

(1960) 04 PAT CK 0023

In the Patna High Court

Case No : Misc. Judl. Case No. 905 of 1959 and No. 19 of 1960

Deolall Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-04-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 17(4), 4, 4(1), 5A

Citation : AIR 1960 Patna 413

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhury, J

Bench : Division Bench

Advocate : K.D. Chatterji and S.N. Bhattacharyya, for the Appellant; Govt. Advocate, Govt. Pleader, A.K. Sinha and Krishna Prakash Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. In both these cases a common question of law arises for determination, namely, whether the notification of the State Government dated the 21st January, 1959. No. D.L.A.P-42/59-783-R, issued u/s 4 of the Land Acquisition Act, is ultra vires and without jurisdiction.

2. It appears that in June, 1958, respondent No. 4 the Budha Griha Nirman Sahyog Samiti, Limited, Patna, made an application to the State Government for acquiring land for construction of dwelling houses, parks, etc. for the use of the members of the Samiti. The notification was issued by the State Government u/s 4(1) of the Land Acquisition Act on the 21st January, 1959, which was published in the Bihar Gazette dated the 4th February, 1959, stating that an area of about 32.48 acres of land in village Dujra, within the Patna Municipal Corporation, as per details mentioned in the notification, was required for a public purpose.

The argument put forward on behalf of the petitioners in both the cases is that the notification made by the State Government u/s 4 is ultra vires and illegal since the copies of the notification which were published in the locality mentioned

that the Government had given direction u/s 17(4) of the Land Acquisition Act that this was a case of urgency and the provisions of Section 5A shall not apply to the acquisition proceedings.

It was contended further on behalf of the petitioners that the notification u/s 4, published in the Bihar Gazette dated the 4th February, 1959, did not contain any declaration of the State Government u/s 17(4) of the Land Acquisition Act, as mentioned in the last paragraph of the form of the notification printed at page 185 of the Bihar Land Acquisition Manual, 1958 edition. It was, therefore, submitted on behalf of the petitioners that the notification u/s 4 of the Land Acquisition Act was illegal and ultra vires and all further proceedings taken in the land acquisition case must be quashed by a writ in the nature of certiorari under Article 226 of the Constitution.

3. On behalf of the respondents it was contended by the learned Government Advocate that proceedings in the land acquisition case have been legally taken and the State Government have merely issued a direction u/s 17(1) of the Land Acquisition Act, stating that the Collector may take, possession of the land even though no award had been made because this was a case of special urgency. It was contended by the learned Government Advocate that it was not the intention of the State Government to give any direction u/s 17(4) of the Land Acquisition Act, and no such direction was actually given in this case.

It was pointed out by the learned Government Advocate that it was open to the petitioners to file objections u/s 5A of the Land Acquisition Act before the Collector in the course of the proceedings. It was submitted that the proceedings taken before the Land Acquisition Officer were not vitiated by any illegality or want of jurisdiction.

4. We are unable to accept the argument of the learned Government Advocate as correct. It is true that Annexure A to the counter-affidavit shows that the State Government gave a direction u/s 17(1) of the Land Acquisition Act to the Collector for taking possession of the land. The letter of the State Government is dated the 31st July, 1959. The notification of the State Government u/s 4 of the Land Acquisition Act was, however, issued in January, 1959, and the order-sheet of the Land Acquisition Officer both before and after the date of the notification suggests that the Land Acquisition Officer intended to take recourse to the provisions of Section 17(4) of the Land Acquisition Act.

Actually, however, the notification u/s 4 as published in Bihar Gazette does not show that recourse was being taken by the State Government under the provisions of Section 17(4) of the Land Acquisition Act. The difficulty, however, is that in the notice published in the locality u/s 4 by the Collector, a reference is made to the provisions of Section 17(4) of the Land Acquisition Act and it is also stated that the provisions of Section 5A shall not apply to the case.

The paragraph previous to the last paragraph of this notice, however, states that objections to acquisitions, if any, filed u/s 5A by any interested person before the

Collector of Patna would be considered. The public notice u/s 4, therefore, in this case is ambiguous and misleading and it was not possible for the petitioners to know definitely whether the State Government had proceeded to take action u/s 17(4) of the Land Acquisition Act or not. The notification published in the Gazette u/s 4 is in the following terms :

"The 21st January, 1959.

No. D. L. A. P. 42/59-783-R -- Whereas it appears to the Government of Bihar that land is required to be taken up by Government at the expense of the Budh Grih Nirman Sahyog Samiti, Limited, Patna, at the public expense for a public purpose, viz., for Budh Grih Nirman Sahyog Samiti Limited, Patna in the village of Dujra No. 4, pargana Phulwari, thana Phulwari, zila Patna, it is hereby notified that for the above purpose a piece of land measuring, more or less, 98 bighas 5 kathas 64 chitaks of standard measurement equivalent to 32.48 acres bounded on the --

Block-A"

North ?

By S. P. Nos. 1193. 165. 166. 184, 185, 226, 227, 221, 220, 217, 263, 250, 310, 311, 386, 223 and part of S.P. Nos. 172, 173, 174 Of Village DuJra No. 4,

East ?

By S. P. Nos. 184. 226, 223, 262, 250, 387, 386, 399, 405, 436, 246, 245, 236, 234, 233 of Village Dujra No 4,

South ?

By P.-of S. P. Nos. 172, 173. 174, 235 and S. P. Nos. 176. 1061, 1080, 1059, 1035, 234, 236, 246, 243, 242, 437, 405, 223 of Village Dujra No. 4.

West ?

By S. P, No. 1193, boundary line of Village Rajapur No. 3, 174, 176, 177, 234, 235 (P), 251, 250, 223, 221, 225, 227 of Village Dujra No. 4;

Block "B

North ?

By S. P. No. 528, 527 (P), 530, 529 of VII. lage Du]ra No. 4,

East ?

By S. P. Nos. 520, 514, 513, 511, 510, and 509 of Village Dujra No. 4.

South ?

By S. P. Nos. 507 and 508 of Village Dujra No. 4,

West ? By S. P. Nos. 414, 530 of Village Dujra No. 4;

Block "C"

North ? By S. P. No. 405 of Village Dujra No. 4,

East ?

By S. P. "Nos. 433, 430 and 432 of Village Dujra No. 4,

South ? By S. P. No. 435 of Village Dujra No. 4,

West ? By S. P. No. 436 of Village Dujra No. 4;

block "D"

North ?

By S. P. Nos. 507, 508, 505, 499, 497. 465, 461, 479, 480 and P. of S. P. Nos. 490, 414 of Village Dujra No. 4,

East ?

By S. P. Nos. 505, 499, 479, 484 and P. Of S. P Nos. 490, 489, 488, 487, 486, 464, 463, 462, 461, 460 of Village Dujra No. 4,

South ?

By S. P. Nos. 479, 480, 464, 459, 484, 475 and 456 of Village Dujra No. 4,

West ?

By S. P. Nos. 484, 414, 480, 464, 465, 467, 468 and 471 of Village Dujra No. 4;

Block "E"

North ?

By S. P. No. 437, 443, 435 and part of S. P. No. 445 of Village Dujra No. 4,

East ?

By S. P. Nos. 436. 442, 443, 414, 452, 453, 454, of Village Dujra No. 4,

South ?

By S. P. Nos. 1041 and 1023, 452 of Village Dujra No. 4,

West ?

By S. P. Nos. 241, 240, 239, 238, 237, 1032. 1041, 443, 435 of Village Dujra No. 4;

Block "F"

North ?

By S. P. Nos. 1041 and 1022 of Village Dujra No. 4,

East ?

By S. P. Nos. 1022, 1021, and P. of S. P. NOS. 1020, 1019, 1047, 1048, 1049 of Village Dujra No. 4,

South ?

By S. P. No. 1060 of village Dujra No. 4, West- By S. P. Nos. 1045, 1046 and 1052 of Village Dujra No. 4,

Block "G"

North ?

By S. P. Nos. 1037 and 1038 of Village Dujra No. 4,

East ?

By S. P. .Nos. 1044 and 1046 of Village Dujra No. 4,

South ?

By S. P. Nos. 1053 and 1054 of Village Dujra No. 4,

West ?

By S. P. No. 1058 of Village Dujra No. 4,

Block "H"

North ? By S. P. No. 1033 of Village Dujra NO. 4,

East ? By S. P. No. 1039 of village Dujra No. 4,

South ?

By S. P. No. 1036 of Village Dujra No. 4,

West ?

By S. P. No 1034 of Village Dujra No, 4; is likely to be needed in the aforesaid Village of Dulra No. 4.

This notification is made under the provisions of Section 4 of Act 1 of 1394 as amended by Act XXXVIII of 1923, to all whom it may concern.

A plan of land may be Inspected in the office of Collector, Patna.

By order of the Governor of Bihar. Sd. S.M. Naqavi, Dy. Secy.

5. The notification published in the Gazette-is however different from the notification published in the locality which is an annexure to the counter-affidavit filed by the State of Bihar in Miscellaneous Judicial Case No. 19 of 1960. This notification is in Hindi and is in the following terms :

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fcgkj ljdkj A

lfjLrseky A

b"kfrgkj A

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u- Mh-] ,y-] ,-] ih- vkj- 42&59&723

pwfd fcgkj ljdkj dks ;g ekyqe iMrk gS fd cq- x`-] fuekZ.k lg;ksx lfefroLrs ekSts nqtjk] izxuk Qqyokjh ds ftyk iVuk esa ljdkj dks tehu dh t:jr gS blfy;s o&tfj;s blds ;g eqLrgj fd;k tkrk gS fd dke etdqj ds fy;s ,d fdrk tehu dh deh cs"k fcxgk dB~Bk NVksad i?s ukels tks cjkcj ,dMd gS ekSts nwtjk etdwj ds vUnj t:jr gS vkSj ftldh pkSgnh gLo tSy gS A

pkSgnh bl vkWfQl esa ;k rk- 4&8&59 dk xtV ns[ksa-

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tehu dk uDlk ds n?rj esa eqykfgtk fd;k tk ldrk gS vxj dksbZ mtznkjh okLrs fy;s tkus atehu gLo nQk 5&, ds dksb "k[l tks ml nQs ds uD"kk ds eqrkfcd ljksdkj j[krss gSa og rkjh[k ;k dsoy ml rkjh[k] ds o&gqtqj tukc dyDVj@fMIVh dfe"uj lkgsc cgknwj ds djsa rks ml mtznkjh ij xkSj dh tk;xh A

,sDV etdqj ds nQs 17?4? dh : ls tks v[kf?;kj gkfly gS muij vey djrs gq, yksdy ljdkj usa ;g

rtoht dh gS fd dke ds t:jh gksusa ds fygktils ,sDV dh nQs 5&, dh "kr?s dke esa ugha ykb tk;saxh A

g- d- d- feJk g- IS:yky jk;

ew- v- i-] iVuk cgqDe xouZj lkgsc cgknwj

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xqtkfj"k gS fd ekStk ggtk ij tkdj ,d fdrk eqjknh uksfV"k xk?o esa ihiy ds isaM esa fdrk xkao d nsohLFkku ij vkSj ,d fdrk uksfV"k rkfey ekuks "kksj xqy djds yksxkssa dk vxkg fd;k A vkSj xokgh cuok fy;k A

18&2&59 g- xqykc iUr ikUMs**

It is manifest that the notification published in the locality u/s 4 is ambiguous and misleading and it was not possible for the petitioners to know definitely from, the notification published in the locality whether the State Government was proceeding to take action u/s 17(4) of the Land Acquisition Act. It is not a formal defect which can be brushed aside in this case. The reason is that if the State Government did not intend to proceed u/s 17(4) of the Land Acquisition Act, the provisions of Section 5A of the statute would be applicable and the petitioners would have the right to put forward objections before the Collector to the acquisition of the land in question.

Counsel on behalf of the petitioners submitted that the impression created by the notification published in the locality was that the Government was proceeding to take action u/s 17(4) of the Land Acquisition Act and so the petitioners did not file any objections before the Collector. The argument of the Government Advocate, on the contrary, is that the State Government was proceeding to take action not u/s 17(4) but u/s 17(1) of the Land Acquisition Act and the direction was given by the State Government on the 31st July, 1959, which is annexure A to the counter-affidavit of Miscellaneous Judicial Case No. 905 of 1959, for taking possession of the land as it was a case of emergency,

In these circumstances we are of opinion that there has been a failure on the part of the respondents to comply with the mandatory requirements of Section 4(1) of the Land Acquisition Act, which is in the following terms :

"4. Publication of preliminary notification and powers of officers thereupon. -- (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality".

The result, therefore, is that the publication of the notification u/s 4 and all proceedings taken by Collector subsequent to it are illegal and ultra vires and must be quashed by a writ in the nature of certiorari under Article 226 of the Constitution. We, however, desire to make it clear that ,it would be open to the State Government to publish a fresh notification u/s 4 of the Land Acquisition Act with regard to the disputed land and then proceed to take steps for acquisition in

accordance with law.

We accordingly allow both these applications, namely, Miscellaneous Judicial Case No. 905 of 1959 and Miscellaneous Judicial Case No. 19 of 1960, and we grant a writ in the nature of certiorari under Article 226 of the Constitution quashing the notification No. D.L.A.P.-42/59-783-R, dated the 21st January, 1959, issued by the State Government, and all proceedings taken by the Land Acquisition Officer in Land Acquisition Case No. 12 of 1959-60.

6. We accordingly allow both the applications. There will be no order as to costs.