

(1977) 01 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jur. Case No. 1185 of 1972

Chandrasekhar Prasad Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-01-1977

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : AIR 1977 Patna 217 : (1977) 10 PLJR 404

Hon'ble Judges : Nagendra Prasad Singh, J;B.S. Sinha, J

Bench : Division Bench

Advocate : A.N. Chatterjee, for the Appellant; Tarakant Jha, A.G. and B.K. Singh, Jr. Counsel to Govt. Pleader 2, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Prasad Singh, J.—This writ application under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner for quashing a notification dated 2-7-1971 issued in purported exercise of the power u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"), conferred on the respondent-Additional Collector, Darbhanga, a copy whereof is Annexure 1 to the writ application. By that notification the respondent, Additional Collector, has stated that it appeared to him that it was desirable that 0.17 acre of land within Dalsingsarai notified area should be acquired for construction of the house of Shri Bale Das and Rohit Paswan, who were Harijans. Details of the lands in question have been mentioned in the said notification. In that very notification, it was further stated that any person affected by the said acquisition was at liberty to file an objection in accordance with Section 5A of the Act.

2. It is the case of the petitioner that pursuant to the said notification, an objection u/s 5A of the Act was filed on his behalf. A copy of the said objection is Annexure "2" to the writ application. The respondent, Additional Collector, however, after hearing the petitioner, rejected the said objection by his order dated 14-8-1972. A copy whereof has been annexed and marked as Annexure

"4".

3. According to the petitioner, the notification aforesaid is not sanctioned by the provisions of the Act inasmuch as it has been issued to serve the interest of an individual and without there being any public purpose for the same. Aforesaid Balo Das, respondent No. 4, (since deceased) was the father of Rohit Paswan, respondent No. 5. According to petitioner he had several litigations in respect of the land, in question, with the aforesaid respondents. They having failed in those litigations have later managed to get the land, in question, acquired through the Government machinery. Learned counsel appearing for the petitioner in support of his contention has drawn our attention to a copy of the aforesaid notification dated 2-7-1971 and the objection filed on behalf of the petitioner before the Additional Collector and has urged that on the facts and in the circumstances of the present case, the proposed acquisition cannot be held to be for any public purpose. At the outset I must say that the notification, in question on face of it, does not conform to the requirement of Section 4 of the Act. At no place in the said notification, it has been stated that the land, in question, is being acquired for any public purpose. I have already pointed out that the notification stated that, for construction of the house of Balo Das, the land, in question, was required. The actual words used are as follows:

^ ^pwa fd vij lekgrkZ] njHkaxk dks ;g izrhr gksrk gS fd xzke yksd ukFkiqj ua- 72 Fkkuk nyflag ljk; uksfVQkbZM ,sfj;k dfeVh ds vUnj loZ=h ckyks nkl ,oa jkfg ikloku gfjtu ds iquokZI ,oa x`g fuekZ.k gsrq ljdkjh [kpZ ij ljdkj }kjk tehu yh tkuh visf{kr gSaa A blfy, blds }kjk vf/klwfpd fd;k tkrk gS fd mijksDr xkao yksd ukFkiqj ds Hkhrj Hkwfe dk ,d VqdMk visf{kr gS tks ekud uke ls de os" k 0%17 ,dM gksrk gS vkSj ftldh pkSgnh fuEu izdkj gS %&&***

Thereafter the details of the land, in question, have been given. In view of the aforesaid statement made in the notification itself, it has to be held that the land in question is sought to be acquired for an individual i.e. Balo Das. Now two questions arise. Firstly whether an acquisition under the provisions of the Act can be made for an individual and still it can be held to be for a public purpose? Secondly as to whether in the facts and circumstances of the present case it can be held that the power vested in the Collector under the Act had been utilised in a bona fide manner?

4. Learned counsel appearing for the petitioner laid great emphasis on the first point that the power of acquisition vested in the Collector under the provisions of the Act cannot be exercised for an individual. It is well settled that the land of a citizen can be acquired under the provisions of the Act for any public purpose and to that extent the right of an individual to hold the property has to give way in the interest of the community at large and on that very principle the validity of the Act has been upheld on several occasions by this Court as well as the Supreme Court. But in every case the question as to whether the acquisition is for the public purpose or not cannot be answered immediately. Whether the acquisition is for public purpose or not, does not depend on the question as to

how many persons are ultimately to be benefited by the said acquisition. It will always vary from facts of each case. But once it is shown that the object of the acquisition is some way connected with some public purpose, then Courts have always rejected any such argument raised on behalf of the persons whose rights have been affected by acquisition.

5. The question as to whether an acquisition of land to serve the interest of an individual, in special circumstances of the case, can be held to be for a public purpose, has been considered on different occasions. In this connection reference can be made to the case of *Smt. Somavanti and Others Vs. The State of Punjab and Others*, where it was observed at p. 164:

"The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity."

In that very case it was further observed:

"Though we are of the opinion that the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose we must emphasise that the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been, on the part of the Government a fraud on the power conferred upon it by the Act. In other words the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of Section 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable provisions such as Section 6(3) notwithstanding."

In the case of *R.L. Arora Vs. State of U.P.*, , again a question arose as to whether the purpose of acquisition in that case had any nexus with the public purpose to be achieved and it was observed as follows:

"In the present case all that the Government was satisfied about, appears to be that the product of the company will be useful to the public and the provision in the agreement is merely that the public shall be able to go upon the works for purpose of business. This in our opinion is not the meaning of the relevant words under Sections 40 and 41 and therefore the Government's satisfaction in that behalf is not enough to entitle it to use the machinery of the Act for the purpose of acquisition in this case."

In the case of Prem Nath v. State of Jammu and Kashmir AIR 1960 J &K 78 a Bench of that Court held that giving over of one person's land to another person for his private enjoyment and personal gain cannot be designated as a public purpose and it was further held that if there was no public purpose the notification u/s 4 or u/s 6 cannot be upheld. In the aforesaid case one Qadir Suthu was in unauthorised possession of a land belonging to the petitioner of that case. Later a notification u/s 4 of the Land Acquisition Act was issued for acquisition of that piece of land. The acquisition was for the purpose of giving the land, in question, to the aforesaid Qadir Suthu. In that connection while quashing the notification it was observed:

"It is equally clear that the giving over of the petitioner's land to Qadir Suthu for his private enjoyment and personal gain cannot, by any stretch of language be designated a public purpose. When the notification under Sections 4 and 6 of the Land Acquisition Act were issued, Qadir Suthu and respondents 3 to 8 appear to have been in actual possession and enjoyment of the land. They were never dispossessed from the land even for a moment as a result of the land acquisition proceedings.

Nor was the land under their occupation sought to be made use of for any public purpose. It appears to us clear beyond doubt that the land in possession of Qadir Suthu which really belonged to the petitioners was made the subject of the land acquisition proceedings only with a view to regularising and giving a legal cloak to an otherwise unauthorised and illegal possession by a private individual, namely, Qadir Suthu."

6. From the, statement made in the writ application and the statement made in the objection filed on behalf of the petitioner u/s 5A of the Act before the Additional Collector, Darbhanga, it appears that some family members of the petitioner at an earlier stage had constructed a Tatti shed over a portion of Survey Plot No. 517 and the same was let out to the aforesaid Balo Das for keeping Tandon and horse. In this connection a Kerayanama had also been executed by him as a monthly tenant. That Tatti shed stood over an area of 5 dhurs only. After the vesting of the estate under the provisions of the Bihar Land Reforms Act, Balo Das and his son aforesaid Rohit Paswan began to lay claim over 4 kathas 10 dhurs of aforesaid plot No. 517. This led to a series of litigation. The wife of Balo Das lodged a criminal case u/s 395 of the I.P.C. against the brother of the petitioner and others. The accused of that case were acquitted by the Sessions Judge, Darbhanga, in the year 1958. Later a proceeding u/s 144 of Criminal P. C. was initiated in respect of that very 4 kathas 10 dhurs of survey plot No. 517, which was converted into a proceeding u/s 145 of the Code. The dispute afterwards was referred to the Munsif, Samastipur, u/s 146 of the Code. On 23rd June, 1962, the learned Munsif recorded a finding that Balo Das was a monthly tenant of the Tatti shed aforesaid, which stood over 5 dhurs for which he had executed a Kerayanama. It was further held that Balo Das was not in possession of any other portion of the plot. He also recorded a finding that the

father of the petitioner and his brothers were in possession of the aforesaid 4 kathas 5 dhurs of the land. Later in the year 1963, Balo Das and his son, Rohit Paswan, forcibly dispossessed the father of the petitioner and thereafter a Title Suit No. 138 of 1954 was filed, which was pending disposal in the court of the Munsif, 1st Court, Samastipur. It was further stated that Balo Das had also filed a petition under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, claiming to be a privileged tenant entitled to remain in possession of the land, in question, which was rejected by the authorities concerned. In this connection our attention was drawn to the observation of the Additional Collector himself in the order dated 14-8-1972, by which he has rejected the objection filed u/s 5A of the Act by the petitioner, which is as follows:

"From the facts and circumstances of the argument and the history of litigation between the aforesaid two persons and the objector has disclosed to me during the course of argument by the learned lawyer for the objector, I am also inclined to feel that the entire litigation between the two parties in the past has been going on because the aforesaid two persons have been struggling for having homes for themselves. Since these two Harijans live within the Notified Area Committee, they cannot be provided with homes by the Government within the provisions of the Bihar Privileged Persons Homestead Tenancy Act. There is apparently, therefore, no alternative before the Government than to acquire the land to ensure their rehabilitation."

According to the petitioner, having failed at different forums and courts, ultimately some of the political helpers of said Balo Das got the notification u/s 4 of the Act issued for acquisition of the land, in question. Further, according to the petitioner, the aforesaid facts eloquently prove that the acquisition is not for any public purpose but only for the purpose of one individual i.e., Balo Das.

7. No doubt, there is force in the contention of the learned counsel even on the first point that an acquisition under the provisions of the Act cannot be made for an individual because it cannot be considered to be a public purpose. But I do not intend to decide this question finally, in view of the fact that the application of the petitioner has to succeed on the second point. For the purpose of this case, even if it is assumed that in certain circumstances acquisition made for an individual can have nexus with a public purpose, in my opinion, in the instant case it cannot be held that it had any such public purpose.

8. No counter-affidavit has been filed on behalf of Balo Das or his son Rohit Paswan, who were impleaded as respondents to this application. A counter-affidavit, however, had been filed on behalf of the State, but due to non-compliance of a peremptory order passed by this Court, that counter-affidavit has been directed to be ignored. The net result is that the statements made on behalf of the petitioner in the writ application and in his objection filed u/s 5A of the Act have to be accepted on their face value. If the statements regarding the past litigations made on behalf of the petitioner are to be accepted, which are also supported by the observation of the Additional Collector in his impugned

order, then it has to be held that the acquisition of the land, in question, is going to be made, keeping in view only the interest of Balo Das and his son Rohit Paswan. In my opinion, in the facts and the circumstances of the present case, the object of acquisition cannot be held to be for a public purpose. Generally, the Courts are very reluctant in examining this question as to whether the purpose for which the acquisition has been made or is going to be made has any public purpose behind it or not. But in the instant case I am of the view that it is one of those cases where it is permissible for this Court to examine this matter. In the case of Smt. Somavanti and Others Vs. The State of Punjab and Others, referred to above, while pointing out the limitation of this Court in examining any such issue it was held that if this Court is satisfied that the acquisition has no public purpose behind it or no purpose at all and was only just colourable exercise of the power, not relatable to the purpose for which power is conferred under the Act, then such declaration has to be held to be a nullity.

9. The learned counsel also pointed out that in the notification u/s 4 of the Act there is no mention that the acquisition is being made for any public purpose. This, however, is not of much importance. In the case of Babu Barkya Thakur Vs. The State of Bombay and Others, it was held that merely non-mention of the public purpose in the notification u/s 4 of the Act is not fatal to the validity of the proceeding; later it can be shown that there was a public purpose behind the proposed acquisition. But the difficulty in the instant case is that not only it is not mentioned in the notification u/s 4 of the Act that the acquisition is going to be made for any public purpose, no such public purpose, has been pointed out on behalf of the respondents. The Additional Collector in his order rejecting the objection u/s 5A of the Act has referred to a decision of the Supreme Court in the case of The State of Bombay Vs. Bhanji Munji and Another, in support of his view that the acquisition for the purpose of providing houses to homeless persons will be deemed to be an acquisition for public purpose. In my opinion, there cannot be two views on this score that acquiring land for providing houses to citizens having no home is a public purpose. But that principle cannot be applied to a case where the acquisition is being made, keeping in view one individual who has failed to prove his claim to the land, in question, in different courts and before different authorities. Even the learned Advocate General appearing for the State who vehemently contended that the acquisition for an individual in special circumstances of a case can be held to be for a public purpose, had to concede that on the facts and in the circumstances of the present case it cannot be said that proposed acquisition has nexus with any public purpose.

10. In the result, the application is allowed, the notification (Annexure "1") u/s 4 of the Act and the order passed by the Additional Collector rejecting the objection u/s 5A of the Act (Annexure "4") are quashed, holding that they have been issued and passed in colourable exercise of the power. In the circumstances of the case, however, there will be no order as to costs.

B.S. Sinha, J.

I agree.