

(2008) 07 GAU CK 0056
In the Gauhati High Court

Kharibam Ibomcha Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 16-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 3, 6, 7

Citation : (2008) 4 GLT 571

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioners, numbering 89, seek interference with the notification issued u/s 6 of the Land Acquisition Act, 1894 declaring that the lands specified in the schedule thereto are needed for public purpose. The prayer of the petitioners is to set aside and quash the said notification and to issue a writ of Mandamus directing the respondents not to interfere with the peaceful possession of the land in question.

2. While entertaining the writ petition, this Court by order dated 16.1.2008 partially stayed the notification. However, the stay order was vacated on the basis of the application filed by the respondents for vacation of the said interim order. The application was registered and numbered as Civil Misc. Application No. 62/2008. The prayer made in the application was allowed by order dated 11.4.2008 making a grievance against which the petitioners preferred a writ appeal being W.A. No. 143/2008. By order dated 26.5.2008, the writ appeal was disposed of refusing to interfere with the order dated 11.4.2008 by which the earlier interim order was vacated. However, the Division Bench provided for hearing of the matter on 17.6.2008 by the appropriate Bench.

3. As per the averments made in the writ petition, the petitioners are owners, possessors and recorded pattadars of the lands situated opposite to the main gate of the Manipur University towards southern east side along with the

National Highway-39. They are in possession of the land for the last many decades by constructing dwelling house, shops, educational institutions, other business premises, petrol pump etc. and even by constructing a market in the name and style of "Tankha Bazar" which according to the petitioners, has become lifeline of hundreds of families living in the area.

4. The Government of Manipur in the Revenue Department issued Annexure-I/A notification dated 1.6.2007 notifying that the lands described in the schedule thereto were likely to be needed for public purposes i.e. for widening of National Highway-39 and construction of Leishang Hiden at Village No. 58-Kayemgei (Sheet No. 1 & 2) Imphal East District. Thereafter, by Annexure-A/2 notification dated 15.6.2007, the Collector, Land Acquisition, Imphal East Division asked for objections to the proposed acquisition of the land for the aforementioned purpose. Such objections were to be filed within 30 days of the date of issuance of the notice.

5. Being aggrieved by the said notification dated 15.6.2007, a writ petition being W.P.(C) No. 491/2007 was filed seeking quashment of the notification dated 1.6.2007 (Annexure-A/1 to the writ petition) and all subsequent proceedings. The writ petition was rejected having regard to the fact that the petitioners would be entitled to raise their objections against the proposed acquisition. Thereafter, the aggrieved persons including the petitioners submitted their objections to the aforesaid notifications. In the objections, they highlighted the grounds/reasons for objections. According to the petitioners, no response has been shown to the said objections by the authorities.

6. The Government of Manipur in the Revenue Department issued yet another notification dated 29.10.2007 (Annexure-A/5 to the writ petition) in supersession of the earlier notification dated 1.6.2007 (Annexure-A/1 to the writ petition) notifying u/s 4 of the Land Acquisition Act, 1884 that the lands described in the schedule thereto were likely to be needed for public purpose, i.e. widening of National Highway-39 and construction of Leishang Hiden from Canchinpur Bridge to Lalong Bridge at Village No. 68--Kyamgoi, Imphal East District. Being aggrieved, the petitioners submitted their objections to the said notification, inter alia, contending that the proposed acquisition was not at all for public interest.

7. The objection hearing took place on 13.7.2007 in the office of the Collector. Thereafter, by Annexure-A/7 notification dated 13.11.2007, it was notified that the lands indicated in the schedule thereto were required for public purpose as indicated earlier and the objections were called for. Upon submission of objections etc., the hearing took place on 13.12.2007 in the office of the Collector.

8. By Annexure-8 notification dated 27.12.2007, a declaration was made u/s 6 of the Land Acquisition Act, 1894 that the lands specified in the schedule thereto were needed for public purpose i.e. widening of National Highway-39 and construction of Leishang Hiden at Village No. 68 - Kyamgoi, Imphal East District.

By the said notification, the Collector, Land Acquisition was directed to take over possession of the said land u/s 7 of the Land Acquisition Act, 1894.

9. According to the petitioners, the proposed action on the part of the respondents towards acquiring the land in question in the name of public purpose is illegal, unlawful, arbitrary, malafied, malicious and unjust. The reasons for such allegation are indicated in Para-11 of the writ petition. It is the case of the petitioners that the proposed acquisition of the land is not in any public interest, but for private interest. According to the petitioners, such acquisition in the name of beautification of Leishang Hiden by depriving the petitioners of their livelihood cannot be in the interest of public. It has been contended that since the entire area accomodates 500 families with their dwelling houses and other establishments, the proposed action with the resultant effect of eviction of the petitioners from the land cannot be said to be for any public purpose.

10. In the grounds urged in Para-11 of the writ petition, the petitioners have mentioned about the existence of shops and establishments, schools and colleges etc. over the land proposed to be acquired. It is the further case of the petitioners that, since lot of other activities are in the offing over the land in question which are also for public good, the respondents without taking note of the same could not have issued the impugned notifications. It has also been contended that the site of Leishang Hiden is not even included in the historical sites as prepared by the State Archaeology of the Department of Arts & Culture, Government of Manipur.

11. The respondents in their counter affidavit have denied the contentions raised in the writ petition. According to them, the allegations made in the writ petition are baseless and unfounded. It has been contended that the objections raised by the petitioners were duly considered and replied. According to the respondents, there is extreme exigency of public purpose for which the lands are sought to be acquired and the same will benefit thousands of people. The project which the respondents have indicated is a multi-purpose project containing construction of large number of water tank, environment protection scheme, water supply and also widening of National Highway-39 situated along side the said project. In a nutshell, it is the contention of the respondents that since the proposal for acquiring the land is in the larger public interest, smaller and individual interest as projected by the petitioners will have to give way to such larger public interest.

12. The petitioners in their affidavit-in-reply have reiterated their stand in the writ petition and have contended that the project of which the respondents have mentioned will not at all serve any public interest, but will benefit only a few. Thus, according to them, the entire idea behind, is the outcome of arbitrary exercise of power at the behest of some vested interest.

13. I have heard Mr. B.P. Sahu along with Mr. N. Thoiba Singh, learned Counsel for the petitioners as well as Mr. H.N.K. Singh, learned Sr. Counsel assisted by Mr. G.B. Das and Mr. Kh. Babulindra, learned Counsel representing the

respondents. I have also considered the materials on record.

14. It is not the case of the petitioners that the procedure to be followed towards acquisition of the land as envisaged under the Land Acquisition Act has not been followed in the instant case. Their only contention is that the land is not required for any public purpose and/or the purpose for which the land is sought to be acquired, cannot be said to be public purpose as envisaged under the Act. On the other hand, it is the stand of the respondents that the land is required for public purpose and the project coupled with the widening of National Highway-39, if materialized, will do maximum good to the public and the private interest espoused by the petitioners must give way to such larger public interest.

15. Under the Land Acquisition Act, the power is vested with the State Government to acquire the land which is required for any public purpose. In the case of Rudradhar R. Trivedi Vs. State of Maharashtra and another, , the Apex Court observed that the paramount consideration is the service of the public purpose. There cannot be any dispute that the widening of National Highway-39 is a public purpose. However, according to the petitioners, the acquisition of the land for construction of "Leishang Hiden" is not at all public interest. It is the case of the respondents that the widening of National Highway-39 and construction of Leishang Hiden are parts of the same multipurpose project containing the construction of large water tank and environmental protection scheme and water supply. Needless to say that in such matters, the writ Court does not have any expertise. It is upto the Government in the particular department to decide as to whether and which particular plot of land is to be acquired or not for the public purpose.

16. Although the petitioners attributed the motive in the guise of public purpose, but no material for substantiating the plea has been placed. The point has been taken as an abstract point of law. There is no attempt on the part of the petitioners to substantiate the point by pleading the relevant facts and producing the relevant evidence. There is nothing in the writ petition in support of the contentions of the petitioners that the impugned acquisition is nothing but a malafide exercise of power to benefit a few. The public purpose for which the land is sought to be acquired has been put to challenge in such an abstract form. The public purpose in question is the construction of multi-purpose project, which is a technical term of the water body apart from the need of widening of National Highway-39. The project is a multi-purpose project containing construction of water tank, environmental protection scheme, water supply and also widening of National Highway-39 situated along side the said project. The respondents in their counter affidavit have annexed the copy of the project plan as Annexure-3. On perusal of the same, it cannot be said to be opposed to public purpose and/or public interest. The project is to be undertaken simultaneously along with widening and improvement of National Highway-39.

17. According to the respondents, the water moat is being slowly encroached upon and occupied by the unauthorized occupants including the petitioners

without obtaining necessary grant or allotment. Instead of evicting the petitioners from such encroachment, the Government decided to acquire the land in accordance with the provisions of the Land Acquisition Act.

18. In the objection filed by the petitioners against the proposed acquisition, it was contended that the proposal for widening the National Highway-39 being in public interest, the objector would have no objection to the same. However, what was objected to is the construction of Leishang Hiden, which according to the petitioners, is not in public interest. According to the particular objector, he has featured the plan for construction of commercial building/establishment over the land situated by the side of the National Highway-39.

19. On perusal of the objection filed by the petitioners, relating to their objection against construction of Leishang Hiden, nothing is discernible as to on what ground the petitioners object to the same. In the objection, the only statement made is that the same is not in public interest. In the writ petition also, the point has been taken as an abstract point of law.

20. In a welfare State, it is the duty of the Government to proceed with the work of development and take steps for all round growths, which are necessary for the country's progress and prosperity. In this connection, the Apex Court in *Bharat Singh and Others Vs. State of Haryana and Others*, observed thus:

It is submitted that as the land is agricultural, it should not have been acquired in view of the said policy decision of the Government. We are unable to accept the contention. In a welfare State, it is the duty of the Government to proceed with the work of development and take steps for the growth of industries which are necessary for the country's progress and prosperity and for solving the question of unemployment. It is true that agricultural land is necessary and should not ordinarily be converted to non-agricultural use, but keeping in view the progress and prosperity of the country the State has to strike a balance between the need for development of industrialization and the need for agriculture. The allegation that before initiating the acquisition proceedings, the Government has not applied its mind to the need for agricultural land is a very vague allegation without any material in support thereof. The contention is overruled.

Lastly, it is argued by Mr. Goburdhan for the writ petitioners that the petitioners have been discriminated inasmuch as the land of other persons in the village has not been acquired. This contention is without any substance whatsoever. The Government will acquire only that amount of land which is necessary and suitable for the public purpose in question. The land belonging to the petitioners have been acquired obviously considering the same as suitable for the public purpose. The petitioners cannot complain of any discrimination because the land of other persons has not been acquired by the Government. The contention is devoid of any merit whatsoever.

21. From the materials on record, I am of the considered opinion that the lands

are needed for widening of National Highway-39 and that, the Leishang Hiden project is for the public purpose. There is no material before this Court to take a different view. Nothing is discernible that the action taken by the Government is founded on any malafide and/or colourable exercise of power. The expression "public purpose" as defined in Section 3 of the Land Acquisition Act is of wide connotation and cannot be restricted to in the touchstone of pleas taken by the petitioners in the writ petition. When the Government exercising wisdom, power and jurisdiction has taken a policy decision for widening of National Highway-39 and construction of Leishang Hiden for the purpose, as stated in the project report, it will not be proper for the writ Court to stall the acquisition proceeding.

22. The project relating to Leishang Hiden has been mooted in order to improve the area including 3 bridges over the moat as well as widening of National Highway up to 30 Mtrs from the center of the National Highway-39 and the estimated cost of Rs. 10 crores and the duration project is 12 months.

23. The project has been undertaken for improvement of the area nearby the Central University, Manipur and also to maintain historical background of Leishang Hiden which will be beneficial for the public at large and also for proper vehicular traffic in the Central University area.

24. For all the aforesaid reasons, I am of the considered opinion that the acquisition proceeding, which has been initiated by the respondents cannot be said to be based on arbitrary and/or colourable exercise of power.

25. Consequently, no interference is called for to the same exercising the power of judicial review under Article 226 of the Constitution of India.

26. In view of the above, the writ petition is dismissed leaving the parties to bear their own costs.