

(1994) 05 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2731 of 1988

Laxman Chandra Das and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-05-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(4), 5A

Citation : (1996) 2 OLR 32

Hon'ble Judges : G.B. Patnaik, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : S. Mohanty, for the Appellant; A.S. Naidu and Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—29 petitioners have assailed the acquisition of their land made by the Government of Orissa by notification dated 25-7-1983. It is alleged in the writ application that though the State Government took recourse to the emergency power under Sub-sections (1) and (4) of Section 17 of the Land Acquisition Act and dispensed with the procedure laid down u/s 5A of the Land Acquisition Act (hereinafter referred to as the "Act"), but in fact there never existed any urgency which is apparent from the fact that the declaration u/s 6 was made on 24-7-1986 and, therefore, the entire acquisition proceeding is vitiated. There is no dispute with the fact that the notification u/s 4 of the Act was issued on 25-7-1983 as per Annexure-2 and notification u/s 17 (1) and (4) of the Act dispensing with hearing of the objections as provided u/s 5A of the Act was issued on 3-8-1983 as per Annexure-5. Declaration u/s 6 was made and published on 29-7-1986 as would appear from Annexure-A to the counter affidavit filed on behalf of the State. The petitioner's case in the writ application is that they do not possess any other house site within the municipal limits of Cuttack and this was the only piece of land they had purchased for building their houses with all their savings of life and the said lands have been acquired by the

State as stated earlier. Apart from challenging the notification of acquisition, the petitioners have also made an alternative prayer that each one of the petitioners may be given a suitable plot of land by the Cuttack Development Authority for whom the land in question had been acquired so that they can build their houses and achieve their desire of having their own houses in the city of Cuttack.

2. The State has filed a counter-affidavit denying the allegations that there was no urgency for the acquisition in question. It has been indicated that on account of congestion in the city of Cuttack when the proposal of establishing a new township was launched, the acquisition proceeding was initiated by taking recourse to the emergency provision contained in Section 17 of the Act and in fact the possession has been taken of the acquired land. The compensation amount has not been paid to the petitioners as the petitioners were not the recorded owners of the land. It has been further averred that the amount in question has been further deposited as revenue deposit. Admittedly one Naba Sethi was the recorded owner of the disputed land and he had alienated the property in favour of one Baikunthanath Patnaik. The petitioners are the purchasers from said Baikunthanath Patnaik. Therefore, we are prepared to accept the said stand of the State that compensation amount for the acquired land has not been paid to the petitioners as they had not been recorded as recorded owners. But their claim of purchase from Baikunthanath Patnaik who in turn had purchased from Naba Sethi has not been refuted in the counter-affidavit and, therefore, the petitioners must be held to be the owners of the disputed land and have a right to approach this Court assailing the legality of the acquisition in question.

3. Mr. Mohanty appearing for the petitioners contended in this Court that a right of objection u/s 5A having been taken away by notification issued u/s 17 of the Act and the pre-condition for exercise of power u/s 17 being existence of urgency which cannot broke the delay of 30 days, the acquisition proceeding is wholly vitiated and therefore, the acquisition should be struck down and in support of the same he placed reliance on several decisions of this Court as well as of the Supreme Court. We have not doubt in our mind that the right conferred on a citizen whose lands are proposed to be acquired to put forth his objection u/s 5A is a valuable right which cannot be denied unless there exists real urgency as provided under Sub-sections (1) and (4) of Section 17 of the Act and we are conscious of the fact that acquisition is liable to be struck down on the ground of fact of urgency and thereby lack of power for issuing notification under Sub-sections (1) and (4) of Section 17 of the Act. But where a vast tract of land is being acquired for the purpose of having a housing complex in view of the unusual congestion in the old city of Cut tack, the urgency of the said acquisition must be inherent therein and therefore, even if there has been delay in making the declaration u/s 6 after issuance of notification u/s 4 (sic) of the Act, it will not be proper for a Court to strike down the acquisition in question. In fact where a similar acquisition had been assailed before the Supreme Court in the case of State of U. P. v. Smt. Pista Devi : AIR 1936 SC 2025 whereunder the land had

been acquired for the purpose of setting up a housing complex by the Meerut Development Authority, the Supreme Court had observed that in the absence of any allegation of any mala fide on the part of the Government or any of its officer, it is not appropriate for a Court to strike down the acquisition on the ground of delay in making declaration u/s 6 after issuance of notification u/s 4(1) of the Land Acquisition Act. The Court in fact had observed in that case that an acquisition for providing accommodation to a large number of people of city of Meerut itself establishes the urgency of acquisition and provision for housing accommodation has become a matter of national urgency of which judicial notice can be taken. What was stated by the apex Court in AIR 1936 SC 2025 supra would apply with greater force to the facts as on today and, therefore, having examined the object for which the land in question has been acquired, and in view of the assertion of the State in the counter-affidavit, that the land has been taken possession of by the State after notification issued under Sub-section (1) and (4) of Section 17 of the Act, it is not appropriate for this Court to interfere with the acquisition proceeding and to quash the same as that would unsettle the entire project of having the new settlement of city of Cuttack in the area in question. We, therefore, decline to interfere with the acquisition in question.

4. While we decline to interfere with the acquisition in question, we cannot lose sight of the fact that these petitioners had purchased small pieces of land between one gunth to 3 gunths with the hope that they would build their houses and reside therein and that hope of theirs has been shattered by the acquisition in question. Just like the State has an obligation to provide housing accommodation to the inhabitants of Cuttack city and with that object the State ventured to set up a new city at Bidanasi and acquire vast tract of lands some of which belong to several citizens, the State also owes an obligation to see the settlement of the poor petitioners who had purchased small pieces of land for having their shage and have been totally disappointed by the acquisition in question. In this context an alternative prayer of the petitioners deserves consideration. In the Supreme Court decision referred for to supra, where the land had been acquired for Meerut Development Authority, their Lordships of the Supreme Court had also observed that Meerut Development Authority for whose benefit the land in question had been acquired should try to provide a house site of a reasonable size on reasonable terms to the expropriated persons who have no houses or shop buildings in the urban area in question. This observation made by their Lordships of the Supreme Court would equally apply with full force to the facts and circumstances of the present case. According to the learned counsel for the Cuttack Development Authority, the authority is prepared to allot house sites to the petitioners if directions are given. But in view of the huge expenses incurred by the CDA in developing the land in question, the CDA is not in a position to allot lands at a price other than the prevalent market price as fixed by the CDA for the allottees. Mr. Mohanty appearing for the petitioners, on the other hand, contends that if the lands are allotted to the petitioners at the prevalent market price then it would tantamount to no allotment at all since the petitioners

do not have the financial capacity to purchase the land at the prevalent market price. The compensation which the petitioners in law would derive it the value of the land as it stood on 27-7-1983 the date on which notification was issued u/s 4 of the Act and that compensation amount certainly would not be sufficient for any of the petitioners to purchase even the smallest category of land at the prevalent market price.

5. In the aforesaid circumstances, while we are not annulling the acquisition in question as stated earlier, but we direct that the CDA would allot each of the petitioners a piece of land of category C and D, category "C" in respect of those petitioners who had 2 gunths or more of land which have been acquired and category "D" in respect of the rest at the price which was prevalent on 24-7-1966, the date on which the State Government issued the notification u/s 6 of the Land Acquisition Act. If this would cast an unreasonable burden on the CDA then the CDA may approach the State Government and on approaching the State Government, the State Government will pay the balance amount between the corevalent price and the price of 1986 at which rate the CDA is going to allot lands in favour of the petitioners. The State Government is directed to pay up the compensation amount to the petitioners within four weeks from the date of receipt of our order, since compensation amount is stated to have already been kept in revenue deposit. So far as the selection of the site is concerned, where the land will be allotted, we are of the considered opinion that the CDA would take steps to allot the lands in the vicinity of the existing site to the petitioners if it is possible or in the nearest sector to the petitioners' existing site since it is stated that the existing site of the petitioners is year-marked for institutional occupation. The allotment in question in favour of the petitioners may be made within six months from the date of receipt of our order.

6. The writ application is accordingly allowed with the aforesaid observation. No costs.

The petitioners shall appear before the Land Acquisition Officer for getting compensation amount in question. For the making of the aforesaid allotment in favour of the petitioners, the petitioners, should make applications to the CDA, but orders of allotment will be made on the basis of the direction given by this Court and not by going through the process or the procedure as provided for allotment by the CDA.

D.M. Patnaik, J.

I agree.