

(1978) 10 OHC CK 0009

In the Orissa High Court

Case No : Original Jur. Case No. 1091 of 1976

Kabir Padhi and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-10-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Land Acquisition Act, 1894 — Section 5A, 6

Orissa Town Planning and Improvement Trust Act, 1956 — Section 32, 32A

Citation : AIR 1979 Ori 27 : (1978) 46 CLT 478

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Additional Government Advocate and S.S. Basu, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Misra, J.—Petitioners are owners of residential holdings in the Janata Hospital Road within the town of Berhampur in the district of Ganjam and in this application they assail the notification under the Land Acquisition Act, 1 of 1894 (hereinafter referred to as the "Act") purporting to acquire 1.61 acres of land as per notification dated 23-5-1976. In July, 1964, the State Government had notified their intention to acquire 2.20 acres of land for the purpose of construction of a hostel and staff quarters of the Government Women's College at Berhampur, The said notification was withdrawn on 8-4-1965. Berhampur Town is governed by the Orissa Town Planning and Improvement Trust Act of 1956 (Orissa Act 10 of 1957) and the locality in question has been marked as a residential zone. It is claimed by the petitioners that after withdrawal of the notification for acquisition, several of them have developed the lands in the locality for construction of houses. On 11-4-1970, the State Government again notified for acquisition of 1.90 acres of land for the same purpose and on this occasion they also resorted to the procedure provided u/s 17 of the Act. O. J. C. No. 500 of 1973 was filed in this Court challenging the invoking of the special

procedure u/s 17 of the Act. By Judgment dated 7-8-1974, the notification was quashed. On 23-5-1976, the State Government again notified their intention to acquire 1.61 acres of land out of the lands originally notified for acquisition. On this occasion, the procedure u/s 17 of the Act was not followed. Notice was given u/s 5-A of the Act inviting objections against the proposed acquisition. Thirty-five objections were received and after disposal of the objections, the requisite notification u/s 6 of the Act was made on 13 Aug., 1976 and was published under the authority of the State Government in the State Gazette on 24-8-1976 (vide Annexure-8). Petitioners thereupon filed this application for quashing the notifications under Sections 4 and 6 of the Act and for a direction that the land in question may not be acquired. Petitioners have advanced two contentions in the main that (i) there has been no appropriate enquiry u/s 5-A of the Act and (ii) the purported acquisition for the purpose of locating a hostel of a public institution violates the zoning regulation under the Orissa Town Planning and Improvement Trust Act.

2. Opposite parties 1 to 4 being the State and its Officers in a common counter affidavit filed on their behalf by the Land Acquisition Officer have claimed that there is great pressure for expanding the Women's College with hostel accommodation and staff quarters; the institution is so located that unless these lands are acquired, there would be no possibility of expansion; it is not open to the petitioners to challenge acquisition by contending that any other site is available and the ultimate choice as to suitability is for the State to decide and petitioners are only entitled to reasonable compensation. It is contended that there was full investigation into the objections and parties had been given appropriate hearing. Though it has been conceded that there has been an approved master plan and the area in question has been reserved for residential localities, variation of the plan has already been proposed and is under consideration of the Government. Petitioners are not entitled to raise objection to the acquisition on the allegation of violation of Section 32 of Orissa Act 10 of 1957.

In a separate counter affidavit filed on behalf of opposite parties 5 and 6, it has been stated that the Berhampur Regional Improvement Trust gave a proposal to the State Government to vary the master plan to the extent that a portion of Bijipur mauza which is under dispute and which is marked as residential zone should be marked as public and semi-public zones and this is as provided in Section 32-A of the 1957 Act.

3. At the hearing of the application, the records of the Land Acquisition Collector were produced and on verification thereof, Mr. Mohanty for the petitioners does not press the first point, namely that no adequate hearing u/s 5-A of the Act had been given to the petitioners. In view of the fact that the point is not pressed, it is not necessary to refer to the documents and decide the question.

4. The only question that remains for examination, therefore, is the alleged violation of the provisions in the Orissa Town Planning & Improvement Trust Act

of 1956. Section 32 of the aforesaid Act on which petitioners placed reliance provides:--

"The Director or the State Government, as the case may be, shall take into consideration the said views of the Planning authority under Sub-section (2) of Section 52 and approve the said Plan with or without modification. Thereupon the Planning authority shall notify in the Gazette and a local newspapers, if any, that the Master Plan has been duly approved and then any person interested in the said plan may see it at a fixed time and place."

Section 32-A provides:--

" (1) If on a proposal made in that be half by the Planning authority or other wise the State Government are of opinion that it is necessary in the public interest to make any variation in any Master Plan approved u/s 32, they may incorporate the proposed variations in the Master Plan and notify in the Gazette and in a local newspapers, if any that any person interested therein may see it at a fixed time and place and file objections or suggestions, if any, within sixty days from the date of such notification.

(2) The State Government may, after taking into consideration all objections and suggestions received under Sub-section (1) and making such enquiry as they deem necessary, finalise the variations so made with or without modifications and notify in the Gazette and in a local newspaper, if any, that the variations in the Master Plan have been duly made and any person interested therein may see it at a fixed time and place.

(3) If any person, who is affected by such variation, has incurred any expenditure in compliance with the Master Plan as it existed before such variation, such person shall be entitled to receive compensation for the loss he has suffered by reason of such variation.

(4) Any person claiming compensation under Sub-section (3) may, within sixty days from the date of the notification under Sub-section (2), make an application in that behalf to the prescribed authority who shall determine the compensation in the prescribed manner.

(5) The compensation determined under Sub-section (4) shall be paid, where the variation is made on a proposal from Planning authority, by such authority and in any other case by the State Government."

Mr. Mohanty for the petitioners maintains that once the master-plan is approved and is final, there is no scope for deviation and until the variation has been made, the proposed acquisition for a purpose not in accordance with the master-plan would not be tenable. We do not think, the contention is justified. It is true that for the purpose of planned improvement of towns, this Act makes specific provisions and master-plan is the foundation for such purpose. It is the specific case of the opposite parties that the master-plan is being varied. Learned Additional Government Advocate rightly contended that the construction is not

coming up immediately and by the time the acquisition proceeding is finalised, the proposed modification may have come. We agree with the submission and are not inclined to interfere with the acquisition in the special facts and circumstances pleaded. There is clear provision in Section 32-A of the 1957 Act for compensating those who are affected by the variation. If petitioners are really entitled to compensation, there is a machinery provided u/s 32-A of the 1957 Act and petitioners cannot, therefore, have any real grievance.

5, In view of the fact that the sole contention raised by the petitioners is not accepted, this writ application has got to be dismissed as being without any merit. We make no order for costs.

B.K. Ray, J.

6. I agree.