
(2014) 01 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8253 of 2010

Lal Babu Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 4, 5-A, 6

Citation : AIR 2014 Patna 100 : (2014) 2 PLJR 448

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Sunil Kumar, Advocate for the Appellant; Ranjeet Kumar, AC to PAAG, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Navaniti Prasad Singh, J.—Counter-affidavit and two supplementary counter-affidavits have been filed by the State. Heard the parties and with their consent this writ petition is being disposed of at this stage itself. Petitioner No. 1 had purchased 4.5 decimals of land by registered sale deed dated 14.12.2009. Petitioner No. 2 had also purchased 4.5 decimals of land vide registered sale deed dated 01.02.2010. Petitioner No. 3 purchased 3.4 decimals of land by a registered sale deed dated 08.02.2010. They all had purchased this land from one Ramjivan Rai. All these three plots purchased by these three petitioners are pertaining to Khata No. 127, Plot No. 456 at Mouza Daulatpur Deoria in the district of Vaishali. Consequent to their purchase they had got their names mutated in the revenue records (Register-II) of the State on 29.01.2010, 06.03.2010 and 21.04.2010 respectively. Accordingly, they paid the land revenue as well up to the date on 29.01.2010, 06.03.2010 and 21.04.2010 respectively. Receipts are Annexures 5, 6 & 7 to the writ petition. They suddenly were confronted with a notification issued purporting to be a notification under Section- 6 of the Land Acquisition Act as published in the newspaper in respect of their lands. They then came to know that avoiding calling for objections, the land

was being acquired to build the Industrial Training Institute (I.T.I). As they had no notice nor they were granted opportunity to object, they filed this writ petition on 10.05.2010.

2. In the counter-affidavits filed by the State it is stated that a total area of about 1.24 acres was required for establishing the I.T.I. and, proposal having been received, a notification under Section- 4 of the Land Acquisition Act (hereinafter in brevity "Act") was issued on 18.03.2010. It was published in the newspapers on 02.04.2010. In the said notification, it was also mentioned that the Section- 4 notification was being issued along with notification under Section-17(4) of the Act, meaning thereby, that the acquisition was being made under emergency or urgent procedure. The effect of this notification is that the right of filing objection and hearing as conferred by Section-5-A of the Act is dispensed with. Immediately thereafter, a notification was issued in terms of Section- 6 of the Act. The first notification under Section- 6 is dated 29.03.2010 and newspaper publication thereof is on 08.04.2010. Thereafter, petitioners assert that they were never noticed. From the counter-affidavits, it appears that award was prepared wherein neither petitioner figured nor his vendor. In the counter-affidavits, it is asserted that several people in whose favour awards were prepared have already received the awards but substantial amount is still lying unclaimed. Petitioners can approach the District Land Acquisition Officer and on establishing their right, title and interest can receive the award money.

3. Learned counsel for the petitioners submits that firstly if one sees the dates of notification under Sections- 4 & 6 of the Act, it would be seen that they are totally incongruous inasmuch as the newspaper publication of the notification in respect of Section- 4 notification is dated 02.04.2010, whereas the gazette notification of Section- 6 notification is dated 18.03.2010, which cannot be because both Sections- 4 & 6 in terms lay down that last date of the publication of the notification in the prescribed manner would be the relevant date for reckoning the date of notification. That being so, Section- 6 notification itself becomes invalid having been issued before the date of the last of Section- 4 notification. Yet, another important ground raised to challenge the proceeding is that what was the urgency in the matter. It is submitted that it was merely construction of I.T.I. that by itself cannot be a matter wherein emergent proceedings resorted to because the effect of emergent proceeding is negation of a valuable right which the law has conferred in Section- 5-A of the Act upon the citizens to object. This only shows that the action was taken mala fide in law to avoid giving chance to the citizens to object. In this connection, it is also submitted that though almost four years have gone by, though on paper possession has been delivered or taken over by the State, petitioners continued in possession and not a single brick has been laid over on their land. This is not compatible to the stand of need of urgency in acquisition proceedings. In the counter-affidavits, all that is said is reports disclosed that work of about Rs. 9 lakhs has been carried out and due to protest of villagers the work has been stopped. Learned counsel for the petitioners submits that this itself shows that

people had serious objections as to acquisition.

4. On behalf of State, it is vehemently submitted that in view of the doctrine of eminent domain the State cannot be denied the right to acquire property for meeting obligations of the State. At best, what the petitioners could be entitled is to a higher compensation but nothing beyond that. State is unable to dispute the dates inasmuch as the notifications have been appended by the State itself in their counter-affidavits. In respect of urgency proceeding, the only thing that is said is that request was made to urgently acquire the land for I.T.I. and that was done. What was so urgent so as to trample over valuable rights of the citizens is not disclosed at all.

5. Having considered the matter, in my view, petitioners' contention must substantially succeed. Firstly, in my view, petitioners' objection as to invocation of Section- 17(4) of the Act is a matter to be considered. Section- 17(4) of the Act as per the Bihar Amendment is quoted hereunder:

Section- 17(4) -- In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-sec (2) are applicable the provisions of Section-5-A shall not apply where the appropriate, Government so directs or where possession of the land has been taken with the consent of the person interested.

6. Thus, Section- 17(4) of the Act talks of the "opinion of the appropriate Government". There must be something more than a whimsical opinion. There must be something available on the records to show the utter urgency in the matter. One must keep in mind that whether urgency is there or not, State is not the last word. The facts have to show that in fact there was a bona fide urgency otherwise State cannot trample over this important right of citizens to object.

7. Here, as noted above, there are no materials to justify any urgency. Every Government project is time bound but that does not mean that it is urgent so as to negate citizens' right. Why this Court is emphasizing this fact is that while objecting the citizens have a right to point out that there are other Government lands available which could be better utilized instead of making them landless. Citizens can show that mere compensation to them would be of no consequence. They would lose their house, their land, their livelihood and the paltry amount of compensation would be no good. They could persuade the Government to change the site to other lands which are less valuable saving Government money as well. I cannot give all the reasons that could possibly arise. This is why the Legislature had valued the right of citizens property which is not mere right to hold land but which is a source of livelihood. It provides of shelter. It is more than mere money in hand. Thus, in order to dispense with this important right available to the citizens, the State must show some utter urgency in the matter. All this becomes important if we look to the facts of the case. State decided that it was a matter in their opinion which justifies urgency proceeding and it had to be hurriedly completed. From this one would understand that there was urgency

in establishing the I.T.I. But, when we see to the fact that now we are in the year 2014, almost 4 years have passed, work worth of only Rs. 9 lakhs has been done and I.T.I. is far from being seen even. There is no worthwhile construction. Petitioners continued to be in possession of their land, as per petitioners' statement, though as per counter-affidavit, possession has been given to the authorities. In the counter-affidavit, it is admitted that upon protest by the local people/villagers the work has been stopped. This shows that had objections been permitted may be situation would have been there where petitioner could show that Government lands were available or other reason and oppose the acquisition. But, all this was circumvented by issuance of notification with respect to Section-17(4) of the Act. That, in my view, in the facts of this case, clearly establishes mala fide in law. The valuable rights of the citizens have been trampled and neutralized beyond the constitutional permissible limits. Thus, the actions cannot be sustained. For the reasons that the notifications being incongruous and the opinion of urgency being unsubstantiated the land acquisition proceedings as a whole stand vitiated.

8. But, the question is to what reliefs are the petitioners entitled. Learned counsel for the State points out that substantial amount of compensation as per award has already been received by various land owners only a small amount is lying unclaimed which could be in respect of the petitioners or others. Government has spent at least some money or some work on the plot. In my view, at best petitioners would be entitled to a higher compensation, i.e., compensation as if acquisition proceedings were to be initiated today. Thus, for the purposes of valuation for preparing the award the date of valuation would be 24.01.2014 only with respect to the petitioners or others who have not received the compensation. From this another issue also arises as to what would be the basis for calculating the compensation. In my view, for calculating the compensation, now that the Land Acquisition Act has been repealed and replaced by a new Act known as Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the compensation to be awarded based on valuation as obtaining on 24.01.2014 would be calculated as per this new Act and paid to the petitioners if their land has been acquired under the said notifications within a period of two months from today. Even though all the particulars in respect of the petitioners are already available on the writ records and, therefore, with the State, at the request of learned counsel for the State, I direct the petitioners to file their claims to their right, title and interest in the lands before the District Land Acquisition Officer, Vaishali at Hajipur immediately who would then verify whether the petitioners' land have been acquired under the said notification and, if that be so, he would accordingly recalculate the award in terms of the new Act and ensure its payment within a period of two months from the date of filing the claim, as noted above. With these observations and directions, this writ petition is, accordingly, disposed of.