

(2008) 09 OHC CK 0024
In the Orissa High Court
Case No : O.J.C. No. 4919 of 2002

Bobbli Surya Prasad Rao

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-09-2008

Acts Referred:

Orissa Land Acquisition Act, 1948 — Section 17(4), 2, 39, 4, 4(1)

Citation : (2009) 1 CLR 274

Hon'ble Judges : I.M. Quddusi, J;A.K. Parichha, J

Bench : Division Bench

Advocate : K.N. Jena, D.K. Mohapatra, B.P. Pal, AK. Sahu, D.P. Mohapatra, S.N. Panda and M. Ganguly, for the Appellant; Addl. Government, for O.Ps. 1 to 3 Asoke Mukherji, G. Mukherji, P. Mukherji, S. Pattnaik, A.C. Panda, S.R. Patra and A. Bidhar, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—By means of this writ petition, the Petitioner has prayed for quashing of the notification dated 1st August, 1994 issued by the Revenue and Excise Department, Government of Orissa, u/s 4 (1) of the Land Acquisition Act acquiring Ac.42.77 of land in mouza Bankabija under Jeypore Tahsil in the district of Koraput for public purpose for establishment of Seba Paper Mill (Annexure-1), the declaration dated 29.6.1995 (Annexure-2) and the letter No. 28 dated 4.1.2002 of the Land Acquisition Officer, Koraput intimating the Petitioner that land measuring Ac.5.00 as claimed by the Petitioner cannot be surrendered as it falls within the alignment area of Ballarpur Industries Limited (Seba Unit).

2. The case of the Petitioner is that he being an educated and unemployed Scheduled Caste person wanted to start a small scale industry at Jeypore. He registered his Unit in the name and style "Prasad Lime Industry" on 10.12.1993 under District Industries Center, Koraput, Jeypore vide registration No. 150903502. For the purpose of setting up of the industry, he purchased Ac.5.00 of land appertaining to plot No. 123 under Khata No. 7 measuring Ac.1.00 and

plot No. 144 under Khata No. 39 measuring Ac.4.00 in mouza Bankabija within Jeypore Tahsil and made application with detail project report to District Industries Centre, Koraput for approval of the same and for onward transmission of the same to the Orissa State Financial Corporation, Jeypore Branch and the State Bank of India, Jeypore Branch for sanction of loan. His application was forwarded by the General Manager, District Industries Centre to Branch Manager, Orissa State Financial Corporation and to the State Bank of India, Jeypore Branch requesting him for sanction of loan. In the mean time he came to know that the land purchased by him has been acquired by the State Government for the purpose of Sewa Paper Mill. So he filed objection in L.A. Case No. 6 of 1994 requesting him to drop the proposed acquisition of the land purchased by him. After receipt of the objection, the Land Acquisition Officer intimated the Chief General Manager (P&A), Orissa Industrial Infrastructure Development Corporation about the objection of the Petitioner to part with the land for the reasons mentioned therein and requesting him to furnish necessary proposal for withdrawal of the purchased land of the Petitioner from acquisition and to furnish additional proposal of acquisition of Ac.5.00 of other land in the adjoining area. The General Manager, District Industries Centre, Koraput also by letter dated 22nd July, 1997 requested opposite party No. 4 to consider exemption of the five acres of land purchased by the Petitioner from acquisition. By letter dated 24.2.1998 the Deputy Manager (P&A), IDCO intimated the Land Acquisition Officer, Koraput to take steps for acquisition of the Ac.5.00 of land purchased by the Petitioner and hand over possession of the same at an early as the same falls within the alignment area of SILT (Unit Sewa). By representation dated 22.12.2001, the Petitioner again requested the Land Acquisition Officer, Koraput that since he has made all preliminary arrangements for establishment of the Industries and materials have been collected, the land purchased by him may be exempted from the land acquisition proceedings in the best interest of justice which he cannot part with for the reasons mentioned in the representation. Finally by letter dated 4.1.2002 (Annexure?14) intimated the Petitioner that the land purchased by him falls within the alignment area of BILT and therefore cannot be surrendered. It was further intimated that the compensation amount of Rs. 85,200.00 due for payment has been placed in Revenue Deposit in the Dist. Treasury, Koraput which was intimated to him vide letter dated 27.3.1999 and therefore there is No. necessity of further correspondence as opposite party No. 4 has expressed his inability to surrender the said land. Hence, this writ petition.

3. Counter affidavit has been filed on behalf of opposite party Nos. 2 and 3. It is stated in the counter affidavit that the land of the Petitioner along with other lands was required to be acquired by the Government in the Industries Department for construction of Sewa Paper Mill for which notification under Sections 4(1) and 17(4) of the Land Acquisition Act was issued on 1.8.1994 and were duly published. However, there was a delay of ten months for publication of notification u/s 6(1) due to collection of sale date from the District Sub-Registrar

Office and patta copy from Tahsildar Office and preparation of working sheet and estimate to arrive at the market value of the land. The objection of the Petitioner was also considered before passing the award. The claim of the Petitioner that he was running a Lime factory on the land in question is not tenable in the eye of law as the Kisam of the land has been recorded as agricultural land and No. step has been taken by the Petitioner to change the classification of the land. Further installation of lime factory within the premises of paper mill being hazardous to human life, the question of allowing the same does not arise. It is further stated that due to grave urgency for acquiring the land as per requisition by the Government in Industries Department letter No. 15579 dated 5.7.1994, notification u/s 4(1) and Section 17(4) of the Land Acquisition Act was issued on 1.8.1994. The Petitioner purchased some portion of the land in question with full knowledge about the acquisition. Since the notification had already been approved by the Industries Department, the permission said to have been granted by the D.I.C. cannot have any overriding effect on the decision of the Government to acquire the land. The objection of the Petitioner to withdraw the land in question from the acquisition was heard by the Land Acquisition Officer and since the Requisitioning Officer reported that the land in question cannot be withdrawn from acquisition as it falls within the alignment area of Sewa Paper Mill and that installation of Lime Factory on the suit land would be hazardous to the health of the residents of Sewa Paper Township, the possession of the land was handed over to the Requisitioning Officer on 6.3.2002. It is further stated that the agreement between the IDCO and the State Government was executed on 6.10.2001, i.e., before filing of the writ petition. The further case of the opposite parties 2 and 3 is that IDCO is an autonomous undertaking of the Government of Orissa duly authorized to acquire the land on behalf of the Companies for establishment of Industries. Therefore, IDCO is neither a third party nor a stranger. Their further case is that Section 43 of the Act provides that the provisions of Sections 39 to 42 shall not apply where the Government is bound by agreement to provide land for companies and as such the agreement is not required to be published in the official gazette. The allegation of the Petitioner that Ac.530.00 of land had been acquired for establishment of Sewa Paper Mill has been denied. It is stated that Ac.167.54 of land has been acquired for the paper mill and more lands are required for the project for construction of residential quarters for its staff, plantation, extension and nursery purpose. In the interest of public, the paper mill has been installed. It is one of the profitable projects in Orissa State and considerable amount is being deposited by the Company in the State Exchequer as royalty. The allegation of the Petitioner that the impugned notifications have been issued in colourable exercise of statutory power without application of mind and with mala fide intention at the instance of private company to deprive the Petitioner and other poor villagers from their right and interest in land has been denied. Therefore, they have prayed for dismissal of the writ petition.

4. Learned Counsel for the Petitioner submitted that in colourable exercise of

power by the State Government to enrich and benefit a private company, the land of the Petitioner has been notified to be acquired employing emergent provision in contravention of the mandatory provisions of law as according to Section 2 (f)(vii) of the Orissa Land Acquisition Act, acquisition of land for a company will not come within the purview of "public purpose" and, as such, the land of the Petitioner having been notified to be acquired for a private Company, i.e., Sewa Paper Mills, the same is illegal. He has further submitted that the notification u/s 6 of the Act was issued after ten months of the issuance of the notification u/s 4 of the Land Acquisition Act as there was No. urgency and further agreement is said to have been executed on 6.10.2001 with IDCO but not yet made with Sewa Paper Mill and the land in question has not yet been delivered to the Company and, as such, Section 6 notification is liable to be quashed. He has further submitted that there was No. urgency for acquisition of the land and by abusing the process of law the State Government infringed the fundamental right of the Petitioner.

5. The notification u/s 4(1) of the Act, in this case, was issued on 151 of August,1994. It appears from the letter dated 22.12.2001 (Annexure-13) of the Petitioner addressed to the land Acquisition Collector that the land measuring Ac.1.00 appertaining to plot No. 123 under Khata No. 7 was purchased by sale deed No. 2385 of 1995 and the lands covered under plot No. 114 under khata No. 39 were purchased under two separate sale deeds after obtaining permission from the Tahasildar vide OSATIPR Case No. 57/95 dated 19.6.1995. Therefore, the lands were purchased after notification u/s 4(1) was issued. The Petitioner being not the owner of the land at the time of issue of notification for acquisition, there was No. question of issue of notice u/s 9 of the Act to him. We have perused the map filed by the Petitioner along with the writ petition. It appears therefrom that the land purchased by the Petitioner is surrounded by the lands acquired for the Sewa Paper Mills on three sides and the road connecting the factory premises passes through plot No. 114. Therefore, the objection not to withdraw the land in question from acquisition since the same falls within the alignment area of the Sewa Paper Mill has substance. Moreover, the prayer of the Petitioner for releasing the land from acquisition has been considered and has been turned down for the reasons mentioned above. In the impugned letter under Annexure-14, it was intimated to the Petitioner that compensation amount of Rs. 85,200.00 due for payment to the Petitioner for the acquisition of the land has been placed in revenue deposit and the said fact has been intimated to him vide letter No. 271 dated 27.3.1999 of the land Acquisition Officer but the said fact has not been denied by the Petitioner. The requisition for acquisition of land was furnished on 22.7.1993, which covered the land in question. Petitioner purchased the land after issuance of notification u/s 4(1). It appears from the record that by 2.4.1997 compensation had been paid in all eligible cases. The Petitioner approached this Court on 2.5.2002.

6. In a recent decision in Civil Appeal No. 5509 of 2008 Sooraram Pratap Reddy and Ors. v. District Collector, Ranga Reddy District and Ors. with Civil Appeal No.

5510 of 2008 Suraram Krishna Reddy and Anr. v. District Collector, Ranga Reddy District and Ors. the Hon"ble apex Court has held that in case of integrated and indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different components to consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters. If the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the State and the public at large, it will serve public purpose and in such a case the action of the State in initiating acquisition proceedings for establishment and development of infrastructure project cannot be held to be contrary to law or objectionable. In the instant case, the land was acquired for the purpose of establishment of a Paper Mill and not only it will have industrial development of the State but also generate employment for the people. Therefore, this Court cannot interfere on the ground that part of the land was lying vacant and Court should direct that the said land be handed over to its erstwhile owner.

7. We, therefore, do not find any merit in this writ petition. The writ petition is accordingly dismissed. However, the compensation amount kept in revenue deposit along with the interest accrued be released in favour of the Petitioner.

8. There shall be No. order as to costs.

A.K. Parichha, J.

9. I agree.