

(2012) 12 GAU CK 0040
In the Gauhati High Court
Case No : Writ Petition (C) No. 361 of 2012

Bongara Sontala Bhumi Suraksha Samittee	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 11-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 11A, 17, 17(1), 4

Citation : (2013) 2 GLT 861

Hon'ble Judges : S.C. Das, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : K.K. Baruah, for the Appellant; N. Rajkhowa, Addl. GA, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—Heard learned counsel, Mr. K.K. Baruah, for the petitioner and Mr. N. Rajkhowa, learned Additional G.A., Govt. of Assam, for the respondents. The issues, falls for our consideration, in this Writ Petition, are (i) whether the respondents should be directed to derequisition the land acquired by Notification No. RLA 253/2007/2, dated 03.01.2008, and (ii) whether the revenue officials of Kamrup District should be restrained from entering into the land, acquisitioned under the aforesaid notification.

2. The petitioner contended that the State Govt. by Notification No. RLA 253/2007/2, dated 03.01.2008, published in Assam Gazette, acquired land for setting up of a Information Technology Park (for short, I.T. Park) at Bongara. The permanent residents of the village Bongara, to resist the acquisition, formed and/or established an unregistered society namely "Bongara Sontala Bhumi Suraksha Samittee" and under the umbrella of that "Samittee" (society), they have been fighting to resist the government from acquiring the land under process of acquisition. It is the contention of the petitioner, that altogether, 294 Bighas, 1 Katha and 1? Lechas of land of village Bongara, Mouja Cheyani, in the District of

Kamrup, has been acquired for the purpose of I.T. Park, under Palashbari revenue circle, and as a result of such acquisition, many people will be losing their house and cultivable land, and that land under acquisition, are fertile land for producing crops and vegetables and if those lands are taken away, the members of the "Samittee" will lose their source of livelihood as well as their permanent residents. They have contended that though notification was made on 03.01.2008, possession has not been taken over as yet, and that the members of the "Samittee" paying the land revenue to the government, as usual, for their respective land and they have produced the revenue receipts in support thereof.

It is also contended by the petitioner that on earlier occasion, land from same Mouja was proposed for acquisition for Indo-Tibetan Border Police (ITBP), but because of the agitation of the local people, state Govt. ultimately cancelled the acquisition process and by a Notification derequisitioned the proposed acquired land.

The petitioner has, therefore, prayed for directing the respondents to derequisition the land, acquired under Notification dated 03.01.2008, as aforesaid, and to restrain the revenue officials from entering into the area for acquisition purpose.

3. Respondents contended that the acquisition of the land has been made under Notification No. RLA 253/2007/2, dated 03.01.2008, as per Section 17 of the Land Acquisition Act, 1894. After such acquisition, the respondents already determined compensation for the acquired land and some of the interested persons belonging the land, already accepted the compensation for such acquisition, and possession also has been taken over of the maximum area of acquired land. Taking over of possession is in the process and the writ petition is liable to be dismissed.

4. Learned counsel for the petitioner, has contended that about 5 years going to be elapsed since the notification has been issued acquisitioning the land but the respondents not yet taken over possession and under such circumstances, the claim of the respondents that the acquisition has been made to meet extreme urgency, as prescribed u/s 17 of the L.A. Act, no longer exists and hence, the respondents are liable to withdraw the notification and issue a fresh notification derequisitioning the acquired land.

5. Learned Additional G.A., on the contrary, has submitted that after the notification, issued u/s 17, the land has already been vested with the government. Compensation has also been determined and some of the interested persons already received compensation. The authority has also taken possession of maximum part of the acquired land and some area yet left out because of the pendency of the present case. He has submitted that there is no point of derequisitioning the land since it is for urgent public purpose. He has also submitted that maximum local people are very much enthusiastic and interested in the setting up of I.T. Park which will generate employment, as a

result of which people will be highly benefited.

6. Admittedly, the present acquisition process has been taken up by the respondents by a Notification, issued u/s 17 of the L.A. Act. In the moment such a Notification is issued, the land described in the Notification vests in the appropriate Govt. for such purpose, for which the acquisition has been made. Law has prescribed that the authority can take over possession on expiration of 15 days from the publication of notice as mentioned in Section 9, sub Section (1) of the said Act. Section 9, sub Section (1) prescribes thus:-

9. Notice to persons interested.-

(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such-land may be made to him.

7. On record, we find that the respondents issued Notification specifying the land under acquisition vide Notification No. RLA 253/2007/2, dated 03.01.2008, published in Assam Gazette. Respondents also placed on record the approval of the appropriate Government for such acquisition, vide Letter No. KRA-44/2007/3, dated 06.09.2007 (Annexure-3 to the counter affidavit). The petitioner placed on record a copy of Form-15 regarding compensation determined by the L.A. Collector in respect of the acquired land. It is, therefore, evident that compensation for the acquired land has already been determined by the appropriate authority and the persons interested to the land, under acquisition, may receive the compensation and take further action according to law.

8. The scheme of Land Acquisition Act prescribes the general procedure of acquisition in the process of publishing notification u/s 4; hearing of objection u/s 5(A); a declaration u/s 6 and then determination of compensation and thereafter taking over of possession on payment of such compensation. Section 17 of the Act has vested a special power to be exercised by the Acquisition authority in case of urgency and when a notification is made u/s 17 for the purpose of acquisition, hearing of objections as required u/s 5(A) of the L.A. Act, is presumed to have dispensed with and a determination of compensation is to be made after publication of a notification as prescribed by law. We find that the notification has already been made by the Acquisition authority describing the land, which has been acquired, and inviting the parties to receive the compensation.

9. In the ordinary course of acquisition, after a declaration is made u/s 6 of the L.A. Act, the Collector shall make the award u/s 11 within a period of 2 years from the date of publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse. The provision of time span has been prescribed in Section 11A of the L.A. Act. On the contrary, while a notification is made u/s 17 of the L.A. Act and notice published as prescribed in Section 9 of the Act, the authority can take over possession of

the acquired land even before determination and payment of compensation. Learned counsel of the petitioner referring the decision of Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, , has submitted that the provision as prescribed u/s 17 is a special provision and in the circumstances, where about 5 years going to be elapsed and the authority did not yet take over possession, it may be presumed that there was no urgency for a notification u/s 17, and thereby, the entire acquisition process has vitiated. The Apex Court in Kishanlal (supra) has observed thus:-

Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under S. 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however, laudable it may be, by itself is not sufficient to take aid of S. 17 to use this extraordinary power as use of such power deprives a land owner of his right-in-relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under S. 5-A of the Act. The authority may have subjective satisfaction of the need for invoking urgency clause under S. 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under S. 5-A of the Act could be completed. In other words, if power under S. 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration.

10. Undoubtedly, Section 17 of the L.A. Act is an exception to the general rule, as prescribed under the L.A. Act, to be followed in course of acquisition of land. In the event, notification was made u/s 17 of the L.A. Act, certain valuable rights of the land holders, prescribed under the Act, cease to operate. Only in a case of real urgency where the situation demands that taking over of possession of the land is required at once and the ordinary procedure cannot be followed, only in such cases the administration is expected to invoke the provision. The urgency must be a real urgency and should not be whimsical. The State is expected to act with due care and responsibility while invoking the urgency clause.

In the present case, notification was made on 03.01.2008 acquisitioning the land for setting up of an I.T. Park. The State Govt. at its wisdom considered the acquisition urgent and, therefore, invoked the power prescribed u/s 17 of the Act. It is, therefore, expected that the Govt. shall not show any laxity or lethargy while taking action followed by notification u/s 17 of the Act. The Supreme Court made it categorically clear that only in exceptional situation such power should be exercised. The petitioners themselves enclosed a copy of the record showing determination of Rs. 5,42,75,169/- for the acquired land. In their writ petition, the petitioner stated that they have been vigorously opposing the acquisition of land and trying to prevent the Revenue Officers from taking over of possession of the acquired land. The respondents contended that the acquisition process was urgently taken up and after notification, compensation has also been paid to some of the land holders and some others are yet to receive the compensation, and the matter was also delayed, because of pendency of the case before the court. While the members of the petitioner's society themselves resisting the handing over of possession of not receiving the determined compensation, they cannot claim the respondent authority for the lapse of time in the meantime. While the reason for delay is attributable to the petitioner, they cannot claim advantage of the delay and so, the petitioner and its members cannot claim that there was actually no urgency and the provision was wrongly resorted to. The ratio of the decision of the Hon'ble Apex Court, in the given facts and circumstances of that case, therefore, cannot be invoked and/or applied in the given facts and circumstances of this case.

11. While a notification has been made u/s 17 of the Act, the land automatically vests in the government after the notification is made and the rest of the procedure is to be followed regarding determination of the compensation and taking over of the possession. Provision of Section 5-A has no manner of application in the process of an acquisition u/s 17 of the Act. Similarly the provision of Section 11-A also has no manner of application. The Supreme Court in the case of Satendra Prasad Jain and Others Vs. State of U.P. and Others, has critically examined and laid down the law in respect of application of Section 11-A and Section 5 of the L.A. Act in a acquisition process invoking emergency clause prescribed u/s 17 of the Act. The Court has held thus:-

The provisions of Section 11A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration u/s 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11A can have no application to cases of acquisitions u/s 17 because the lands have already vested in the

Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner. Section 11A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.

We find no merit in the writ petition and since the issues what have been raised by the learned counsel of the petitioner, that possession has not been taken over as yet, or that the public at large are not interested to hand over the possession etc., cannot be decided in a writ petition under Article 226 of the Constitution as those are disputed question of fact and need to be decided taking evidence thereof.