bearing plot No. 1676 and plot No. 1677 were recorded in survey khatian as "Dhanhar land", the tank and the temple had been constructed after the land acquisition proceedings, the same amounts to encroachment and no action was possible in favour of the Appellant. On 27.11.1999, vide Annexure-1, the authority directed for removal of the encroachment, this was followed by letter dated 3.2.2000 (Annexure-2) from the Respondent No. 4 to the Appellant to remove the encroachment. The said letters were impugned before the learned Single Judge.

5. The Respondent-State and the private Respondents contended before the learned Single Judge that the petition suffered with laches and delay, the Appellant had no right to challenge the acquisition proceedings either saying that the acquisition was bad or the original alignment as proposed in the original plan was subsequently changed. It was also contended by the Respondent that the alleged first alignment in fact, was only a proposed alignment and after taking into consideration everything, the authorities came to the conclusion that a little deviation from the proposed alignment was permissible, therefore, they changed the alignment, approved the same finally and in accordance with the final proposal requested for acquisition of the land. The Respondent-State further submitted that neither alignment was changed to benefit some people or to cause illegal loss to the Appellant. In fact, it was contended before the learned Single Judge that the petition was actuated with malafide, the Appellant was not vigilant and proposes to challenge a stale claim by digging the buried claim which attained finality somewhere in the year 1988/1990.

6. The learned Single Judge after hearing the parties held that the petition suffered with lethal blow of delay and laches, the record show that on the date of proposal the tank or the temple were not in existence, the alleged first alignment deciding the course of sub-canal and after taking into consideration the pros and cons of the subject, the authorities finally decided to change the course and in accordance with the changed plan, they made request for acquisition of the land to the Land Acquisition Officer.

7. Sri Dwivedi, learned Senior Counsel for the Appellant submitted before us that as the Appellant's land was acquired contrary to the provisions of the Land Acquisition Act, the Court even after lapse of such long period should interfere in the matter.

8. Sri S.S. Naiyar Hussain, Senior Advocate (GP II) for the State, Sri S.C. Jha, learned Counsel for Respondent No. 8 and Sri Chakradhari S. Singh, learned Counsel for Respondent No. 9 vehemently opposed the said argument. It was contended by them that series of decisions of the Supreme Court clearly show that in a case where land oustee was not vigilant of his own rights, and did not propose to challenge the acquisition either before issuance of a declaration u/s 6 or before the delivery of the final award, he cannot be allowed to challenge the proceedings.

9. The question of delay and laches whether would assume importance in a case where the land acquisition proceedings are challenged, is not res integra. In the matter of State of Orissa Vs. Dhobei Sethi and Another, the Supreme Court had an occasion to deal with such a matter. In the said matter, the writ petition challenging the acquisition proceedings was filed in the High Court after seven, years of the publication of the notification u/s 4(1) of the Land Acquisition Act. The Supreme Court observed that such a petition was liable to be dismissed on the ground of laches. It is note worthy that the appeal of State was allowed and the judgment of the High Court was set aside. The matter again came up for consideration before the Supreme Court in the matter of Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, In the said matter, the Supreme Court observed that once acquisition proceedings were completed and the land vested in the State free from all encumbrances, the proceedings become final and it would not be open to challenge under Article 226 on the ground of non-compliance of any statutory requirement, such as non-existence of public purpose. The Supreme Court further observed that the person aggrieved by the land acquisition should approach the Court before completion of the proceeding.

10. In the matter of Delhi Administration v. Gurdip Singh AIR 2000 Supreme Court 3737, while considering a review petition, the Supreme Court observed that "those claimants who have not filed objections to the Section 4 Notification cannot be permitted to contend before the Court that the Section 5A inquiry is vitiated so far as they are concerned. Nor can they be permitted to seek quashing of Section 6 declaration on that ground. Objections u/s 5A, if filed, can relate to the contention that (i) the purpose for which land is being acquired is not a public purpose (ii) that even if the purpose is a public purpose, the land of the objector is not necessary, in the sense that the public or some other land to which the objector may refer or (iii) that in any event, even if this land is necessary for the public purpose, the special fact-situation in which the objector is placed, it is a fit case for omitting his land from the acquisition. Objection (ii) is personal to the land and objection (iii) is personal to the objector. In the (ii) and (iii) type of objections, there is a personal element which has to be pleaded in the Section 5A inquiry and if objections have not been filed, the notification must be conclusive proof that the said person had "waived" all objections which were personal and which he could have raised. However, so far as objection (i) is concerned, even in case objections are not filed, the affected party can challenge in Court that the purpose was not a public purpose. Thus, in respect of each land owner whose land is acquired, the Section 4 notification if it is sought to be avoided on personal grounds as stated in (ii) and (iii) above, it is necessary that objection be filed to avoid avoidable notification. Otherwise, the notification which is not avoided on any personal ground, remains operative and personal objections are deemed to be waived."

11. From the above observations of the Supreme Court it would clearly appear that in the grounds (ii) and (iii), there is a personal element which have to be

pleaded in the Section 5A inquiry and if objections have not been filed, the notification must be conclusive proof that the person have waived all objections which were personal and which he could have raised. In the ground (i), according to the Supreme Court, a person would be entitled to throw a challenge to the acquisition proceeding saying that the purpose was not a public purpose. The question for consideration would be whether after lapse of such a long time, where not only the land acquisition proceedings have culminated into an award and part of the canal and sub-canal has already been constructed after spending a good fortune, this Court should interfere. In our considered opinion, at this stage if this Court enters into controversy that whether the acquisition of the Appellant's particular land was for a public purpose or not, is taken for consideration, not only it would open the Pandora's box, but would lead to unnecessary loss to exchequer because 1/4th of the work has already been carried out.

12. In fact, the Appellant does not say that the acquisition was not for a public purpose, but he wants to suggest that his land could not be acquired because the alignment of the sub-canal was later on changed without any authority of law. This question shall be considered by us subsequently. At this stage, we would concentrate ourselves on the question of delay and laches.

13. In the matter of Municipal Council, Ahmednagar v. Shah Hyder Beig AIR 2000 Supreme Court 671, the Supreme Court again had an occasion to consider the question of delay and laches in the matter of land acquisition. In the said matter, the award was published in the year 1976 and the writ petition was filed almost after 16 years, i.e. in the year 1992. The Supreme Court in unequivocal terms observed that after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceeding there under. Relying upon the earlier judgment of the Supreme Court in the matter of C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, , the Supreme Court observed that such a delayed challenge should not be permitted and such a Petitioner should not be allowed to canvass before the High Court that the land acquisition was bad. In paragraph 21, the Supreme Court observed that the High Court was not justified in quashing the proceedings.

14. From the above judgments of the Supreme Court, it would clearly appear that when a person who seeks to challenge the land acquisition proceeding after a long lapse of time, after issuance of a declaration specially after delivery of the award, the Courts must be loath in interfering with the matter and should not allow the stale claims to be agitated before it.

15. Undisputedly, the award was prepared on 23.7.1988 and was issued on behalf of the Collector of Madhubani and the present petition came to be filed on 1.3.2001, i.e., almost after thirteen and half years of the delivery of the award. According to the Supreme Court, seven years period for challenging a declaration issued u/s 6 of the Act was bad and in case of grant of the award after considering every aspect, pros and cons of the matter, the Courts would not be

entitled to permit anybody to challenge the validity of the acquisition or the award.

16. Faced with this situation, Sri Dwivedi, learned Counsel for the Appellant at one stage submitted that he does not challenge nor was challenging the correctness, validity and propriety of the land acquisition proceedings and award, but was requiring the Court to resolve the controversy relating to change in the alignment of the Sub-canal. In support of his submission, he referred to Rules 126 and 127 of the PWD Code. The said rules read as under:

126. For every work which it is proposed to carry out except petty works and repairs, the cost of which is not likely to exceed Rs. 1,000 and annual repairs for which a lump sum provision has been sanctioned by the Superintending Engineer under paragraph 204, a properly detailed estimate must be prepared for the sanction of the competent authority. This sanction is known as the technical sanction of the estimate and except in cases such as are referred to in paragraphs 128 and 130 must be obtained before the construction of the work is commenced. As its name indicates, it amounts to no more than a guarantee that the proposals, are structurally sound, and that the estimates are accurately calculated and based on adequate data. Such sanction will be accorded by the officer of the Public Works Department authorised to do so. In the case of an original work, the counter-signature of the local head of the department on behalf of which its execution is proposed, or of such other officer of lower status as may have been empowered to accord administrative approval to it, should be obtained to the plans and estimates in token of his acceptance of them, before the technical sanction is accorded.

If subsequent to the grant of technical sanction, material structural alterations are contemplated, the orders of the original sanctioning authority should be obtained even though no additional expenditure may be involved by alterations."

127. In cases where a substantial section of a project sanctioned by a higher authority than himself has been abandoned, or where material deviations from the original proposals are expected to result in substantial savings, the Superintending Engineers must revise the amount of the estimate and intimate both to the Accountant General and to the Executive Engineer that the amount of the expenditure sanction should be reduced accordingly. In cases where the saving is due to material deviation of a structural nature from the design originally approved, and the amount of the revised estimate is greater than that up to which the Superintending Engineer is empowered to sanction estimates technically, a revised technical sanction must be obtained from the competent authority.

17. A bare perusal of the rules with their juxtapose reading would show that if, subsequent to the grant of technical sanction, material structural alterations are contemplated, the orders of the original sanctioning authority should be obtained and/or material deviations from the original proposals are expected to result in

substantial savings, the Superintending Engineers should revise the amount of the estimate and intimate both to the Accountant General and to the Executive Engineer that the amount of the expenditure sanction should be reduced accordingly. We fail to understand as to how Rules 126 and 127 of the PWD Code would be applicable in the present matter. The Respondent-State has come with a positive case that the first alignment, in fact, was not the final course of channel or the alignment, but it was the proposed alignment or course of the sub-canal. They have also stated before this Court that the second alignment as alleged by the Appellant was, in fact, the final alignment or course of the channel/sub-canal. Contrary to what has been said by the Respondent State, nothing has been brought on record to say, show or suggest that abruptly the final proposal was changed in an unscrupulous manner to cause illegal gain to some person and unnecessary loss to the Appellant or his father. Even in the administrative matter, the Court is required to see that whether the authorities acted bonafide with vigilance and without ill-will against a particular person. But in case of an order which is neither malafide nor is actuated with any motive, even if is not palatable to a particular party, the Court would not interfere. After all the human error is possible everywhere. In the present matter, the learned Single Judge has recorded a finding of fact that there has been no change in the alignment and the course of sub-canal inasmuch as what is described by the Appellant as the first alignment was under the consideration of the Respondent-authorities at the draft stage, but was found unsuitable. The learned Single Judge after giving his anxious consideration to the rival submissions, in the opinion of this Court, recorded a correct finding that what is described by the Appellant as the first alignment was one option, was considered by the Executive Engineer at the draft stage and was rejected. In our opinion, if at the draft stage, certain options were left open and one out of many is accepted and many out of some are rejected, it cannot be argued that acceptance of one or rejection of another was actuated with motive.

18. In our opinion, in a case like present, where the first alignment, in fact, was the proposed alignment, there is no scope to say that without any authority from the higher authorities, the Executive Engineer for the reasons best known to him changed the course and the course of canal. Having given our anxious consideration to the arguments raised by Sri Dwivedi, we are of the opinion that Rules 126 and 127 of the PWD Code cannot be applied to the present case.

19. At this stage, we would again revert to the question of delay and laches. It is to be seen that after publication of the award, the Appellant's father raised certain objections, but did not propose to challenge the alleged change in the alignment right from 1988 to 2001. There is no explanation coming forth from the side of the Appellant as to why there was such conspicuous silence on his part for a long period of 13 years or more. It would also be necessary to say that possession of the land has been handed over to the Respondent No. 4 on 9.11.1990 and if thereafter the Appellant continues to exercise some right over the said property then the same would be rightly termed as "encroachment".

20. The learned Counsel for the Appellant next contended before us that the Court must judicially review the facts and the circumstances in which the alignment was changed. Though we have already recorded our finding that there was no change in the alignment of the course or channel/sub-canal, but out of many, one option was exercised by the department, but to be fair to the learned Counsel for the Appellant, we would take this issue also.

21. In the matter of J.R. Raghupathy and Others Vs. State of A.P. and Others, the Supreme Court while taking up the matter relating to the extent of judicial review observed that where the Government exercises certain powers conferred upon it by the Statute, the Court would not be justified in interfering in the matter merely on the ground of violation of guidelines. In our opinion, the Courts are entitled to judicial review of each and every administrative matter, but the power is not absolute or unchannalised. There has to be limit to the power of judicial review. In the matter of Municipal Corporation of Greater Bombay (supra), the Supreme Court had observed that power of judicial review can always be exercised by the Court, but delay and laches would certainly come in the way of a person who is not vigilant and the Courts may refuse to interfere in the matter. In the said matter, the Supreme Court clearly observed that the High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference.

22. After taking into consideration the totality of the circumstances, the delay, and the arguments raised by the parties, for the reasons aforesaid, we find no reason to interfere. The appeal is, accordingly, dismissed. However, the cost of the writ petition is quantified to Rs. 2000/-only.