

(2020) 02 PAT CK 0197

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2924, 5734 Of 1993

Budhi Nath Jha And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(i), 5A, 6, 9, 9(1), 9(2), 9(3), 9(4), 11A, 12(2), 16, 24(2)

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24

Citation : (2020) 02 PAT CK 0197

Hon'ble Judges : Prabhat Kumar Jha, J

Bench : Single Bench

Advocate : Tuhin Shankar, Gopal Kumar, Ajay Kumar Rastogi, Sushil Kumar Singh

Final Decision : Allowed

Judgement

Heard both sides.

2. The petitioners in both the writ petitions seek issuance of a writ in the nature of certiorari for quashing the entire proceeding of Land Acquisition Case No.444 of 1974-75 of the court of Land Acquisition Officer, Madhubani including the notification dated 14.01.1966, issued under the provisions of Section 4(i) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') and subsequent declaration under Section 6 of the Act. The petitioners further pray for a direction to the respondent authorities not to interfere into the peaceful possession of the petitioners over the lands.

3. The facts bereft of unnecessary details but relevant are that the dispute is with regard to 30 acres of land situated in a compact block in village Mahdewa, Tilath and Deorh falling in Ghoghardiha circle of district Madhubani. The land was sought to be acquired for construction of buildings, work shops, hostels and staff quarters for Industrial Training Institute, Ghoghardiha. In 1996, the lands of

village Mahdewa, Tilath and Deorh measuring 30 acres were sought to be acquired vide Land Acquisition Case No.444 of 1974-75 with notification dated 14.01.1966 but no notice was served on the landlords-petitioners. In the year 1968-69, the proposal was reconsidered by the Government of Bihar for shifting of I.T.I. from Ghoghardiha to Samastipur and the petitioners thought that the government shelved the idea of acquisition of land of the petitioners for construction of I.T.I., Ghoghardiha. The revisional survey was started in the year 1974-75. Raiyati khatihan were prepared in the name of the petitioners and the government accepted the rents. The petitioners remained in possession of the lands. All of a sudden in the month of February, 1993, the Circle Officer, Ghoghardiha, Madhubani, respondent no.8, along with the B.D.O., Ghoghardiha and the Officer-in-Charge, Ghoghardiha police station with armed forces came on the disputed lands and made inspection and started measuring the lands. The petitioners enquired from the respondent no.8 who replied that some lands were measured for the purpose of taking physical possession for construction of building for I.T.I., Ghoghardiha. Local Member of Parliament and local Member of Legislative Assembly along with other officials also came on the spot, laid the foundation stone and forcibly tried to take possession of the lands.

4. Learned counsel for the petitioners submits that a notification under Section 4 of the Act was issued in the year 1966 but the petitioners never received any notice in pursuance to the issuance of notification under Section 4 or under Section 6 of the Act. Only 5-6 land owners received notice and filed objection.

Thereafter the authority sent letter to the Secretary, Labour and Training Department for shifting of the I.T.I. from Ghoghardiha to Samastipur in the year 1967 itself and thereafter the authority did not take any action. The petitioners never received any notice under Section 9 of the Act nor any objection filed in the year 1966 by some of the landlords was also disposed of. The petitioners had no knowledge about preparation of award and even after preparation of award no notice was issued to the petitioners. The petitioners never received any single farthing as compensation till date. It is further submitted that in the year 1984 by an Amending Act 68 of 1984 Section 11-A was inserted and it was made mandatory that award should be prepared within two years from the date of notification. It is further submitted that the authority without giving any notice to the petitioners completed the process of acquisition and even after preparation of award no notice was ever issued to the petitioners to receive the compensation amount. The provisions as contained in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 says that even an award under Section 11 has been made, then such proceeding shall continue under the provisions of the said Land Acquisition Act, but if physical possession of the land has not been taken over or the compensation has not been paid, the said proceeding shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings in accordance with the provisions of this Act, therefore, on account of the fact that the delivery of possession has not been taken over nor any

compensation was paid to the landlords, the entire proceeding for acquisition of the lands shall be deemed to have elapsed.

5. Learned counsel for the State filed counter affidavit as well as the detailed supplementary counter affidavit. It is submitted that L.A. Case No.444 of 1974-75 together with the notification dated 14.01.1966 through which the land in question were acquired for the project of I.T.I., Ghoghardiha was initiated on the basis of letter no.7358/DLA, DAR 217/65 dated 11.08.1965 of the Special Officer, Directorate, Land Acquisition, Bihar, Patna. 51 land owners owns 30 acres of land spread in three villages, namely, Mahdewa, Tilath and Deorh of Ghoghardiha Anchal. Preliminary notification under Section 4(1) of the Act was published on 14.01.1966. When no objection was received under Section 5-A of the Act on behalf of land owners or any person interested therein, the declaration of acquisition of the aforesaid land was made under Section 6 of the Act on 20.04.1966. On 11.05.1966, a notice (Annexure-J series) under Section 9 of the Act was issued to each of the land owners regarding intention of taking possession over the aforesaid lands. It is further submitted that after issuance of the aforesaid notice, the persons interested in the aforesaid lands were heard on 06.09.1966 and after settlement of their claims finally the award was prepared on 31.01.1975. The notice under Section 12(2) of the Act was issued to the land owners which was duly served upon them. In spite of this notice none of the awardees appeared to receive payment on the date fixed, i.e., 16.03.1975 and subsequently entire award money was deposited in the treasury on 17.03.1975. After issuing public notice, the awardees refused to take notice. It is further submitted that thereafter physical possession of 30 acres acquired land was taken over on 26.11.1975 under Section 16 of the Act and construction was made thereon.

6. Having heard the submissions of both sides, the questions arise for consideration (i) Whether the lands of the petitioners were acquired in accordance with law after giving notice and hearing the objections of the petitioners? (ii) Whether the award for acquisition of the lands of the petitioners was prepared in accordance with law and notice was issued to the petitioners under Section 12(2) of the Act?

7. It is evident from perusal of the records, which was called for by order dated 22.03.2018, that the land acquisition proceeding was initiated after issuance of notification under Section 4 of the Act. Thereafter notification under Section 6 of the Act was published on 24.03.1966. On 11.05.1966, notice under Section 9 sub-sections (1), (2), (3) and (4) was issued inviting objection and the land owners were directed to appear on 09.06.1966 at Industrial Training Centre, Ghoghardiha but from perusal of the ordersheet, it appears that after 09.06.1966, no landlord appeared before the Land Acquisition Authority nor the Land Acquisition Authority issued any notice to the land owners. Receipt of service of notice is also not on record but the respondents claimed to have heard the objections although it appears from the ordersheet that the landlords neither

appeared nor filed any objection before the Land Acquisition Authority and this fact itself shows that the land owners had no notice about the acquisition of the lands. It further transpires from the order dated 16.05.1967 of the Additional Collector that the rate of the land was fixed and sent to the government for sanction. From order dated 15.12.1967/29.12.1967, it transpires that the Land Acquisition Authority went to the Superintendent of I.T.I. and they heard the objection of Vijayanand Jha and others who had filed objection before the Revenue Department in pursuance of letter no.4516, dated 23.05.1967 for leaving the lands of the land owners. The Land Acquisition Authority found that if 12 or 13 acres lands are left to the land owners, their most of the difficulties shall be removed and such proposal to this effect was sent. Thereafter the record (land acquisition case) remained pending for years. On 25.05.1973, it transpired that 12 acres land was agreed to be left out from acquisition. From perusal of different ordersheet in the file, it appears that no concrete decision was taken and award was prepared but even after preparation of award, no notice was issued to the land owners under Section 12(2) of the Act. Although the respondents have stated in the counter affidavit that the notice under Section 12(2) of the Act was personally served and when the landlords did not turn up to receive the award amount, the award amount was deposited in the treasury.

8. From the facts stated above, the position is admitted that of course the step for initiation of land acquisition was initiated in the year 1965 but the award was prepared in the year 1975. At no point of time either under Section 9 or under Section 12(2) of the Act after preparation of the award, the notice was served on the land owners. No service report showing issuance of notice on the landlords are kept on record nor from perusal of the ordersheet or the margin of ordersheet, it appears that notice was ever served on the landlords. The respondents have admitted in the counter affidavit that the award money was deposited in the treasury and in the referral court. Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads as follows:

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section

(1), in case of land acquisition proceedings initiated under the Land Acquisition

Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

9. From perusal of sub-section (2) of Section 24 of the Act, it is crystal clear that in case the land acquisition proceeding was initiated under the Land Acquisition Act, 1894 and award was prepared but the physical possession of the land has not been taken or the compensation has not been paid, the same proceeding shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceeding of such land acquisition afresh in accordance with the provisions of this Act. This is admitted fact in the present case that after initiation of the land acquisition proceeding in the year 1965, no notice was served to 51 land owners whose 30 acres of lands were to be acquired after issuance of notification under Section 4 of the Act 1 of 1894. Even after notification issued under Section 6 for acquisition of the lands, no notice under Section 9 of the Act was ever served on the landlords. Even the Land Acquisition Officer staled the proceeding as a proposal was received for shifting of I.T.I., Ghoghardiha to Samastipur but again in the year 1973, the Land Acquisition Authority proceeded further and award was prepared without informing the land owners and inviting objection from the land owners or the persons interested in the lands under Section 9 of the Act. Even after preparation of award, no notice was served on the land owners but the respondent again washed off his hands after preparing the award and without getting the service report of notice, deposited the compensation amount in the treasury instead of depositing the same in referral court under the Act and none of the land owners get even a single farthing as compensation for acquisition of their lands. The land owners remained in possession as revisional survey operation was started in the year 1974-75 and Khatihan was prepared in the names of the land owners according to the record of rights prepared in the cadestral survey. The land owners kept paying the rent till the year 1991-92. Thus, I find that in view of the provisions as contained in sub-section (2) of Section 24, the entire land acquisition proceeding of Land Acquisition Case No.444 of 1974-75 is deemed to have elapsed on account of non-payment of compensation as well as not taking over the possession of the lands from the land owners. Accordingly, the order passed in Land Acquisition Case No.444 of 1974-75 acquiring the land of the petitioners is set aside.

10. Both the writ petitions are allowed.

11. The original record of Land Acquisition Case No.444 of 1974-75 is handed over to the learned counsel appearing on behalf of the State in the Court itself.