

(2013) 02 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2418 of 2012

Brajesh Kumar and Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Railways (Amendment) Act, 2008 — Section 2(37A)
Railways Act, 1989 — Section 2(37A), 20(D), 20A, 20A(1), 20D(3)

Citation : AIR 2013 Jhar 92 : (2013) 3 AJR 323 : (2013) 3 JLJR 249

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Ayush Aditya and Ms. Debolina Sen, for the Appellant; Ram Niwas Roy, for the Railway and S.C.(Mines) for the State, for the Respondent

Final Decision : Disposed Off

Judgement

P.P. Bhatt, J.—The petitioners, by way of filing the instant writ petition under Article 226 of the Constitution of India, have prayed for issuance of appropriate writ/order/direction for quashing and setting aside the notification bearing No. 2804 dated 14.12.2011 (Annexure-2) whereby and whereunder a notification u/s 20A(1) of the Railway Act, 1989 has been issued for the purpose of acquiring the lands of Mouza-Bhuda within the district of Dhanbad, although the said lands are covered by more than hundreds of residential houses and is densely and thickly residential colony namely Binod Nagar Colony. It is further prayed that respondents be restrained from disturbing the peaceful possession of the petitioners over their residential houses, particularly when the objections filed by the petitioners in terms of Section 20(D) of Act is still pending. It is also prayed that necessary direction be issued upon the respondents to decide the objections of the petitioner (Annexure-3), keeping in view the principle of minimum damage and the recommendation of the Member, Railway Board (Annexure-4) who has also admitted that the lands covered by the notification (Annexure-2) consisting of a residential colony and will amount to uprooting/displacing rendering

homeless several persons who have their house since last more than three decades. Heard learned counsel for the petitioners Ms. Debolina Sen as well as learned counsel Mr. Ram Nivas Roy for the respondents-Railway Authorities and perused the materials placed on record.

2. It is the case of the petitioners that they are resident of Binod Nagar Colony in Mouza Bhuda in the district of Dhanbad and they have constructed their residential house and have been living for the last three decades. According to petitioners, the houses were constructed out of the savings of the life and after taking loan from banks/financial institutions, on the basis of sanctioned building plan and they all have been recognized as raiyats.

3. It is the case of the petitioners that the Act of 1989 was enacted to consolidate and amend the law relating to Railways by the Railway (Amendment) Act, 2008 (Act 11 of 2008) (hereinafter referred to as the Amendment Act), which came into effect from 31.01.2008. As per Amendment Act, the Central Government was conferred with the powers to acquire lands for a special railway project has been defined u/s 2(37A), which was introduced by the Amendment Act.

4. It appears that a notification dated 14.12.2011 was published in the daily newspaper dated 04.02.2012 whereby the Central Government issued a notification declaring its intention of acquiring lands consisting of 9 plots in Mouza-Bhuda.

5. It is the case of the petitioners that said notification does not show anywhere that the requirement of Section 2(37A) of the Amendment Act has been fulfilled. It is submitted that there is no mention about any notification by the Central Government of the project in question nor there are other relevant details mentioned which can classify the same within the ambit of Section 2(37A) of the Act.

6. It is submitted that all the petitioners have their residential houses which are standing over different plots of Mouza- Bhuda since almost last three decades. It is submitted that no ground work/survey has been done and in the most mechanical way, the notification has been issued.

7. It is further submitted that on the southern side of the railway track there is vast extent of vacant land, most of which is Government land. It is also submitted that there will be hardly any uprooting of any residential house, if the proposed construction is shifted to the southern side of the railway track.

8. Learned counsel for the petitioners Ms. Debolina Sen vehemently submitted that the proposed notification dated 14.12.2011 will amount to demolition of hundreds of houses which have been existing since last three decades and it is well settled that while achieving public purpose the principle of minimum damage has to be applied. However, the said notification has been given a complete go-bye in the impugned notification which shall result into demolition of hundreds of

residential houses of these petitioners.

9. Learned counsel for the petitioners Ms. Debolina Sen further submitted that immediately on coming to know of the said notification, the petitioners have filed their objections before the competent authority clearly stating that they have their residential houses over the lands proposed to be acquired by the notification dated 14.12.2011 and that if the proposed acquisition is shifted to southern side of the railway track, which contains vast land then the principle of minimum damage can be achieved. According to learned counsel for the petitioner even the Member, Railway Board has accepted that the said proposed acquisition is against the public interest and will amount to demolition of residential houses of several persons, since the area i.e. Binod Nagar Colony is densely populated residential area and accordingly, a suggestion has been made for preventing unnecessary and unavoidable displacement and for taking well considered decision after taking into account all aspect of the matter.

10. Learned counsel for the petitioners, Ms. Debolina Sen in support of her submissions relied upon the decision rendered in the case of Competent Authority Vs. Barangore Jute Factory and Others, . Para 5 of the said judgment reads as under:-

5.... far as the question whether the impugned notification meets the requirement of Section 3-A(1) of the Act regarding giving brief description of land is concerned, we have already shown that even though plot numbers of lands in respect of each mouza are given, different pieces of land are acquired either as whole or in part. Wherever the acquisition is of a portion of a bigger piece of land, there is no description as to which portion was being acquired. Unless it is known as to which portion was to be acquired, the petitioners would be unable to understand the impact of acquisition or to raise any objection about user of the acquired land for the purposes specified under the Act or to make a claim for compensation. It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning. In our view, the impugned notification fails to meet the statutory mandate. It is vague. The least that is required in such cases is that the acquisition notification should let the person whose land is sought to be acquired know what he is going to lose. The impugned notification in this case is, therefore, not in accordance with the law.

11. As against that learned counsel appearing for the respondent-Railway Authorities tried to justify the notification dated 14.12.2011 which was published in official gazette.

12. Learned counsel Mr. Ram Nivas Roy appearing for the respondents-Railway Authorities by referring the counter affidavit, filed on behalf of the respondent No. 2 submitted that the notification has been issued in public interest and for special railway project, and the same has been mentioned in the notification. It is

further submitted that the objection of the petitioners has been heard by competent authority and appropriate action has been taken as provided in Section 20(D) of the Act. It is further submitted that Section 20D(3) of the Act provides that the order of competent authority on such objections shall be final.

13. It is further submitted that a thorough ground work/survey has been conducted by DFCCIL and alignment has been finalized based on techno-economic survey. It is further submitted that the alignment of DFCCIL can not be changed as it is not technically feasible as Dhanbad station and yard lines are falling on south side of alignment. Also Dhanbad, Jharia Pradhankhunta-Sindri, Dhanbad-Kusunda lines are in south side, which constraints prohibit the planning of DFCCIL alignment on south side. It is further submitted that the project involves construction of 3800 K.M. of double line freight corridor in 1st phase. The alignment is kept parallel to main trunk routs for operational requirement. Such projects are linear in nature and railway alignments unlike road works, can not be altered or deviated to cater for small obstructions.

14. It is further submitted that the objections submitted by the petitioners to the competent authority have been heard by the competent authority and appropriate action has been taken as provided in Section 20D of the Railway Amendment Act, 2003.

15. It is lastly submitted that the acquisition process by the respondents are strictly as per Railway Amendment Act, 2008 and no violation of law has been made.

16. Considering the aforesaid rival submissions and on perusal of the materials placed on record as well as para 14 of the judgment cited by the learned counsel for the petitioner reported in the case of Competent Authority Vs. Barangore Jute Factory and Others, , the questions, which arises for consideration is as to whether the impugned notification and impugned Annexures are illegal, arbitrary and unsustainable in the eyes of law; Secondly, whether the impugned notification has been issued in public interest and for special railway project; Thirdly, whether the respondents without deciding the objection of the petitioners can acquire the raiyati lands of the petitioners ?

17. For consideration of the aforesaid questions first of all, the provision contained in Section 20A(1) of the Railway Act, 1989 which was amended by the Railway Amendment Act, 2008 (Act 11 of 2008) which came into effect from 31.01.2008 is required to be seen. The Section 20A of the Act provided as under:

20A, Power to acquire land, etc.-(1) where the Central Government is satisfied that for a public purpose any land is required for execution of a special railway project, it may, by notification, declare its intention to acquire such land. (2) Every notification under sub-section (1), shall give a brief description of the land and of the special railway project for which the land is intended to be acquired.

18. On perusal of notification bearing No. 2804 dated 14.12.2011 (Annexure-2),

it appears that in the said notification the brief description of the land and the purpose for which the land is intent to be acquired has been mentioned in the said notification. The requirement in law under Sub-section 2 of Section 20A of the Railway (Amendment) Act 2008, appears to be satisfied and therefore, the said notification appears to be in accordance with the said provision and can not be treated as illegal.

19. Now the another question which arises for consideration is whether the said notification has been issued in public interest and for special railway project. On perusal of the counter affidavit filed by the respondent and the document annexed with the said counter affidavit clearly demonstrates that the said notification was issued in public interest and for special railway project.

20. In view of above position the judgment referred to and relied upon by the learned counsel for the petitioner reported in Competent Authority Vs. Barangore Jute Factory and Others, para-5 does not help to the petitioner's case. However, the view taken by the Hon"ble Apex Court in the case of "Competent Authority Versus Bangalore Jute Factory and others". (supra) para 14 is relevant for the purpose of present case as the petitioner's land-losers are required to be compensated adequately. Para 14 of the said judgment reads as under:

14. "Having held that the impugned notification regarding acquisition of land is invalid because it fails to meet the statutory requirements and also having found that taking possession of the land of the writ petitioners in the present case in pursuance of the said notification was not in accordance with law, the question arises as to what relief can be granted to the petitioners. The High Court rightly observed that the acquisition of land in the present cape was for a project of great national importance i.e. the construction of a national highway. The construction of a national highway on the acquired land has already been completed as informed to us during the course of hearing. No useful purpose will be served by quashing the impugned notification at this stage. We cannot be unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the landowners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the landowners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems involved in quashing the impugned notification, we are of the view that a better course will be to compensate the landowners, that is, the writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action."

22. Now the third question which arises for consideration is whether respondents have properly considered and decided the objections filed by the petitioners?

23. It appears that the objections/representations have not been properly considered and decided as ought to have been decided by the respondent authorities. Therefore, while disposing of this writ petition, respondent authorities are directed to deal with and decide the objections/representations filed by the present petitioner afresh by giving them reasonable opportunity of being heard. Though the petitioners have submitted their objections and representations earlier, however, the petitioners are required to be given an opportunity to file a fresh representation within four weeks from the date of receipt of the order so that the petitioners have an opportunity to put forward their case before the authorities concerned. On receipt of such representation, the railway authorities shall consider the same, in accordance with law, within four weeks from the date of receipt of the said representations.

24. It is expected from the respondent-railway authorities that a fair evolution shall be made, keeping in mind the principle of minimum damage while achieving public purpose and, therefore, the railway authorities shall take into account many factors such as the position prevailing on the site, nature and position of the land, the residential houses, if any, and the loss which is likely to be caused/incurred to the petitioners as well as amount of compensation which shall be required to be paid by the railways to the persons whose house/land is put under acquisition due to such acquisition in achieving larger public interest.

25. Till the representations are decided by the railway authorities, it will be open for the railway authorities to carry out the work of laying railway track by observing principle of minimum damage to the residential houses of the petitioners while achieving public purpose. With aforesaid observations and directions this writ petition stands disposed of.