
(1965) 04 PAT CK 0004
In the Patna High Court
Case No : Misc. Judl. Case No. 463 of 1963

Jugal Kishore Bhagar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-04-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 5A

Citation : AIR 1965 Patna 397

Hon'ble Judges : U.N. Sinha, J; S.N.P. Singh, J

Bench : Division Bench

Advocate : Prem Lall and Rameshwar Prasad No. 2, for the Appellant; Standing Counsel, S.K. Jha and S.N. Jha, for the Respondent

Final Decision : Allowed

Judgement

U.N. Sinha, J.—This application has been filed by the petitioner under Articles 226 and 227 of the Constitution of India, praying that an order, dated the 22nd March, 1963, incorporated in Annexure "F" of the application, passed by opposite party No. 2, the Revenue Minister, Government of Bihar, Patna, may be quashed by a writ in the nature of a writ of certiorari or by any other appropriate writ. The substance of the facts stated in the application is as follows. It is stated that the petitioner is the owner of a house in Mohalla Bakerganj, in the town of Laherisarai, in the district of Darbhanga, bearing holding No. 92, plot No. 28816, measuring about 1 katha, 13 dhurs and 87 dhurkis. A notification had been published in the Bihar Gazette for acquisition of some lands, including the petitioner's land, for the purpose of extending Sinba Homeo Medical College and Hospital, Laherisarai. In the due course the petitioner filed an objection u/s 54 of the Land Acquisition Act before the Collector of Darbhanga. By order dated the 5th October, 1961, the Collector of Darbhanga rejected the petitioner's objection and thereupon, the petitioner filed an application u/s 54(1) of the Land Acquisition Act, as amended by Bihar Act 11 of 1961, before the appropriate Government.

It is stated that the then Revenue Minister, Government of Bihar, passed his order on the petitioner's application, which is incorporated in Annexure "D" of the application dated the 2nd March, 1962. It is stated, further, that in pursuance of the directions given by the then Revenue Minister, the Collector dropped the land acquisition proceeding, as is evidenced by Annexure E" - It is then stated that in April, 1962, opposite party No. 5, the Secretary of the Sinha Horaeo Medical College and Hospital, revived the land acquisition proceeding by filing a petition before the Revenue Minister, Government of Bihar. It is then stated that by order dated the 22nd March, 1963. the then Revenue Minister reopened the matter and ordered that the land and house of the petitioner will be acquired under the Land Acquisition Act. This is the impugned order, incorporated in Annexure "F". It Is mentioned in the application that the order dated the 22nd March, 1963 was illegal and without jurisdiction, as the order passed earlier and incorporated in Annexure "D", dated the 2nd March, 1962, was final. It is further stated that the Revenue Minister, Government of Bihar, had no power to review an earlier decision, and, therefore, the order dated the 22nd March, 1963, should be quashed.

2. A counter-affidavit has been filed on behalf of opposite parties Nos. 1 to 4 and the substance of it is that the land, which was the subject-matter of land acquisition proceeding, was partly vacant and partly covered with dilapidated houses, and, therefore, there was nothing wrong in the order dated the 22nd March, 1963, having been passed for acquisition. The existence of any house, as alleged by the petitioner, has been denied. A reply to the counter-affidavit has also been filed by the petitioner, stating that in fact, a house stands on the land proposed to be acquired and its holding numbers are 92 and 92A in the record of the Darbhanga Municipality. Some other facts have also been in this reply.

3. The main argument advanced by Sri Prem Lall, appearing for the petitioner, is based on Section 5A incorporated in the Land Acquisition Act of 1894 by Land Acquisition (Bihar Amendment) Act, 1960, which is Bihar Act No. 11 of 1961. The original section of the Land Acquisition Act, 1894 (Act No. 1 of 1894), reads thus :

"5A. (1) Any person interested in any land which has been notified u/s 4, Sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the issue of the, notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate Government, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act".

The amendment incorporated by Bihar Act 11 of 1961 reads as follows:

"Amendment of section 5A of Act 1 of 1894.--In Section 5A of the said Act:

(1) in Sub-section (1), for the words "within thirty days after the issue of the notice the following words shall be substituted, namely:-- "within thirty days after the publication of the notification referred to in the said Sub-section at some conspicuous place in the village in which the land is situated or of the service of the copy thereof on him, whichever is later," : and --

II. for Sub-section (2), the following Sub-section shall be substituted, namely-

"(2) (1) Every objection under Sub-section (1) shall be made in writing to the Collector who shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and making such further enquiry, if any, as he thinks necessary, decide the objection:

Provided that the appropriate Government may, either of its own motion or on the application of any person interested in the land, call for the record of the proceedings held by the Collector and pass such order as it may think fit.

(ii) The order of the appropriate Government and subject to such order, the decision of the Collector, under Clause (1) shall be final."

It is contended by the learned counsel that after the petitioner had filed his application to the Government, u/s 5A(2)(1), which is Annexure "C" of the application, and after its disposal by the appropriate Government, whose order was incorporated in Annexure "D" of the application, dated the 2nd March, 1962, the order of the appropriate Government in this matter had become final, and, therefore, the same matter could not have been re-agitated and reviewed in 1963 by any further order incorporated in Annexure "F" of the application. According to the learned counsel, Section 5A introduced by Bihar Act 11 of 1961 enacts that when the appropriate Government chooses to pass an order, after the Collector has dealt with the matter, the order of the appropriate Government must be taken to be conclusive once for all and the order cannot be reviewed, as there is no provision in the Land Acquisition Act for any review of an order which has been declared to be final by Section 5A.

The learned Standing Counsel has argued on the other hand, that the order incorporated in Annexure "F" was really not a review of the earlier order of the Government, incorporated in Annexure "D", but that it was a fresh order for continuing the original land acquisition case, which was, for some reason or the other, in abeyance upto that time. According to the learned standing counsel, the order incorporated in Annexure "D" did not indicate that the original land acquisition case had been dropped, and, therefore, no illegality had been

committed by reviving the matter in 1963, by the order incorporated in Annexure "F". In my opinion, however, the contentions raised by the learned counsel for the petitioner are of substance, and it is difficult to hold that the order incorporated in Annexure "F" did not amount to a contrary order, having been passed on review or re-consideration. It is actually mentioned in Annexure "F" that the matter of acquisition of land for Sinha Homeo Medical College and Hospital in Laherisarai had again been inquired into by the Government, and after fresh consideration, the Government had come to the decision which was incorporated in Annexure "F". There is no doubt whatsoever that the order incorporated in Annexure "F" amounted to reviving the land acquisition proceeding against the property of the petitioner, mentioned earlier, which acquisition had not been approved earlier in the order incorporated in Annexure "D".

Whether by the order incorporated in Annexure "D" the whole land acquisition proceeding has been dropped or not, need not be decided in this case, although it does appear from Annexure "E", that the Collector of Darbhanga had himself understood that the land acquisition proceeding had been dropped. But so far as the property of the present petitioner is concerned, there is no doubt that the order of the appropriate Government, incorporated in Annexure "D", was to the effect that the acquisition proceeding against that property should not proceed, whereas the present order incorporated in Annexure "F" states that further steps for acquisition of land should be taken, including the property of the petitioner. In my opinion, the first order of the appropriate Government, incorporated in Annexure "D", became final by virtue of Section 5A, quoted above, and the appropriate Government had not thereafter any jurisdiction to review or re-consider the matter to come to a contrary conclusion, with respect to the property of the petitioner. It is not possible to uphold the contention of the learned standing counsel that the order incorporated in Annexure "F" did not interfere with the order incorporated in Annexure "D", and that by the order incorporated in Annexure "F", the land acquisition proceeding had merely been revived, which was in abeyance after the order incorporated in Annexure "D" had been passed.

There is no indication in the Land Acquisition, Act, that the order declared to be final by Section 5A can be reviewed or reconsidered, and as a matter of fact, when section 5A states that certain order shall become final at a particular stage it must be taken that the authority whose order had become final could not thereafter re-open the matter and pass a contrary order. Learned counsel for the petitioner has referred to a number of decisions, which are, the case of *Ram Nath Prasad Vs. State Transport Appellate Authority and Others*, the case of *Rameshwar v. State of Bihar* AIR 1960 Pat 6 the case of *Bhola Pd. Singh Vs. Prof. U.A. Goswami and Others*, and the case of *Debi Prasad and Others Vs. Khelawan and Others*, . I do not think it is necessary to deal with these decisions in any detail, because the wordings of Section 5A are clear and categorical, and no other interpretation is possible except that the order declared to be final must be

final and conclusive for all purposes, so far as the authority which had passed that order is concerned.

4. For the reasons given above, the application must succeed; but this judgment may not be taken to have decided the rights of any of the other parties whose lands were the subject-matter of the land acquisition proceeding in question except that of the present petitioner. The order incorporated in Annexure "F" of this application is, therefore, quashed, with respect to the petitioner's property, by a writ of certiorari and a writ of mandamus shall issue prohibiting the opposite party from giving effect to the order incorporated in Annexure "F", so far as the property of the present petitioner is concerned. The application is, therefore, allowed in the terms mentioned above. Under the circumstances, however, there will be no order for costs of this Court.

S.N.P. Singh, J.

5. J agree.