(1984) 03 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 2713 of 1983

Girija Dubey and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 07-03-1984

Acts Referred:
Land Acquisition Act, 1894 — Section 38

Citation : AIR 1985 Patna 15 : (1985) 33 BLJR 556 : (1984) PLJR 417

Hon'ble Judges : M.P. Varma, J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : Ajay Kumar Sinha, for the Appellant; Ram Balak Mahto, A.A.G. and L.K. Bajla, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Varma, J.—The petitioners in this application have challenged the validity of the notification (Annexure 4 to the writ petition) issued u/s 4, Land Acquisition Act, (hereinafter referred to as ''the Act'') with respect to several plots of land belonging to them of mauza Ramchandrapur, police station Jasidih, in the district of Santhal Parganas.

2. The main question involved in this writ application is whether the acquisition of the lands for construction of residential houses for the purpose of the company, namely, M/s. Hyderabad Asbestos and Cement Product Ltd., Jasidih (respondent 3), will come under the ambit of acquisition for public purpose.

3. Learned counsel for the petitioners, Mr. Ajay Kumar Sinha, has submitted that in a case of acquisition by a company it was incumbent on the part of the respondent-authorities to have followed the procedure laid down in Part VII of the Act in absence of which the acquisition is bad in law and the notification contained in Annexure 4 is fit to be set aside. Mr. Ram Balak Mahto, Additional Advocate General, appearing on behalf of the respondents 1 and 2, on the other hand, has submitted that this acquisition must be deemed to be and is for a

public purpose. Counter-affidavits have been filed on behalf of respondents 1, 2 and 3 stating therein that for the purpose of acquisition, the Government has contributed a nominal cost of Re. 1/- as compensation, the balance cost to be deposited by the concerned company, for payment to the persons whose lands are to be acquired.

In support of his contention, learned counsel has placed reliance in the case of Manubhai Jehtalal Patel and Another Vs. State of Gujarat and Others, , where it has been held that even when there is an acquisition for a company, the State Government has the power to acquire the land for a public purpose from the revenue of the State and in case when there is a contribution made by the State, the provisions laid down under Part VII of the Act are not attracted.

In another case decided by the Supreme Court, Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, it has also been held that in the case of an acquisition for a company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII of the Act. But, that does not necessarily mean that an acquisition for a company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. It has been said that the essential condition for acquisition for a public purpose is that the cost of acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a company may also be made for a public purpose within the meaning of the Act and it was, therefore, not necessary to go through the procedure prescribed by Part VII of the Act.

4. In the instant case, it is the admitted position that there is a contribution made by the Government for the purpose of acquisition and in that view of the matter, since the acquisition is for public purpose it was not necessary to go through the procedure laid down under Part VII of the Act and thus there does not appear to be any infirmity in the notification (Annexure4).

5. In the result, the application fails and is dismissed. There shall be no order as to costs.

Lalit Mohan Sharma, J.

I agree.

