

(1984) 08 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 2478 of 1982 and 707 of 1983

Keshav Pal and Others etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 14-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 40(1), 5A(2), 6(3)

Citation : AIR 1985 Patna 70 : (1985) PLJR 779

Hon'ble Judges : S. Sarwar Ali, J;B.P. Jha, J

Bench : Division Bench

Advocate : Basudev Prasad, Rajendra Prasad Singh, Anil Kumar, Sunil Kumar and Ramji Prasad, for the Appellant; J. Jha, Standing Counsel, S. Das Gupta, Jr. Counsel to Standing Counsel, J.P. Shukla, Govt. Pleader, S.C. Jha, Jr. Counsel to Govt. Pleader, K.P. Sinha S. Rangrajan, K.N. Tewary, B.K.M. Tripathy, Anjani Kumar Sinha and D.D. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Jha, J.—I shall dispose of both the writ petitions by a common judgment as they arise out of a common award made u/s 11 of the Land Acquisition Act, 1894 (Act I of 1894) (hereinafter referred to as "the Act").

2. In C.W.J.C No. 707 of 1983, the petitioners pray for quashing Annexures 1, 2, 3 and 4. By a supplementary affidavit, they have also prayed for quashing Annexure 6. Annexure 1 is a notification issued u/s 6 of the Act; Annexure 2 is a certificate of the delivery of possession of the acquired lands to the Secretary, Maha Lekha Kar Karmachari Griha Nirman Sahyog Samittee Ltd. (hereinafter referred to as "the Company"); Annexure 3 contains a notice u/s 9 of the Act; Annexure 4 is an award prepared u/s 11 of the Act; and Annexure 6 contains a certificate that the delivery of possession was given by the Kanungo on 24th April, 1982.

3. In C.W.J.C. No. 2478 of 1982, these petitioners pray for quashing Annexure 1,

a notification u/s 6 of the Act, and Annexure 2, a certificate of delivery of possession given by the Kanungo on 24th April 1982. These petitioners are purchasers from the original owners.

4. The main grievance of the petitioners in CW.J.C. No. 2478 of 1982 is that they may become landless in view of the acquisition of the lands in question and, as such, their lands should be excluded from the land acquisition proceeding.

5. Respondent 6 is a registered Society under the Bihar and Orissa Co-operative Societies Act 1935, and, it is a company within the meaning of Section 3(e) of the Act. The object of the Company is to provide house to the homeless members. The Company requested the State of Bihar for acquiring 70 acres of land for construction of dwelling houses for the employees of the Accountant General's office, Patna Branch, by a letter dated 12th Sept, 1974. The State Government directed the Collector by a letter dated 21st Feb., 1975, to make a report u/s 40 of the Act as well as under Rule 4 of the Land Acquisition (Companies) Rules, 1963 (hereinafter referred to as "the Rules"). The Additional Collector submitted a report to the State Government on 9th Jan., 1976. After the receipt of the above-mentioned report, the proposal for land acquisition was placed before the State Land Acquisition Committee (hereinafter referred to as "the Committee"). The Committee considered the report and the State Government approved the same on 24th Oct, 1978. In other words, the State Government gave the consent u/s 40(1) of the Act and directed the land acquisition authority to initiate proceeding under the Land Acquisition Act. After granting consent, the State Government issued a notification u/s 4 of the Act on 1st June, 1979 for acquisition of 54.75 acres of land in village Sheikhpura, P.S. Phulwari, district Patna for a public purpose.

6. Notices were issued to all the interested persons including the petitioners in both the writ petitions. It is stated in paragraph 25 of the counter-affidavit filed on behalf of respondent 6 that notices upon all the persons including the petitioners were served and objections were heard u/s 5A of the Act and the objections of the petitioners were also heard and finally disposed of on 25th April, 1980 (see paragraph 25 of the counter-affidavit filed on behalf of respondent 6 in C.W.J.C. No. 707 of 1983).

7. On 7th June, 1980, the Company entered into an agreement with the State Government as required u/s 41 of the Act. The agreement was published in the official gazette on 9th July, 1980 as provided u/s 42 of the Act. In the present case, the provisions laid down in Part VII of the Act were followed and the provisions of Rule 4 of the Rules were also complied with. The Company also deposited a sum of Rs. 70,00,000/- and odd with the State Government.

8. On 1st Sept 1980, the State Government issued a notification u/s 6 of the Act. Notices were issued to the interested persons u/s 9 of the Act. The award u/s 11 of the Act was made on 20th Feb. 1982, and delivery of possession of the lands was given to the Secretary of the Company by Annexures 2 and 6 on 24th April,

1982. These two writ petitions were filed on 30th June, 1982 (C.W.J.C No. 2478 of 1982) and on 17th Feb., 1983 (C.W.J.C. No. 707 of 1983).

9. These petitioners have assigned no reason why they should have waited till the middle of 1982 to come to this Court for challenging the validity of the notification issued on 1st Sept, 1980. In the present case, the notification u/s 4 of the Act was issued on 1st June, 1979. The notification u/s 6 of the Act was issued on 1st Sept, 1980. The award was prepared on 20th Feb., 1982, and delivery of possession was given on 24th April, 1982. In this connection, their Lordships of the Supreme Court in the case of Aflatoon and Others Vs. Lt. Governor of Delhi and Others, have held as follows at page 808 : (at p. 2081 of AIR) :

"To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners."

10. In my opinion, these petitioners should not have waited till 1982 to come to this Court for challenging the validity of the notification issued on 1st Sept, 1980. They ought to have moved this Court within a reasonable time. These petitioners should have moved this Court in 1980 for quashing the notification u/s 6 of the Act. In these two writ petitions, these petitioners have offered no explanation as to why the writ petitions were filed after such an inordinate delay and after the entire process of acquisition was over. These writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners. This view is also being supported by the decision in Babu Singh and Others Vs. Union of India (UOI) and Others, .

11. On a perusal of Section 4 of the Act it is clear that the appropriate Government will issue a notification to the effect that the land is needed or is likely to be needed for any public purpose. In the present case, the notification u/s 6 of the Act suggests that the land in question was needed for a public purpose. In the present case, the State Government acquired the land in village Sheikhpura, pargana Phulwari, P.S. Phulwari, district Patna, for a public purpose. It has been held in the case of The State of Bombay Vs. Bhanji Munji and Another, that providing house accommodation to the homeless is a public purpose. This decision has also been followed in the case of Babu Barkya Thakur v. State of Bombay AIR 1980 SC 1203, wherein it has been held that the acquisition of land for construction of dwelling houses by a company is also a public purpose. It has also been held in P. Thambiran Padayachi and Others Vs. The State of Madras and Others, that Section 40(1)(a) does not even refer to a public purpose; much less does it indicate that the construction of dwelling houses for persons who are not workmen would not be a public purpose. It has been further held that Section 40(1) is intended merely to give a guide to the

State Government for granting consent to acquisition of lands for a company. Once consent has been granted by the Government, such consent cannot be challenged, especially when the acquisition proceedings under the Act had started. In the present case, these petitioners cannot challenge the consent granted u/s 40(1) of the Act after the proceeding is over.

12. In the present case, the Government approved the report of the Additional Collector and granted consent on 24th Oct, 1978. On 1st Sept, 1980, the State Government issued a notification u/s 6 of the Act. These petitioners are challenging the grant of consent given by the State Government as required, u/s 40(1) of the Act after the completion of the acquisition proceedings. Such a challenge cannot be allowed. These petitioners should not have waited till 1982 for challenging the consent granted by the State Government for acquisition of the lands in question. These petitioners have offered no explanation as to why the writ petitions were filed after such an inordinate delay and after the entire process of acquisition was over.

13. It was contended by the learned Counsel of the petitioners that the State Government could not have granted consent as required u/s 40(1) of the Act. It is further contended on the basis of Section 44B of the Act that consent can be granted only under Clause (a) of Sub-section (1) of Section 40 as respondent 6 is a private company. So far as the second part of the argument is concerned, respondent 6 is not a private Company within the meaning of the Indian Companies Act, 1956. By virtue of the definition as contained in Section 3(e) of the Act, respondent 6 is a company. As such, consent can be granted to respondent 6 in accordance with the provisions of Section 40(1)(aa) of the Act.

14. The restriction imposed u/s 44B to a private Company will not apply to the case of respondent 6. Two conditions precedent are required to be satisfied before acquiring any land for the purpose of a company, namely, (1) that the previous consent of the appropriate Government has been given to the acquisition, and (2) that the company has entered into an agreement u/s 41 of the Act.

15. Section 40(1) of the Act provides the conditions under which the appropriate Government shall grant consent. Section 41 lays down the terms to be incorporated in the agreement. Section 42 provides publication of the agreement in the official gazette. In the present case, both the conditions as contemplated in Section 39 of the Act had been satisfied before issuing a notification u/s 6 of the Act. The agreement was entered into between the Government and the Company on 7th June, 1980 and the same was published in the Gazette on 9th July, 1980. The State Government issued the notification u/s 6 of the Act on 1st Sept., 1980. It is, therefore, clear that the provisions of Part VII of the Act have been followed in the present case.

16. The main question for decision is : --Whether the provisions of Part VII of the Act will apply to the present case or not? It has been held in Pandit Jhandu Lal

and Others Vs. The State of Punjab and Others, that if a part or whole of the cost of acquisition is met by the public revenue, then it is not necessary to go through the procedure prescribed in Part VII. If the acquisition for a Company is made at the cost entirely of the Company, such an acquisition comes under the provisions of Part VII. It is an admitted position in this case that the cost of acquisition has not been met from out of the public fund, and, as such, the procedure prescribed in Part VII is required to be followed in the present case.

17. The question for consideration, therefore, is under which clause of Section 40(1), the consent was given by the State Government So far as Clause (a) is concerned, it will apply to a company for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith. So far as Clause (aa) is concerned, it will apply to the present case. In the present case, the acquisition is needed for the construction of buildings for a company which is engaged in taking steps for engaging itself in any work which is for a public purpose. In the present case, the work is to construct houses for the members of the Company which itself is a public purpose. It has been held in *The State of Bombay Vs. Bhanji Munji and Another*, *Babu Barkya Thakur Vs. The State of Bombay and Others*, and *P. Thambiran Padayachi and Others Vs. The State of Madras and Others*, that to construct houses for homeless persons by a company is a public purpose.

18. In order to attract the provision of Section 40(1)(aa), it is necessary that the construction of the building by a Company is for a public purpose. It has been held in *the State of West Bengal and Another Vs. Surendra Nath Bhattacharya and Another*, that the words "public purpose" are not to be interpreted in a restricted sense. It takes colour from the nature of the industry itself. The words "public purpose" are usually used where the public are directly connected therewith. Clause (b) of Section 40(1) contemplates such work, like construction of a hospital or an educational institution, which may be directly used by the public. Under Clause (aa) of Section 40(1), the acquisition should be for the construction of some buildings for a Company which is engaged in any work which is for a public purpose. In the present case, the Company has been constituted for providing houses to its members who are homeless persons. Such work is for a public purpose, that is, for erecting houses for the members who are homeless persons. The words "public purpose" in Clause (aa) should not be used in a restricted sense. Under Clause (aa) of Section 40(1), it is not necessary that the work should be useful for the general public. The members of a Company are part of the general public and the Company is constructing the houses for a section of the public who are homeless persons. This type of work also can be held for a public purpose within the purview of Section 40(1)(aa) of the Act. I, therefore, hold that the State Government granted consent u/s 40(1) (aa) of the Act.

19. The agreement (Annexure A/2) dated 9th July, 1980, clearly suggests that the purpose of the Company was to construct residential houses for the members

of the Company. Hence, in my opinion, such a case will be covered by Section 40(1)(aa) of the Act. It is not mentioned in Section 40(1)(aa) that if the purpose of the Company is to construct houses for the members, such work will not be for a public purpose. Hence, I reject the contention raised by the learned Counsel for the petitioners on two grounds, namely, (1) that the petitioners cannot challenge the grant of consent at such a late stage, especially when the proceeding under the Act has come to an end, and (2) that in the present case, the State Government has granted consent u/s 40(1)(aa) of the Act.

20. The consent was granted on 24th Oct. 1978 by the State Government u/s 40(1)(aa) of the Act. The State Government directed the authorities to initiate the proceeding under the Act. In other words, consent was given by the State Government before issue of a notification u/s 4 of the Act. On 1st June, 1979, the notification u/s 4 of the Act was issued.

21. In the present case, the notification u/s 6 of the Act (Annexure 1) clearly suggests that the lands are being acquired for a public purpose, that is, for constructing buildings. It has been held in the case of *Ratilal Shakarabhai and Others Vs. The State of Gujarat and Others*, that if there is a declaration u/s 6 of the Act that the lands proposed to be acquired are needed for a public purpose, such a declaration is conclusive evidence that the lands are needed for a public purpose (see Section 6(3) of the Act). It is, therefore, clear that the statement made in the notification u/s 6 of the Act to the effect that the lands are needed for a public purpose is a conclusive evidence u/s 6(3) of the Act. Rule 3 of the Rules provides for the constitution of the Land Acquisition Committee. Rule 4 provides that whenever a Company makes an application to the appropriate Government for acquisition, of any land, that Government shall direct the Collector to submit a report to it on the matters enumerated in the rule. In the present case the provisions of Rule 4 have been fully complied with. On 12th Sept, 1974, the Company applied to the State Government as required under Rule 4 of the Rules for acquisition of 70 acres of land for the purpose of constructing buildings for the employees of the office of the Accountant General at Patna. On 21st Feb., 1975, the State Government directed the Collector to make an enquiry and to submit a report. On 9th Jan. 1976, the Additional Collector submitted a report after holding an enquiry under Rule 4. The report was considered by the Committee. The State Government approved the report and granted consent on 24th Oct., 1978.

23. Sub-rule (4) of Rule 4 prohibits the State Government from issuing a declaration u/s 6 of the Act unless these two conditions are satisfied, namely, (1) that the appropriate Government has consulted the Committee and considered the report submitted under this rule and the report, if any, submitted u/s 5A of the Act, and (2) that the agreement has been executed u/s 41 of the Act. In the present case, the Committee considered the report of the Additional Collector and the same was approved by the State Government on 24th Oct., 1978. The Company entered into an agreement with the State Government on 7th June,

1980 and the same was published in the official gazette on 9th July, 1980. The notification u/s 6 of the Act was issued after complying with the mandatory provisions of Rule 4(4) of the Rules.

24. The main contention of the learned counsel of the petitioners is that the application of the petitioners filed u/s 5A of the Act were not entertained and considered and, as such, the petitioners were not given any opportunity of being heard (see paragraph 11 of C.W.J.C. No. 707 of 1983). It is further contended by the learned Counsel for the petitioners that no notices under Sections 4 and 9 of the Act have been given to the petitioners. Similar allegations have been made in C. W. J.C. No. 2478 of 1982. It is admitted in paragraph 31 of C.W.J.C. No. 2478 of 1982 that the petitioners filed their objections before the Collector as well as before the Director of Acquisition.

25. In C.W.J.C. No. 707 of 1983, the statements made in paragraph 11 of the petition have been controverted in paras 8 and 25 of the counter-affidavit filed by respondent 6. An identical counter-affidavit has also been filed in C.W.J.C. No. 2478 of 1982. It is stated in the counter-affidavit that the petitioners have taken part in the land acquisition proceeding. Notices were issued under Sections 4 and 9 of the Act which were served on the petitioners on 29th Aug. 1979 and 27th Nov., 1980. The service reports in regard to the service of the notices issued u/s 4 of the Act were received in the office of the Land Acquisition Officer on 5th Sept., 1979. It is further stated in the counter-affidavit that the petitioners raised objections in the enquiry u/s 5A of the Act and their objections were disposed of finally on 25th April, 1980. Annexure F attached to the counter-affidavit is the order dated 25th April, 1980.

26. On a perusal of the writ petitions, it is clear that these petitioners filed their objections u/s 5A of the Act. Their grievance is that their objections were not entertained and considered u/s 5A of the Act. Their further grievance is that they were not heard. On a perusal of Annexure F (attached to the counter-affidavit), it is clear that 94 persons raised objections in the proceeding u/s 5A of the Act. A counsel appeared for 50 of the objectors. In the objections, these petitioners did not raise an objection that the acquisition was not for a public purpose. They raised a specific objection that there was no enquiry u/s 40(1) of the Act before holding an enquiry u/s 5A of the Act. The objections were rejected by the Additional Collector vide Annexure F.

27. It appears from the counter-affidavit of respondents 1 to 5 in C.W.J.C. No. 707 of 1983 that the petitioners were heard fully and their objections were disposed of in accordance with law (see paras 10 and 11). An identical statement was made by respondent 6 in the counter-affidavit filed in CW.J.C. No. 707 of 1983.

28. It is also stated in the counter-affidavit filed on behalf of respondents 1 to 5 and 6 in C.W.J.C. No. 2478 of 1982 that notices were issued as required under Sections 5A and 9 of the Act and in response to the notices, about 94 persons

filed objections which were disposed of by the Additional Collector (see paras 13, 16 and 13, 15 in the counter-affidavit of respondents 1 to 5 and 6). On the facts and circumstances of both the cases, I hold that the objections u/s 5A of the Act were heard and disposed of by the Additional Collector vide Annexure F. Notices u/s 9 of the Act were issued and objections were disposed of by the Additional Collector.

29. On a perusal of Annexure F, it is clear that the Additional Collector considered their objections and rejected them. It has been held by the learned Additional Collector that the people of Sheikhpura locality are selling their lands. It is for this reason the learned Additional Collector has stated that there will be a planned development of the area if the lands are acquired by the State Government, for the purpose of constructing houses. It is also mentioned in the report that if anyone becomes landless, then his land should be released from a corner of the lands acquired. In view of the last portion of the recommendation, the State Government released 1 acre and odd of lands to the owners of the lands. The Government acquired 52.1265 acres of lands for the purpose of the Company and delivery of possession of the same was given to respondent 6 on 24th April, 1982.

30. The awards were prepared in the names of 128 persons on 20th February, 1982, and out of them 86 awardees have already received compensation (see paragraph 17 of the counter-affidavit of respondent 6 in C.W.J.C. No. 2478 of 1982).

31. These petitioners, namely, Sita Sharan Singh and Shakuntala Devi, appeared through their Counsel before the Land Acquisition Officer vide Vakalatnamas (Annexures A and A/1), and these two petitioners also filed applications (Annexures D and D/I) before the Land Acquisition Officer, Patna. In their petitions, they claimed that they were entitled to issuance of awards in their names. In these petitions, they did not challenge the validity of the notification issued u/s 6 of the Act. They submitted to the jurisdiction of the Land Acquisition Officer and prayed that the awards be issued in their names as they were the son and daughter of Sri Raghubir Singh. The original owner of the lands in question was Raghubir Singh. Petitioners 1 and 2 are the sons of Raghubir Singh and petitioner 3 is the daughter of Raghubir Singh.

32. So far as C.W.J.C. No. 2476 of 1982 is concerned, it is stated that they are landless persons and they have no houses in Patna. These petitioners are purchasers from the original owners. The Additional Collector held in his report u/s 5A of the Act that the lands of those, who were landless persons, should be released and they should be given lands in the corner. The finding of the Additional Collector was accepted to some extent and the State Government released 1 acre and odd of lands to the owners. So far as the petitioners in C.W.J.C. No. 2478 of 1982 are concerned, the finding of the Additional Collector was not accepted by the State Government.

33. u/s 5A(2)(ii) of the Bihar Amendment, the order of the Collector shall be final subject to the order of the appropriate Government. The State Government allowed the representation of a few persons and excluded their lands covering an area of 1 acre and odd from the purview of land acquisition proceeding. The State Government did not exclude the lands of the petitioners in C.W.J.C. No. 2478 of 1982 from the purview of the land acquisition proceeding. As the State Government did not uphold the findings of the Additional Collector in the case of the petitioners in C.W.J.C. No. 2478 of 1982, the order of the State Government has become final u/s 5A(2)(ii) of the Bihar Amendment. It is relevant to quote Section 5A(2)(ii) of the Bihar Amendment which runs as follows: --

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

In this circumstance, I reject the contention of the petitioners in C.W.J.C. No. 2478 of 1982 that their lands be excluded on the basis of the finding of the Additional Collector. Apart from these facts, the order of the Additional Collector is vague; and it does not mention that the lands of the petitioners in C.W.J.C. No. 2478 of 1982 be excluded as they are landless.

34. These petitioners moved this Court when the land acquisition proceeding had come to an end. Defendant 6 has already deposited a sum of Rs. 70,00,000/- and odd with the State Government. According to respondent 6, the lands have already been distributed amongst the members of the Company. Therefore, it is not the stage for interfering with the validity of the land acquisition proceeding.

35. The law laid down in this case is summarised as follows:

Where a part of the cost or whole of the cost is met out of the public revenue, the provisions of Part VII of the Act will not apply. If the cost is met exclusively by a Company, the provisions of Part VII of the Act and Rule 4 of the Rules are required to be followed. To provide houses to the homeless persons is itself a public purpose.

The notification u/s 6 of the Act shall be issued by the appropriate Government after satisfying these two conditions as laid down in Rule 4(4) of the Rules, namely, (1) that the appropriate Government has consulted the Committee and has considered the report submitted under Rule 4 and the report, if any, submitted u/s 5A of the Act, and (2) that the agreement u/s 4 of the Act has been executed by the Company. In the present case, the notification u/s 6 of the Act was issued after complying with these conditions.

36. In the result, both the writ petitions are dismissed. The parties shall bear their "own costs."

S. Sarwar Ali, J.—I agree.