

(1970) 03 PAT CK 0008

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 959 of 1969

Dharampal Singh and Others

APPELLANT

Vs

A.K. Banerji and Others

RESPONDENT

Date of Decision : 04-03-1970

Acts Referred:

Bihar and Orissa General Clauses Act, 1917 — Section 4(30)
Bihar Panchayat Raj Act, 1947 — Section 3
Constitution of India, 1950 — Article 31(2)
Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 5A(4), 6

Citation : AIR 1971 Patna 209 : (1970) 3 PLJR 416

Hon'ble Judges : N.L. Untwalia, J;G.N. Prasad, J

Bench : Division Bench

Advocate : B.C. Ghose, S.K. Chattopadhyaya, D.N. Pandey and Pralay Kumar Sinha, for the Appellant; K.P. Verma, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Untwalia, J.—The petitioners in this writ application claim to be owners of land bearing plot Nos. 54 and 56 situated in village Lachhu Chak, Police Station Kharagpur, district Monghyr. On the first occasion the Additional Collector of Monghyr (respondent No. 1) had issued a notification u/s 4(1) of the Land Acquisition Act, 1894 (Central Act I of 1894), hereinafter called "the Act", as the said section stood amended by the Land Acquisition (Bihar Amendment) Act, 1960 (Bihar Act 11 of 1961). A copy of this notification dated the 9th of June, 1967 is Annexure "1" to the writ application.

The State Government had decided by an order made on the 24th of May, 1967, u/s 17(4) of the Act, as it stands under the Bihar Amendment, to dispense with the provisions contained in Section 5A of the Act. The declaration thereafter was issued by respondent No. 1 on the 5th of September, 1967, which was published on the 13th of November, 1967, u/s 6 of the Act, a copy of which is Annexure "1A". The petitioners challenged the validity of the said notifications in C.W.J.C No. 753 of 1968.

Several points were raised in this writ case but the notifications were quashed only on one point that publication and service of the notification issued under Section 4(1) of the Act was not made in accordance with the requirements of the said provision of law as amended by Bihar Act 11 of 1961. No other point was decided in the judgment in that case which was delivered on the 26th of February, 1969.

2. After the decision in C.W.J.C, No. 753 of 1968, respondent No. 1 has issued a fresh notification dated the 1st of July, 1969, u/s 4 of the Act Referring to the decision of the Government as to the urgency of the scheme taken in May, 1967 the provisions of Section 5A of the Act have been dispensed with and a declaration u/s 6 of the Act has been made on the 9th of July, 1969. The notification as also the declaration were published in the Bihar Gazette dated the 23rd of July, 1969. It is claimed that publication in other manners had also been made.

The petitioners are now challenging the validity of the notification u/s 4 of the Act, a copy of which is Annexure "2", and the declaration u/s 6 of the Act, a copy of which has been filed as Annexure "5" with the supplementary petition filed by the petitioners on the 24th of February, 1970. Again the petitioners have raised several points for the quashing of the two annexures aforesaid namely, 2 and 5, and, since they have got to be quashed for the reasons to be stated hereafter on two points, a fresh notification will have to be issued by the appropriate authorities.

If the other points are left undecided, the petitioners will raise them again. To avoid this contingency, full arguments were addressed to us by Mr. B.C. Ghose, learned Advocate appearing for the petitioners, and Mr. K.P. Varma, Government Advocate, on behalf of the State of Bihar (respondent No. 2). It is necessary and expedient to decide all the points one way or the other raised before us in this writ case. I, therefore, proceed to state and discuss the points one by one and decide them for the disposal of this writ application.

3. The first point raised on behalf of the petitioners is that the public purpose mentioned in Annexure "2" is different from that mentioned in Annexure "1" in that in the latter the purpose mentioned was construction of bundh and nala while in Annexure "2" the purpose mentioned was for protection of the two existing bundhs. In my opinion, there is no substance in this argument. The purpose is not very differently mentioned in Annexure "2" from the one mentioned in Annexure 1. Even assuming it to be so, it is for the authorities to decide as to what was the existing public purpose when the fresh notification u/s 4 was made in July 1959. It is, however, hoped that when another notification would be issued after the impugned ones in this case have been quashed the public purpose for which the land is sought to be acquired would be mentioned with consistency certainty and precision as far as possible.

4. The next point urged on behalf of the petitioners is that the land, as stated on

behalf of the State in the earlier case (C. W J. C. 753 of 1968) as also in this case, is sought to be acquired at the instance of Paharpur Gram Panchayat, within the jurisdiction of which the land sought to be acquired is situated. The compensation money also is to come wholly from the funds of the Gram Panchayat. In that view of the matter, a declaration u/s 6 could not be made because the compensation to be awarded for the property sought to be acquired was not to be paid wholly or partly out of the consolidated fund of the State or some fund controlled or managed by a local authority within the meaning of the proviso to Sub-section (1) of Section 6 of the Act as stands amended by Bihar Act 11 of 1961. In reply to this contention the learned Government Advocate urged that the compensation was to come from the fund controlled and managed by the Paharpur Gram Panchayat which is a local authority for the purpose of the said proviso. In my opinion, the contention put forward on behalf of the respondents is well-founded and must be accepted as correct.

5. The Bihar Panchayat Raj Act, 1947 (Bihar Act 7 of 1948), was enacted, as the preamble indicates, to establish and develop local self-Government in the village communities of the State of Bihar and to organise and improve their social and economic life. A Gram Panchayat is constituted u/s 3 of the Act u/s 6 every Gram Panchayat is a body corporate. The functions of the Gram Panchayat are enumerated in Chapter III. The compulsory duties of Gram Panchayat and the supplementary duties enumerated in Sections 14 and 15 would show that in respect of the area over which they have been assigned jurisdiction they have been assigned various kinds of duties which are generally performed by a municipal board in the area where a municipality has been constituted. Sections 15 and 17 provide for improvement of sanitation and cleansing of villages.

The power of Executive Committee of the Gram Panchayat as to public streets, waterways and other matters is provided in Section 19 and similar other powers have been given to the Executive Committee in Sections 20 to 23. In Section 24 control of erection of buildings has been vested in the Executive Committee just like it is vested in the Municipal Board within a Municipality. Violation of the directions given in Section 24 has been made punishable by a Gram Cutcherry under Sub-section (3) of that Section and the procedure for recovery of fines has been provided in Section 25. u/s 40 of the Act it has been provided that where the Executive Committee of a Gram Panchayat requires to carry out any purpose of the Act, it shall first negotiate with the person or persons having interest in such land and if the parties fail to reach an agreement, the Executive Committee may make an application in the prescribed form to the Collector to acquire the land and the Collector may proceed to acquire the land under the Land Acquisition Act, 1894.

Section 41 creates a Gram Panchayat fund to the credit of which there shall be placed such proceeds of tax and other moneys received by the Gram Panchayat as may be prescribed. Chapter VI provides the machinery of taxation by the Gram Panchayat Chapter VII provides for establishment, powers, duties and

procedure of Gram Cutcherry and Benches thereof.

It would thus be seen that the Gram Panchayat for a particular locality has been vested with executive power, judicial power, power of taxation, power of controlling sanitation, erection of buildings etc. I fail to understand what more was required to invest the Gram Panchayat with the character of a local authority.

The history of the local Government in England is well-known. Local administration before the nineteenth century was primarily of two subjects only, poor law and highways. In the nineteenth century sprang up by several statutes local administration and local Government of various kinds. It now primarily consists in the administration by locally elected bodies of functions conferred on them by the Central Government, or which have been delegated to them by other local Government bodies statutorily empowered to delegate functions. These locally elected bodies are constituted as corporations and as such are legally distinct entities from the inhabitants of the areas which they govern.

The Public Health Act, 1875, consolidated and amended the previous legislation concerning public health. The Local Government Act, 1888, set up a new locally elected administrative body called the county council, which took over the administrative business of the county justices in quarter sessions. The Local Government Act, 1894, set up in every rural parish a parish meeting, consisting of all the Parliamentary and Local Government electors within the parish. The Local Government Act, 1929, transferred the functions of poor law authorities to county councils and county borough councils. From 1st June 1934 onwards, on the passing of the Local Government Act, 1933 (sic) came into operation and Act which now governs the structure of local Government and enacts its machinery. In India also local authorities have been established from time to time. In towns the Municipal Act establishes such authorities. In villages local authorities like the District Board, Local Board etc., were established by the Bihar and Orissa Local Self-Government Act of 1885.

The Union Boards were established by the Bihar and Orissa Village Administration Act, 1922. u/s 8 of this Act was provided the constitution of Union Board and Panchayats. Some judicial powers were given to some Panchayats also. Section 49 of Bihar and Orissa Act 3 of 1922 establishes "Union Fund" for each Union to which were to be credited all sums realised on account of the tax imposed u/s 46 of the Act and all donations and contributions from the State Government, the District Board or any private person and any sums transferred to the Union Board by an order u/s 2. u/s 48 of the Bihar Panchayat Raj Act a provision has been made for continuance of taxes levied in any area included in a Union Board subsequent to its transfer to a Gram Panchayat.

It would be noticed from the relevant provisions, referred to above, that the Gram Panchayat is a local authority within the meaning of Clause (30) of Section 4 of the Bihar and Orissa General Clauses Act, 1917, which is exactly the same as Clause (31) of Section 3 of the Central Act. The definition in the General

Clauses Act will govern the expression used in the proviso to Sub-section (1) of Section 6 of the Act, as it stands amended under Bihar Act 11 of 1961. This definition runs as follows:

" "Local authority" shall mean a Municipal Committee. District Board, or any other authority entrusted by any Government with, or legally entitled to, the control or management of a municipal or local fund."

In my opinion, Gram Panchayat is an authority which is legally entitled to control or manage the local fund known as Gram Panchayat fund. Hence it is a local authority as defined in the General Clauses Act.

6. Mr. Ghose referred to the definition of "local authority" given in Clause (i) of Section 2 of Bihar Act 7 of 1948. In this definition, besides the local authority as defined in the General Clauses Act, has been included "any authority constituted under any law for the time being in force to administer a "chaukidari" Fund". Counsel submitted that the definition In the said Act does not include the Gram Panchayat. The argument, it seems to me, has been advanced in a reverse gear. For the purpose of the Panchayat Raj Act the definition of local authority" had to be so given because certain provisions were made in that Act to distinguish the Gram Panchayat from such local authority as defined in Clause (i) of Section 2 of the Act.

Reference was made by Mr. Ghose In this connection to the proviso to Section 15 for the purpose of pointing out the distinction between Gram Panchayat and local authority as also to such reference in Clause (a) to Sub-section (2) of Section 33. It would be noticed in that connection that Gram Panchayat was being established over areas where certain local authorities were functioning. Some provisions had to be made to regulate the functions of the Gram Panchayat vis-a-vis those of such local authorities. It was exactly for this purpose that throughout the Bihar Panchayat Raj Act a distinction had to be maintained between Gram Panchayat and various other local authorities. Gram Panchayat could not be taken to be a local authority for the purpose of the Panchayat Raj Act. But that does not mean that even if it satisfies all the conditions of being a local authority under the General Clauses Act, it is not so for the purpose of any Bihar Act or the Central Act. I have no difficulty in hold-ins that Gram Panchayat is a local authority and the fund for compensation of the land sought to be acquired coming from this local authority fulfils the requirements of the proviso to Sub-section (1) of Section 6 of the Act.

I may lend support to the view which I have expressed above from the Full Bench decision of the Punjab High Court in the case of Kishan Singh v. State of Punjab, AIR 1961 Punj 1 (FB), which was cited by the learned Government Advocate. Khosla, C. J. has said at p. 3, column 1, that Village Panchayat is a local authority under the Panchayat Act, which was under consideration in Kishan Singh and Another Vs. State of Punjab and Others, and made provision for local funds which were managed by the Village Panchayats and consequently it was

held that Panchayat was a local authority in accordance with the definition given in the General Clauses Act. I am in respectful agreement with this view.

7. Mr. Ghose strenuously urged that Sections 4 and 6 of the Act, as they stand amended by Bihar Act 11 of 1961, are constitutionally invalid, as the amended provision, which is a post-Constitution law, is violative of Article 31(2) of the Constitution. A similar argument, although not an identical one, had been advanced by Mr. S.C. Ghose in C. W. J. C. Nos. 604 and 1174 of 1969, decided by this very Bench on 16-2-1970 = (reported in Bokaro and Ramgur Vs. Additional Collector and Another,). The constitutional validity of the sections, as they stand amended by the Bihar Act, was upheld after repelling the argument that they are violative of Articles 14, 19 or 31 of the Constitution. Reference in this connection was made in the judgment to Section 5A of the Act as it stands amended by Bihar Act 11 of 1961.

It was pointed out that the Collector or the Additional Collector, who has been given power to issue notifications u/s 4 of the Act or to make a declaration u/s 6, has not been given power in cases of urgency to dispense with the application of Section 5A of the Act in accordance with Section 17(4). In other words, it was pointed out that wherever a proceeding for acquisition of land is initiated by the Collector or the Additional Collector and not by the appropriate Government, the safeguard is to be found in the proviso to Clause (i) of Sub-section (2) of Section 5A of the Act as it stands amended by Bihar Act 11 of 1961.

In the said proviso a power of revision has been given to the State Government either suo motu or on an application of any person interested in the land. That power is wide enough to go into the propriety of the notification issued by the Collector or the Additional Collector u/s 4 of the Act and to find out whether the land sought to be acquired by him is needed for a public purpose. It has been said in the earlier judgment:

"If a person interested in the land can approach the State Government to revise the order of the Collector dismissing his objection u/s 5A(2) of the Act, I do not see how the person is affected by exercise of the power by the Collector of issuing a notification u/s 4 of the Act. The final word in both the cases is with the State Government. If the State Government would allow the objection, no declaration u/s 6 can be issued by the Collector." It has further been said after referring to the provisions of Section 17(4) of the Act that-

". . . . when a notification has been issued by the Collector u/s 4(1), an objection u/s 5A will always lie and the order of the Collector will always be subject to revision by the State Government at the instance of the objector or any person interested in the land. Such safeguard being there, it is difficult to accept the argument put forward on behalf of the petitioner that Section 6 of the Act as it stands under the Bihar Amendment, is constitutionally invalid."

8. Learned counsel for the petitioners in this case however, submitted that a post-Constitution law, which provides that the declaration of the authority u/s 6 of the

Act is conclusive evidence, or, as a matter of that, conclusive proof of the fact that the land is acquired for public purpose, is invalid because such law engrafted in the Central Act has always been saved as being pre-Constitution law in view of Article 31(5)(a). But the Bihar Law having been enacted after coming into force of the Constitution must be held to be invalid as the finality attaching to the declaration of a public purpose is not sufficient to say that the law is for acquisition of land for public purpose. Public purpose, counsel submitted, must be decided objectively and in a court of law.

In this connection learned counsel made reference to a passage in the judgment of the Supreme Court in the case of *The State of West Bengal Vs. Bela Banerjee and Others*, . In that case the Attorney General appearing for the State of West Bengal had conceded and rightly as observed by Patanjali Sastri, C. J. in paragraph 3 of the judgment that

"inasmuch as Article 31(2) made the existence of a public purpose a necessary condition of acquisition the existence of such a purpose as a fact must be established objectively, and the provision in Section 8 relating to the conclusiveness of the declaration of Government as to the nature of the purpose of the acquisition must be held unconstitutional but he contended that the provision was saved by Article 31(5) of the Constitution." The Bihar Amendment obviously cannot be saved by Article 31(5).

Question, however, is: Can the Bihar Amendment be knocked down as invalid only on that account? As I have said above, the existence of a public purpose has to be decided by the Collector or the Additional Collector when he initiates the proceeding for acquisition of a piece of land. The notification u/s 4 of the Act has to say so. When the proceeding is initiated by him, I reiterate what I have said in the earlier judgment in C. W. J. C. Nos. 604 and 1174 of 1969 = (reported in *Bokaro and Ramgur Vs. Additional Collector and Another*,) that the machinery of dealing with the objection as provided in Section 5A of the Act cannot be dispensed with. An opportunity of filing objection has to be given. The objection has to be decided by the Collector or the Additional Collector in the first instance and finally by the State Government in exercise of their power of revision either suo motu or if they are moved in the matter by a person interested in the land. The ultimate decision even in regard to the question of public purpose would be of the appropriate Government. Then and then only a declaration u/s 6 can follow.

If a person interested in the land is reconciled to the fact of the acquisition being for a public purpose and does not move the State Government in revision, he cannot thereafter say that the declaration by the Collector or the Additional Collector u/s 6 as to the public purpose being there is not conclusive evidence of the fact stated in the declaration. It may well be that in certain appropriate cases when the facts on the face of the notification are glaring enough to show that the acquisition is not for a public purpose or facts are brought to light to show that the power has been exercised fraudulently or mala fide, the declaration as to

public purpose on its face will not be binding on the Court and the Court will not be powerless in such a case to go into the matter and find out whether the declaration is legally valid. But that is not to say that the law as it stands amended by Bihar Act 11 of 1961 does not stand the test of Article 31(2) of the Constitution.

The law does say that land cannot be acquired save for a public purpose. While making the declaration of the Collector or the Additional Collector as conclusive evidence of public purpose, it has provided ample safeguard for the person whose land is sought to be acquired. Even assuming that in some appropriate cases the question of public purpose can be objectively decided in spite of the finality which attaches to the declaration under Sub-section (3) of Section 6 of the Act, I do not feel persuaded to hold on that account that the law is constitutionally invalid.

By and large the very purpose and object of the land acquisition law will be defeated and frustrated if persons are allowed to raise objections lightly in Courts of Law in respect of the acquisition proceedings and if they are allowed to have a full-fledged trial by joining issues with the authorities that the land is not acquired for a public purpose. It is not possible to put such a construction upon the statute to defeat its very object and purpose. It will bear repetition, however, to say that in cases of urgency it is only the State Government who can take action of issuing notification u/s 4 of the Act and dispensing with the provisions u/s 5A in exercise of their power u/s 17(4) of the Act. It is then and then only that after the issuance of the declaration u/s 6 the State Government can ask the Collector to take possession u/s 17(1) of the Act as it stands amended by Bihar Act 11 of 1961.

9. Mr. B. C. Ghose also referred to a passage occurring in paragraph 12 of the decision of the Supreme Court in the case of Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others, . Shelat, J., while delivering the judgment on behalf of the Court has said that even if it is stated in the declaration u/s 6 that the authority is satisfied that the land is acquired for a public purpose still it is open to a person interested in the land to challenge that as a matter of fact the Government was not actually satisfied. This is, however, a different question. It will have some relevancy to another point which I shall be discussing hereinafter.

10. In the instant case on the basis of the urgency, which was decided by the State Government in the year 1967, a fresh notification was issued by the Additional Collector in July 1969. Issuance of this notification in this regard has been attacked on two grounds, (1) that the urgency which existed in 1967 could not be presumed to continue in the year 1969 unless there was a fresh decision by the Government to say that it still continued and (2) that the proceeding not having been initiated by the State Government, the requirements of Section 5A could not be done away with by them in exercise of their power u/s 17(4) of the Act. I am inclined to accept as valid the attack on the notification (Annexure 2)

and Annexure 5 on both the grounds urged on behalf of the petitioners.

If the State Government think that there is urgency for acquisition of the land to which the provisions of Section 17 can be applied, it is for them to issue the notification u/s 4 of the Act and the declaration u/s 6. As stated above, in the same proceeding exercise of power to issue notifications under Sections 4 and 6 by the Collector and to dispense with the requirements of Section 5A in exercise of power u/s 17(4) by different authorities is not legal and justified.

If the State Government decide about the urgency at the stage when the notification u/s 4 is issued, they must also decide that the land is needed for a public purpose and then and then only they can dispense with the requirements of Section 5A, which dispenses with the revisional procedure in the matter of objection filed by a person interested in the land u/s 5A of the Act. If, however, the fact of urgency is brought to light or decided after the declaration u/s 6 has been made by the Collector or the Additional Collector and only a direction is given under Sub-section (1) of Section 17 of the Act, the matter may be on a different footing with which we are not concerned in this case. But I have no doubt in my mind that under the scheme of the Act, as it stands amended by Bihar Act 11 of 1961, it is not open to the Collector or the Additional Collector to issue notification u/s 4 of the Act and leaving it to the State Government to dispense with the requirements of Section 5A in exercise of their power u/s 17(4).

I may observe that if fresh steps are taken for acquisition of the land in question it is hoped that if the urgency still exists, by saying so the State Government will take steps themselves. If the urgency does not exist, the Collector or the Additional Collector may exercise power for the acquisition of the land but in that case the procedure of filing objections and their disposal provided in Section 5A of the Act must be followed.

11. The notifications (Annexures 2 and 5) are also bad because they had been signed by the Additional Collector, who speaks about the existence of a public necessity as it appears to the Collector or on his satisfaction and not that it appeared to him or that he was satisfied that the land was needed for a public purpose. The identical defect was there in the notification which was the subject-matter of consideration in C. W. J. C. Nos. 604 and 1174 of 1969 = (reported in Bokaro and Ramgur Vs. Additional Collector and Another,). In such a situation the notification was held to be bad. Annexures 2 and 5 are bad in this case also on that ground.

12. Mr. Ghose also drew our attention to a statement in Annexure 2 that the land was required for a public purpose at the Government expense and is needed by the Government, although the statements in the counter-affidavit filed in C.W.J.C. No. 753 of 1969 as also in this writ case would indicate that the land is being acquired at the instance of the Paharpur Gram Panchayat and at their expenses. It is not necessary for us to examine this apparent discrepancy in this case but it is hoped that while initiating fresh proceeding for the acquisition of

the land in question, the authorities concerned will take decisions in accordance with law as discussed in this judgment and thereafter proceed to issue fresh notifications stating clearly whether the land is needed for a public purpose and the compensation to be awarded for the land is to be paid from the fund of the local authority.

13. For the reasons stated above, the notification dated the 1st of July, 1969, u/s 4(1) of the Act, issued by respondent No. 1 and the declaration dated the 9th of July, 1969, made by the same respondent, copies of which are respectively Annexures 2 and 5 to the writ application and the supplementary amending application, are quashed by grant of a writ of certiorari. In the circumstances, I shall make no order as to costs.

G.N. Prasad, J.

14. I agree.