

(1975) 01 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 230 of 1974

Gyan Das Shaw and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 20-01-1975

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4)

Citation : AIR 1975 Patna 320

Hon'ble Judges : Shambhu Prasad Singh, J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : K.D. Chatterji and Chunni Lal, for the Appellant; Md. Khaleel, Govt. Pleader 4 and Prabhu Nath Ray, J.C. to G.P. 1, for the Respondent

Final Decision : Dismissed

Judgement

1. By this application under Article 226 of the Constitution of India the petitioners pray for quashing of Annexures 1 and 3, a notification u/s 4 and a declaration u/s 6 of the Land Acquisition. Act (hereinafter referred to as "the Act"). Annexure "1", the notification u/s 4 of the Act also gives a direction u/s 17(4) of the Act that acquisition of the land was urgently needed and, therefore, the provisions of Section 5A of the Act were not to apply in the case.

2. Plots Nos. 215, 218, 219 and 228 of village Jasidih which belong to the petitioners are subject-matter of the acquisition. According to them Plot No. 215 measures 22.3 acres and is second class Bari land, Plot No. 218 measures 9.8 acres and is "mango garden etc.," Plot No. 209 measures .74 acre and is rasta, and Plot No. 228 measures .79 acre and is a third class Dhani land. The petitioners claim that as the notification and the declaration do not specify which of these lands are waste lands and which of these are arable, they are bad in law. It is further claimed that some of these lands such as Plot No. 218, which is a mango orchard is neither waste nor arable and, therefore, no direction u/s 17(4) of the Act could be given in respect thereof.

3. Reliance has been placed on behalf of the petitioners on the decision in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, wherein it has been held that directions u/s 17 of the Act could not issue in respect of land which was neither waste nor arable. It has further been held in that case that lands with forests are neither waste nor arable. It has been pointed out that only such land is arable which is capable of being ploughed or fit for tillage and only such land is waste which is unfit for cultivation or habitation, desolate and barren with little or no vegetation thereon. This decision was in respect of a case from Uttar Pradesh. It has rightly been pointed out by learned Counsel for the State that in view of the amendment of Section 17 of the Act by the Land Acquisition (Bihar Amendment) Act, 1960 (Bihar Act 2 of 1961), lands having forest, orchard or trees are either waste or arable and directions u/s 17 of the Act could issue in respect thereof- By Section 9 of the said Act Section 17 was amended and the following explanation was added after subsection (1) of Section 17 of the Act:--

"Explanation -- This sub-section shall apply to any waste or arable land notwithstanding the existence thereon of forest, orchard or trees."

It cannot, therefore, be held so far Bihar is concerned, that simply because mango orchard is standing on Plot No. 218 of the petitioners, which is subject-matter of acquisition, that land is neither waste nor arable and a direction u/s 17 of the Act could not issue in respect thereof.

4. It has next been contended on behalf of the petitioners that the impugned notifications do not specify which of the lands are arable and which of the lands are waste, which shows that relevant facts were not taken into consideration by the State Government before issue of the notifications u/s 4 or declaration u/s 6 of the Act. We are not inclined to accept this contention either, for two reasons. Firstly, the State has filed a document which has been made Annexure "A" to the counter-affidavit, amending the notification u/s 4 of the Act. This document specifies that out of the total area under acquisition about 251.96 acres was arable and 60 acres was waste. This amending notification prima facie shows that the State Government did apply itself to the fact which of the lands under acquisition were arable and which were waste, before issuing this notification. No materials have been placed before us, neither it has been alleged on behalf of the petitioners that the statement made in Annexure "A" about the area of arable and waste land under acquisition is not correct. Further, both from the notification and the writ petition it is amply clear that the four plots of the petitioners which are subject-matter of dispute are either waste or arable within the meaning of the terms as understood under the Act as amended by Bihar Act, and they do not belong to any third category. In the circumstances the petitioners cannot claim that no direction u/s 17 of the Act could issue in respect thereof nor can they claim that it is a case where relevant facts have not been taken into consideration by the State Government. In the circumstances, two Bench decisions of this Court in *Kunja Malaha* and after him *Mt. Laro Devi v. Land Acquisition Officer, Patna* 1965 BLJR 272) and *Chaudhury Rafiquir Rahman v.*

State of Bihar 1972 BLJR 537) have got no application to the facts of the present case. In the latter case the writ was allowed on the ground that no valid notification u/s 4 of the Act could be issued by the Additional Collector when it was a case where the power u/s 17(4) of the Act had been exercised by the State Government.

5. For the aforesaid reasons, we find no merit in the application which is accordingly dismissed, but in the circumstances of the case without costs.