

(2013) 08 OHC CK 0079

In the Orissa High Court

Case No : Writ Petition (C) No. 10755 of 2012, Miscellaneous Case No's. 9351 of 2012 and 10064 of 2013

Lambodar Sahoo

APPELLANT

Vs

Comnr.-C-Secy, Revenue

RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

Citation : (2013) 08 OHC CK 0079

Hon'ble Judges : C. Nagappan, C.J;I. Mahanty, J

Bench : Division Bench

Advocate : Trilochana Barik, for the Appellant; Ramakanta Mohapatra, learned Government Advocate for the State, Mr. Jagannath Pattnaik, learned for Opposite Party No. 5 (IDCO) and Mr. Laxmidhar Pangari, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard Mr. Trilochana Barik, learned counsel for the petitioners, Mr. Ramakanta Mohapatra, learned Government Advocate for the State, Mr. Jagannath Pattnaik, learned Senior Advocate for Opposite Party No. 5 (IDCO) and Mr. Laxmidhar Pangari, learned Senior Advocate appearing for Opposite Party No. 6 (GMR Energy Ltd.). Misc. Case No. 9351 of 2012 was filed by the writ petitioners seeking interim stay of operation of notice under Annexure-6 series and orders thereon was passed by this Court on 28.06.2012 directing status quo and the said order continuous to remain operation till today.

2. Misc. Case No. 10064 of 2013 came to be filed by Opposite Party No. 6 (GMR Energy Ltd.) praying for vacation of the interim order of status quo dated 28.06.2012 passed in Misc. Case No. 9351 of 2012.

3. In this writ application, the petitioners have challenged the Memorandum Of Understanding (MOU) dated 9.6.2006, the Notification under the Land Acquisition Act in Annexures-2, 3, 5 and 6 series.

4. Learned counsel for Opposite Party No. 6 submitted that Notices u/s 4(1) of

the Land Acquisition Act were issued on 6.6.2007, declaration of the Act were issued in the year 2008 and awards were passed in the month of May, 2009 and various petitioners have also received compensations in respect of their land without any objection pursuant to notices u/s 9 of the award. It is further submitted that the Government of Odisha took over possession of the land on 21.1.2010 and the Opposite Party No. 6-company (GMR Energy Ltd.) was granted lease by IDCO (Government of Odisha undertaking-Opposite Party No. 5) which was executed on 9.2.2010 for the purpose of setting up of the thermal based power plant. It is also submitted that the substantial investment of more than Rs. 5500.00 crores has already been invested by Opposite Party No. 6-Company in installing the Power Plant. The Opposite Party-company has also started producing power, yet, the land covered under the order of status quo passed by this Court, though very small in size, is extremely vital for the purpose of operation of the Plant i.e. for transportation of Cargo, raw materials and fly ash and also for a direct approach road to the Plant (to avoid public nuisance to the villagers through which the existing public road exists). It is further submitted that Opposite Party No. 6 is in the process of setting up a thermal power plant with capacity of 1050 MW and the first unit of the Plant for 350 MW has already been commissioned on 27.1.2013. It is further submitted that another two units each of similar capacity were ready for commissioning in the months of July & August, 2013. Presently, the Government of Odisha is buying power from outside the State at substantial costs and once Opposite Party No. 6-Company starts full generation of electricity, the same would be of great advantage to the State of Odisha, in comparison to the cost buying power from other States. Learned counsel further submitted that while an area of Ac. 994.18 has been acquired for the purpose of establishing of Power Plant. The total additional land acquired for allied purposes of the project are as follows:

5. Placing reliance on the aforesaid assertions, it is submitted that the total land involved in the status quo order passed by this Court is little more than Ac. 5.00 and the full operation of the Plant is highly dependant upon vacation of the order of status quo in order to enable Opposite Party No. 6 to complete its railway siding, direct approach road and for drawal of power line on land which have already been acquired and in their possession.

6. Learned counsel for Opposite Party No. 6- Company further submitted that similar challenge has been earlier made before this Court in W.P. (C) No. 5559 of 2012. While this Hon''ble Court had been pleased to pass interim order of status quo on 6.4.2012 therein, subsequently, Opposite Party No. 6 had filed Misc. Case No. 5989 of 2012 seeking vacation of the said order and this Court by a Division Bench presided over by Hon''ble Justice V. Gopala Gowda (Chief Justice as the then was) has been pleased to allow the said Misc. Case and by order dated 19.12.2012 directed vacation of the interim order dated 6.4.2012, keeping in view the substantial progress made by Opposite Party No. 6 is setting up the thermal power project.

Learned counsel, therefore, submitted that a further challenge to acquisition had been also raised in W.P. (C) No. 24709 of 2012 but the prayer for injunction came to be rejected by a Division Bench of this Court, vide order dated 21.12.2012, keeping in view the fact that the land acquisition was of the year 2010 and two years had elapsed in the meanwhile and that compensation had already been paid to the petitioners, although disputed by the petitioner's counsel, directed that any such construction made by Opposite Party No. 6 will be subject to the result of the writ petition.

7. Keeping the aforesaid directions of this Court in similar cases as noted hereinabove, learned counsel for Opposite Party No. 6 prays for vacation of interim orders of status quo in the present case.

8. Mr. Jagannath Pattnaik, learned Senior Advocate for Opposite Party No. 5 (IDCO) supported the prayer made by the learned counsel for Opposite Party No. 6 seeking vacation of interim order and places reliance on another earlier order dated 06.08.2009 of this Court passed in W.P. (C) No. 9295 of 2009, where similar placed persons who had sought challenge the land acquisition and this Court had refused to grant the prayer for stay of the process of acquisition vide order dated 6.8.2009, taking into consideration IDCO's objection that the land acquisition proceedings had already been concluded and awards had already been made.

9. Learned counsel for the writ petitioners, on the other hand, submitted that the petitioners are the poor farmers and will loss their only agricultural land which is their only source of livelihood and vacating the order of status quo would have serious consequences and the compensation offered is not an adequate remedy in the present case.

10. On a query from the Court as to whether the petitioners in W.P. (C) No. 5559 of 2012 had challenged the order dated 19.10.2012 passed in Misc. Case No. 5989 of 2012, (whereby the interim orders dated 6.4.2012 had been vacated) or not, he fairly submitted that the said order has not been challenged. We further asked the learned counsel for the petitioners as to whether the petitioners in the aforesaid writ application were in any manner differently circumstanced than the petitioners in the present batch of cases, he fairly admitted that the present writ petitioners are similar circumstanced.

11. Learned Senior Counsel for Opposite Party No. 6, on the other hand, submitted that the aforesaid orders vacating the interim orders were passed considering the fact that approximately 85% of the work of the Plant had been completed. In the present circumstances, more than 95% of the work is ready and unless the order of status quo is vacated, it would be extremely difficult for Opposite Party No. 6 to bring to its site the much needed raw-materials either through rail or through road transport and to evacuate the power generated without tower lines being completed.

12. Learned Senior Counsel for Opposite Party No. 6 placed reliance on the

judgment of Hon''ble Supreme Court in the case of Sawaran Lata etc. Vs. State of Haryana and Others, In the said judgment considering the issue as to whether acquisition proceeding can be challenged at a belated stage. His Lordship after reiterating the views of the Hon''ble Apex Court time and again concluded that "when a person challenges Section 4 Notification on any ground, it should be challenged within a reasonable period, and if the acquisition is challenged at a belated stage, the petition deserves to be dismissed only on this count".

13. Having heard the learned counsel for the respective parties, we are of the considered view that the writ application requires detailed hearing for a final adjudication on the issues raised. In the meantime, counter affidavit and rejoinder affidavit have been filed. Keeping the judgment of the Hon''ble Supreme Court in view as well as the fact that, this Court had vacated the interim order of status quo in W.P. (C) No. 5559 of 2012 by order dated 19.10.2012 and further taking into consideration the dire necessity of Opposite Party No. 6 to have access to its Plant both by rail as well as road and also the dire necessity to install the necessary tower lines for evacuation of energy while the State of Odisha remains in dire need of energy which is of vital importance, considering the small extent of land covered under the orders of status quo in comparison with the land already in lawful possession of Opposite Party No. 6, we are of the considered view that the prayer made in Misc. Case No. 10064 of 2013 for vacation of interim order dated 28.06.2012 passed in Misc. Case No. 9351 of 2012 ought to be allowed. Accordingly, the order of status quo dated 28.06.2012 stands vacated and any construction made in the disputed land shall be subject to the result of the writ application. The Misc. Cases are disposed of.

Urgent certified copy of this order be granted on proper application.

W.P. (C) No. 10755 of 2012

List this matter for hearing in the last week of October, 2013.