

(1999) 06 PAT CK 0056
In the Patna High Court
Case No : C.W.J.C. No. 6545 of 1998

Atma Ram Yadav and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11A, 4, 4(1), 5(1), 5A

Citation : (1999) 2 PLJR 811

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Rameshwar Prasad, Bishundeo Narayan and Arun Kumar, for the Appellant; Ganga Prasad Rai, Chittaranjan Sinha and Amit Prakash, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This case relates to land acquisition proceeding being P.L.A Case No. 24/91 (L.A. Case No. 2/96-97) (D.L.A. Patna Case No. 18/98).

The acquisition proceeding as well as the Notifications, declarations, orders and awards etc. published, issued, prepared and passed in the said case, as contained in Annexures-1 to 6, have been challenged by the Petitioners in the proceeding under Article 226 of the Constitution of India.

2. The brief fact of the case as pleaded show that the acquisition of land was started in pursuance of a scheme known as "widening of Chiraiyatand Over-bridge and approach roads at Patna". On the requisition made on 22nd August, 1991 by the P.W.D., New Capital Division, Patna, P.L.A. Case No. 24/91 was initiated. Notification u/s 4(1) was published in the District Gazette on 6th October, 1994 and then in two newspapers on 28th November, 1994. Notices u/s 4(1) were served on land holders by 10th April, 1995 and in the notification and notice, specific purpose was mentioned, as "widening of Chiraiyatand Overbridge". The land holders filed their objections" u/s 5(1) of the Act before

the Collector between 1994-95 whereinafter authority concerned filed report. Most of the objections u/s 5(1) were rejected on 5th January, 1996, except some, which were in respect of Temples and Mosks.

In between January and February 1996, a number of land holders filed objections u/s 5A(2), some before Minister I/C. and others before the Commissioner. All such petitions were placed before the Minister I/C. in August, 1996. In the meantime, declaration u/s 6 was made by the District Land Acquisition officer on 2nd March, 1996 and notices u/s 6 were published in two local newspaper on 21st March, 1986. Individual notices of declaration u/s 6 were sent to the land holders by 31st of July, 1996.

3. According to the Petitioners, after the objection made in L.A. Case No. 2/96, the District Land Acquisition Officer, Patna vide his letter to the Collector dated 19th July, 1996 pointed out certain defects in the notification. Inspite of the same, notices under Sections 9 of the Act were issued in August, 1996. Thereafter, a number of land holders preferred C.W.J.C. No. 9454 of 1996 and 1661 of 1996 before this Court, wherein controversy was raised in respect to amended proviso to Section 5A. This Court vide its order and judgment dated 9th February, 1998 while held that the State Government was competent to call for record of a land acquisition proceeding of its own motion or on application of any person also held that it can pass orders as it thinks fit.

From the said case, it appears that the Hon"ble Minister I/C. passed certain order on 26th December, 1996. As the Hon"ble Minister I/C. apprehended certain doubts, directed the Collector to make resurvey of the area. As nothing done thereafter, the court directed the State Government to dispose of the proceeding (D.L.A. Patna Case No. 2/97) in accordance with law at the earliest. Interim order of stay was passed by this Court, and it was observed that till final orders were passed, the Petitioners of the said case be not dispossessed from the lands/buildings.

4. The State of Bihar (Hon"ble Minister I/C), subsequently, on hearing the parties rejected all the petitions filed u/s 5A(2), vide his order dated 23rd July, 1988 and made the following observations.

- (i) In the process of acquisition, Temple and Mosks should be protected;
- (ii) The land holders be paid present market price before they are displaced from their land/holdings; and
- (iii) The Road Construction Department of the State should furnish undertaking that they will complete the building of the road within six months from the date of possession; overbridge to be constructed and completed within two years from the date of possession and, if possible, to rehabilitate the displaced land holder at other places.

The Collector thereafter prepared and signed awards u/s 6 on 30th July, 1998 and issued notices to the land holders. It was at this stage, the present writ

petition was preferred by the if Petitioners.

5. To appreciate the case and arguments, it is pertinent to mention the position of the Chiraiyatand overbridge and the adjacent area, as mentioned hereunder.

In the heart of Patna town nearer to the Railway Station (Patna Junction), there is an old existing overbridge commonly known as "Chiraiyatand Bridge". It passes over the railway line from north to south and connects two roads; commonly known as "Station Road" and "Karbighaiya Road". The railway line is from east to west and in its northern side, the road, a little bit parallel to the railway line, is known as "Station Road". In the southern side of the said railway line, the parallel road is "Karbighaiya Road". Both the aforesaid roads are connected by this Chiraiyatand Railway Overbridge. The rough sketch of the two roads and the connected Railway Overbridge, is like "H".

6. The grievance of the Petitioners can be summarised, as follows:

(i) The acquisition proceeding has been initiated with mala fide motive, there being oblique motive to displace residentials and shop keepers of Station Road and Karbighaiya Road;

(ii) The order passed by Hon''ble Minister I/C. on 26th December, 1996 having merged with order dated 23rd July'' 98, the authorities had no jurisdiction to proceed in the matter further without adhering to the order passed u/s 5A(2) of the Act; and

(iii) The award having not prepared and signed within the prescribed period u/s 11A of the Act, the acquisition proceeding stood lapsed.

7. It was submitted that for widening Chiraiyatand Overbridge which passes over the railway track, the State Government is required to get approval of the Indian Railways, the railway track and adjacent lands being of the Railways. For such widening of Bridge, the adjacent land of the Bridge is required to be acquired. Till date, neither the Railway authorities have given any approval nor the Railway lands adjacent to the Railway Oyerbridge has been acquired. No notification for acquisition to adjacent lands to the Railway Overbridge has been made in pursuance of the present acquisition proceeding. Aforesaid matter was pointed out by the Railway authorities in the meeting on 28th January, 1997 when the State Government was asked to submit its aims and object with map and other relevant papers for its approval by the Railways, but till date the same has not been submitted.

8. There is nothing on the record to suggest that such approval has been granted by the Railway authorities. Wrong statement was made before the Hon''ble Minister as well as before this Court that the scheme was at advanced stage for its approval by the Railway authorities, which caused, illegal rejection of applications preferred u/s 5A(2) of the Act.

9. Reliance was placed on a decision of the Supreme Court in the case of

Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, to substantiate the argument that the State is bound to exercise powers in reasonable good faith for effectuate purpose. There should be legitimate reasons and if the power is exercised for extraneous or irrelevant consideration or reason, which is unquestionably a colourable exercise of power it vitiates the proceedings.

The decision of Supreme Court in the case of State of Punjab and Another Vs. Gurdial Singh and Others, was also cited. It was submitted that by giving laudable name of widening of the Railway Overbridge, the authorities want to deprive the land holders and business persons of adjacent roads, though there is no scheme of widening of Chiraiyatand Railway Overbridge, in the eye of law. The scheme suffers because of mala fide factual error and, therefore, it is a fit case to quash the entire land acquisition proceeding.

While it was specifically pleaded that there is no scheme for widening of the Chiraiyatand Railway overbridge, it was stated that adjacent "Station Road" is 90 Feet in width, as per master plan and there is no plan to widen the said road.

10. The Respondents while disputed the aforesaid submission denied the allegation of mala fide on their part. It was submitted that the scheme itself is known as "Chiraiyatand Railway Overbridge widening and approaching road at Patna Within the aforesaid scheme, while provision have been made to widen the approaching roads of existing Chiraiyatand Railway Overbridge, it was also decided to widen the existing Chiraiyatand Railway overbridge itself, apart from the construction of fly-overs on the approaching roads. A map has been enclosed with the supplementary affidavit along with a memorandum as was prepared for the council of Ministers for approval for acquisition of lands and houses in pursuance of such scheme. It was pointed out that the "project" includes construction of two additional lanes to the existing structure of the Railway overbridge from the eastern side, providing four lanes fly-over upon it being most economical and viable. Since the acquisition of lands and buildings in the congested area is the first need before starting construction work, in the first phase proposal for acquisition of land and house properties was considered. Proposal was made for acquisition of lands and house property worth Rs. 4.06 crores and Rs. 1.8258 crores respectively. No expenditure was shown for the first two years as per schedule.

11. It appears that the Cabinet approved the proposal on 19th October, 1990 whereinafter action was taken by the competent authorities for acquisition of lands and buildings for widening of approaching roads commonly known as "Station Road" and "Karbighaiya Road".

In the map, the existing Chiraiyatand Railway over bridge has been shown to be of 9 meters width with the proposal to expand further 9.15 meters in its eastern portion.

In the map attached; with the supplementary counter affidavit, no proposed fly overs have been shown on the "Station Road" and/or "Karbighaiya Road", which

are the approaching roads to the Chiraiyatand overbridge. It seems to have been prepared on 23rd September, 1998. It was for the said reason, the counsel for the State placed the original photostate copy of the map prepared in January, 1993, to which objection was raised on behalf of the Petitioners.

12. Submission was made on behalf of the Petitioners that the Respondents cannot add new facts nor can raise new questions of fact to highlight public purpose for widening of approaching roads. As the matter is of great importance, this Court directed the Respondents to produce the original scheme and relevant file relating to acquisition, which was produced.

13. From the file it appears that the proposed scheme was made on 5th November, 1988 and preliminary introduction, administrative approval was sought for conducting detailed survey of Chiraiyatand Railway Overbridge on 5th March, 1987, and for widening of approaching roads. While necessity for widening of the existing Railway Over-bridge and approaching roads were shown, proposal was made for acquisition of some Railway lands, including Railway compound wall for widening of existing Railway Overbridge from its eastern side. To ease out gradient of the existing Railway bridge approach, fly-overs from east to west was proposed on both the approach roads for easy flow of traffic from the either end of the existing bridge, at the road crossing. A fly over at the northern crossing was proposed on the "Station Road" for direct flow of traffic from Patna Railway Station to Kadamkuan and vice versa. Similarly, a fly over was proposed on the southern side, on the approaching "Karbighaiya Road" for direct flow of traffic from Karbighaiya to Patna Bypass road and vice versa. Thus to ease traffic movement from east to west and vice versa, two additional fly overs have been proposed in the scheme on both the approach roads, apart from widening of existing connecting Chiraiyatand Railway Overbridge.

It further appears that two separate proposed fly overs have been shown in the map on both the approaching roads, which was prepared on 14th December, 1987 and such scheme was modified in April, 1989. The file routed from Chief Engineer to the Secretary, Road Construction Department, which was ultimately approved by the Cabinet on 19th October, 1990. Approval of the Planning Department and Finance Department was also obtained prior to the approval of the Cabinet. In fact the Hon"ble Minister I/C, Road Construction Department had earlier given its approval on 5th July, 1990. Ultimately, Order No. 7479 dated 1st December, 1990 was issued showing Government approval.

Detail of proceeding of meeting dated 28th January, 1997 held between the State Government Officials and Railway Officials is also enclosed at page 27 of the file, from which it appears that negotiation is going on for acquisition of railway land for widening of existing Chiraiyatand Railway Overbridge in its eastern portion.

14. From the facts aforesaid, the original scheme and the relevant file, it can be safely stated that the scheme and proposal for widening of existing Chiraiyatand Railway Overbridge also includes widening of approach roads i.e. "Station Road"

and "Karbighaiya Road" for construction of two separate fly overs those roads for easy flow of traffic. Thereby, I hold that there is no mala fide on the part of the Respondents for acquisition of lands/buildings for widening of approach roads i.e. Station Road and Karbighaiya Road, and thereby the first question raised on behalf of the Petitioners is rejected.

15. The next plea made on behalf of the Petitioners to assail the acquisition is based on the order dated 26th December, 1998 passed by the Hon'ble Minister concerned. It was submitted that the Minister vide aforesaid order directed to scrutinise the project to find out as to which are the lands to be acquired for widening of Overbridge. If the Overbridge is not widened and only approaching roads are to be widened then certain other lands are to be acquired. The District Magistrate, Patna was made convenor and two technical persons along with P.W.D. Engineers were made members of a Committee to submit report on the query made by the Minister I/C. The aforesaid order was communicated to the District Magistrate, Patna on 3rd January, 1997 and a meeting held with the Railway Officials on 28th January, 1997. The Railway Officials' acquainted the Committee that the State Government had to send a plan to the Railway for acquisition of railway land for widening of the existing Chiraiyatand Railway overbridge. The Executive Engineer suggested that the width of the road of the Railway Overbridge, is to be finalised to incorporate and finalisation of the master plan and for such purpose resurvey, traffic census was required to be conducted. It was alleged that no such resurvey or traffic census was conducted, nor any notice was given to any individual in this respect. The Executive Engineer of the Road Construction Department vide letter dated 25th June, 1997 wrote to the Collector, Patna that no fresh step in the matter of acquisition of land can be taken without such resurvey and ultimately no such step was taken.

16. The counsel for the Petitioner pointed out that in the meantime, a writ petition, C.W.J.C. No. 9454/56 along with another C.W.J.C. No. 1661/96 were heard together, wherein this Court by order dated 9th February, 1998 directed the authority concerned to dispose of the matter which was pending u/s 5A(2) of the L.A. Act. The concerned Hon'ble Minister I/C. thereafter passed order on 23rd July, 1998 and directed to protect the temple and mosque in the process of acquisition and to acquire land, after resurvey. The land holders were ordered to be paid present market price before their displacement and the Road Construction Department was directed to furnish written agreement giving time schedule for completion of work like, Roads, overbridge, Fly-over etc. Suggestion was made to rehabilitate the displaced landholders, businessmen at some other places, as mentioned therein

Submission was made that earlier order passed by Minister concerned on 26th December, 1996 merged with the order dated 23rd July, 1988 and the authorities had no jurisdiction to proceed in the matter further without adhering to such order passed u/s 5A(2) of the L.A. Act. It was submitted that without implementing the order dated 23rd July, 1998, the Collector prepared and signed

the award on 30th July, 1998, which is illegal.

The counsel relied on the Supreme Court (sic) decision in the case of Jugal Kishore Bhagar Vs. The State of Bihar and Others, and submitted that the authority cannot go beyond the order passed u/s 5A(2) of the Act, being binding on the authorities.

Much stress was placed on order passed by the Hon'ble Minister I/C. on 26.12.1996 wherein direction was given to resurvey the matter. It was suggested the Hon'ble Minister, in fact, doubted the scheme, but the District administration without pursuing the matter in proper aspect, proceeded in the matter. After order dated 9.2.1998 passed by this Court, though the Hon'ble Minister I/C. reheard the matter and directed the authorities to fulfil certain conditions but without fulfilling such conditions of rehabilitating the shopkeepers and without resurvey, steps were taken, which is against the law and rules of natural justice.

Reliance was placed on a decision of Karnataka High Court reported in AIR 1988 Karn 70 where declaration u/s 6 of the Act was held to be illegal having made without hearing the landholders u/s 4 of the Act.

17. The Petitioner also assailed the award and proceeding on the ground of limitation as prescribed u/s 11A of the L.A. Act and it was submitted that the award having not prepared within two years from the date of publication of notification u/s 4 is fit to be set aside.

Reliance was placed on the decision reported in and Kaliyappan Vs. State of Kerala and Others,

18. The counsel for the State relied on relevant dates relating to publication of notification u/s 4; Section 6 and order passed u/s 5A of the L.A. Act, apart from the date of award.

It appears from the record the notification u/s 4 was issued on 16th October, 1994 which was published in the newspaper on 28th November, 1994. Notices u/s 4(1) were served upon all the land holders by 10th February, 1989. Pursuant to some objections filed u/s 5A of the L.A. Act, initial order was passed on 5th January, 1996, but subsequently the matter was taken up by the Minister concerned. During the pendency of the matter before the Minister I/C., declaration u/s 6 was made on 2nd March, 1996. Such declaration was published in two daily newspaper on 21st March, 1996, followed by service of notice on the land holders which was lastly served on 31st July, 1996. The Minister concerned passed order on 26th November, 1996 for resurvey of the area, which was done as appears from Annexure-D to the counter affidavit. Subsequently, in pursuance of order dated 3rd February, 1998, passed in C.W.J.C. No. 9454 of 1996 and C.W.J.C. No. 1661 of 1996, the matter was finally disposed of by Minister on 23rd July, 1998. Award was finally prepared on 30th July, 1998 i.e. within two years when the last notice was served on 31st July, 1996 u/s 6 of the L.A. Act.

19. The aforesaid fact as pleaded by the State has not been refuted by the

Petitioners and for the said reason, I hold that the award was prepared well within the period of limitation as prescribed u/s 11A of the L.A. Act, and there was no infirmity in the proceeding, specific order having passed by the Minister concerned u/s 5A(2) of the L.A. Act.

20. In the aforesaid circumstances, I find no reason to interfere with the matter, there being no mala fide on the part of the Respondents and there being no illegality. However, the Respondents are directed to adhere to their undertaking given before this Court relating to completion of the widening of Chiraiyatand Overbridge; widening of approach roads; and construction of two fly-overs on such approach roads, each of which should be completed within three years from the date of acquisition of land in one or other part.

21. The writ petition is dismissed with the aforesaid observation. However, on the facts and circumstances, there shall be no order, as to costs.