
(1991) 01 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 5431 of 1989

Manohar Lal Khetan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-01-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 3, 4

Citation : (1991) 1 BLJR 471 : (1991) 1 PLJR 285

Hon'ble Judges : S.C. Mookharji, J;G.C. Bharuka, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present writ application has been filed by the petitioner seeking quashing of the entire proceeding in Land Acquisition Case No. 125 of 1986-87 pending before the Special Land Acquisition Officer, In. T.P.C. Kahalgaon, Respondent No. 3, and for other consequential reliefs.

2. The State Government has initiated impugned land acquisition proceeding in respect of certain lands including that of the petitioner for carrying out a Super Thermal Power Project undertaken by the National Thermal Power Corporation (hereinafter to be referred to as "the Corporation" only).

3. In the present case the petitioner is disputing the acquisition of 35 decimals of land of Kata No. 1141, R.S. Plot No. 10 (New) in Mauza Mahesn Munda, P.S. Kahalgaon, District Bhagalpur.

4. Before entering into the grounds of challenge raised on behalf of the petitioner, it may be stated that in C.W.J.C. No. 2008 of 1985 and analogous cases, which were heard along with the present writ application and have been disposed of only today, it has been held that the provisions of Land Acquisition Act, 1894, as amended by the Central Act No. 68 of 1984, will be the law applicable for acquisition of lands in the State of Bihar, it has also been held in those cases that "Official Gazette" would mean the Bihar Gazette and, therefore,

the notifications which are meant to be published under the provisions of the Act, have to be published in Bihar Gazette so as to make the proceedings valid.

5. So far as the purpose of acquisition of the land is concerned, there cannot be any dispute that the acquisition is for a public purpose within the meaning of Clause (f) of Section 3 of the Land Acquisition Act, 1894.

6. Shri Y.V. Giri, learned Counsel for the petitioner has challenged the impugned proceeding, inter alia, on the grounds that,

(i) His 35 decimals of lands, which are sought to be acquired in the impugned acquisition proceeding are part of his factory i.e. Stone Crusher and, as such, the same cannot be deemed to be waste or arable land and, as such, urgency proceedings contemplated u/s 17 of the Act cannot be applied.

(ii) Necessary steps for acquisition, like, publication in the Official Gazette and in two Newspapers as required u/s 4 of the Act, have not been taken.

7. So far as the first ground of challenge is concerned, it is not in dispute that 35 decimals of lands in question are vacant lands. These lands may be contiguous to the lands over which the Stone Crusher of the petitioner is located, nonetheless no structure is admittedly standing thereon.

8. Now in view of 1984 amendment, for the application of Section 17 of the Act it is not necessary that the lands sought to be acquired should be waste or arable. Urgency proceedings contemplated u/s 17 of the Act can now be initiated "for taking possession of any land needed for a public purpose." Thus the first ground of challenge raised on behalf of the petitioner fails.

9. So far as the necessity and urgency for acquiring the lands in question is concerned, it is well demonstrated by assertions made on behalf of the Corporation in its Supplementary Counter Affidavit, wherein it has been stated that:

That the 35 decimals of land sought to be acquired, and which are the subject matter of the abovementioned writ application, are extremely crucial for the timely completion and functioning of the Super Thermal Power Project and by virtue of the interim order passed by this Hon'ble Court, serious National prejudice and loss is being caused. The petitioner in the event of his success in the present application can well be compensated in monetary terms to be determined on the basis of the date the writ application may be allowed (para 3 of Supp). counter affidavit). That the subject land is required for making the earthen embankment around the make up Water System for which the land has already been acquired. Laying of 03 Nos. of mild steel pipes of 1.2 metres dia has also to be done in the subject land, which shall require minimum six months time. The embankment is to be made before the commencement of monsoon. The area of pump house site is to be raised above flood level by making the embankment, which is not possible till the subject land is not acquired. In case the embankment is not made before monsoon the other structures which have

already been constructed such as desalting chamber, pump house buildings, switch gear from etc. will get submerged in water during monsoon" The work of construction of embankment has already been started all around the pump house site leaving the area of subject land i.e. 035 acres. If the land is not made available immediately for the work, the entire area will get flooded and will result in complete damage of the structures on which approximate Rs. 3 crores have already been spent (para 4 of the supplementary counter affidavit of Respondent No. 4).

10. In the above view of the matter, in my opinion, the steps for acquiring the lands u/s 17 of the Act have been rightly taken, as considering the nature and the purpose of acquisition, it cannot be disputed that the lands are required to be acquired urgently.

11. So far as the second ground of challenge is concerned from the pleadings of the parties, the records of the case and the submissions made at the Bar, it is clear that because of some confusion with regard to the applicability of the Central Amendment to the State of Bihar, irregularities have been committed in initiation of acquisition proceedings in accordance with Section 4 and other provisions of the Act.

12. In view of the statements made on behalf of the Corporation and keeping in view the public need for better supply of electricity in the State it is incumbent upon the State Government to exercise its statutory powers at the earliest in order to promote the said public purpose. We have also heard learned Advocate-General at length in this regard.

13. It is accordingly directed that the Land Reforms Commissioner, Bihar, will take immediate steps for issuance and publication of the required notifications and also take other necessary steps for acquiring the lands in question within a period of one month from today.

14. The writ application is allowed to the extent indicated above. No costs.

S.C. Mookherji, J.

I agree.