

(2013) 06 PAT CK 0034
In the Patna High Court
Case No : CWJC No. 3398 of 2013

Manoj Kumar Sinha

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4)
National Highways Act, 1956 — Section 3A, 3C, 3D

Citation : (2013) 3 PLJR 644

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Nagendra Sharma, for the Appellant; S.N. Pathak, Surendra Kumar Singh for the N.H.A.I., Mr. Swapnil Kumar Singh in CWJC No. 3398 of 2013, Mrs. Rekha Kumari in CWJC No. 3499 of 2013 for the State and Mr. N.A. Shamshi for the Union of India, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Singh, J.—Petitioners of these two writ applications belong to the group of the villagers of Belaganj Block of Gaya district who have admittedly got affected on account of Notification issued by the Ministry of Road Transport and Highways, Government of India, in terms of sub-section (1) of Section 3A of the National Highways Act, 1956, declaring its intention to acquire the plots of land mentioned in the schedule of the Notification for building (widening/four-laning, etc.) maintenance, management and operation on the stretch of land from km. 71.000 to km. 125 (Patna-Gaya-Dobhi Section) of National Highway No. 83 in the district of Gaya. The said Notification, as contained in Annexure-2 with the writ application, was published in extraordinary issue of Gazette of India dated 25.10.2010 and circulated through the newspapers dated 27.12.2010. The common grievance of the petitioners of the two writ applications is that their only piece of land with their only residential house thereon was taken into acquisition rendering them homeless. Hence, common prayer in both the writ applications are to quash the said Notification, the declaration dated 3.6.2011, as published

in the newspaper on 18.7.2011, vide Annexure-6A and the order of respondent No. 5 dated 21.7.2012, as contained in Annexure-5 (wrongly mentioned in the first paragraph of the writ application as Annexure-6), by which the objections of the petitioners and others were considered in terms of the Division Bench orders of this Court and were rejected. From the pleadings of both the writ applications, it is clear that only plea the petitioners of these two writ applications in support of their case is that instead of laying down the New Bypass Road in the stretch Patna-Gaya-Dobhi Section of the National Highway No. 83 through the Bajitpur village, the respondents should have widened the existing National Highway passing through the Belaganj Bazar by using the available adjoining Government land and removing the encroachments, thus saving the villagers from being deprived of their fertile land and residential houses etc. An identical pleading in this regard has been made in paragraph 16 of both the writ applications which reads as follows:--

16. That it is relevant to make it clear that the petitioner's grievance is not to obstruct, in any way, the construction of entire project but it is restricted only to their claim that in lieu of acquiring poor petitioner's land/building for adopting a circuitous route the respondents could utilize their own land by extending the existing NH 83 passing through Belaganj.

2. Through the supplementary affidavit petitioners have brought on record a list of properties and buildings, going to be affected by acquisition, as Annexure-8. Petitioners have also tried to demonstrate that the area was in the process of development, vide an agreement of State Bank of India with one of the villagers produced alongwith the said list. A vague plea has also been taken that all the objectors were not heard before the impugned order was passed by the Collector, vide Annexure-5.

3. Learned counsel for the petitioner, in support of his case, placed reliance on two judgments of the Apex Court; (i) in the case of Raghbir Singh Sehrawat Vs. State of Haryana and Others, , and (ii) in the case of Dev Sharan and Others Vs. State of U.P. and Others, . He also submitted that the Notifications were issued by the Ministry under Sections 3A and 3D of the National Highways Act, 1956 without following the procedure as laid down in Section 3C.

4. Learned counsel for the respondent National Highway Authority of India (for short "the NHAI") appeared and also filed his counter affidavit. He referred to the statements in paragraphs 4 and 5 of the counter affidavit which are as follows:--

4. That it is stated and brought to notice of this Hon''ble Court that alignment of Patna-Gaya-Dobhi Section of NH-83 including Belaganj Bypass has been prepared by M/s. Intercontinental Consultant and Techno Crate Pvt. Ltd. on the basis of extensive survey and investigation considering all the villages including Village-Bajitpur, in order to minimize the demolition of structures in accordance with the Indian Road Congress specification as also considering the 100 kms. per

hour designed speed, safety of the users and avoiding the traffic condition of Belaganj thickly populated Bazar.

5. That the following facts are necessary to be considered in this case by this Hon"ble Court:--

a. As per the report of consultant the length of bypass is 2.1 km. (km. 71.500 to 73.600 km.).

b. As per data available with the PWD division, the existing availability of the road length, width or right way of the road length is 18 to 22 meters within Belaganj Bazar portion and requirement of Right of Way (ROW) as per NHI norms is 60 meters so approximately 42 to 38 meters respectively width will be required to be acquired in Belaganj Bazar as per IRC Guidelines.

c. Through bypass alignment, only one temple is going to be affected, but on the other hand 7 number of temples, one Masjid apart from post office, bank and other several buildings will be affected through the Belaganj Bazar Alignment.

d. Mixed traffic use of National Highway with very fast through and slow local traffic may have resulted into slower speed, thus defeating the entire purpose of improvement of national highway.

e. That NHI has prepared extensive action plan with regard to the person affected under the prevalent policy and guidelines of the State Government.

f. That road action plan has been duly concurred by an International funding agency JICA who are providing loan for the improvement of roads in India.

5. Learned counsel also submitted that a P.I.L. was filed in this Court by some of the villagers which was disposed of by a Division Bench, vide order dated 10.4.2012, as contained in Annexure-5 with the writ application, directing the Collector, Gaya, who was the competent authority, to dispose of the representations of the petitioners pending before him. In compliance to the said order of the Division Bench, the Collector heard the objectors, who appeared before him, and dispose of their objections by his impugned order dated 21.7.2012, as contained in Annexure-5. He also submitted that the order of the Collector is a well reasoned one and deals with all the aspects of the matter. He submitted that in the matter of development of National Highways at the national level under the National Highways Act the scope of judicial review is very limited, as the NHAI, being an expert statutory body, is the only competent authority under the law to fix up alignments and laying down the routes of the National Highways in the Country. In support of this submission, he placed reliance on a judgment of the Apex Court in the case of Union of India (UOI) Vs. Dr. Kushala Shetty and Others, . He also submitted that some of the villagers had earlier moved this Court through CWJC No. 1482 of 2013. Their writ application was considered by a learned Single Judge of this Court and, after considering similar arguments and the judgments relied upon by learned counsel for the petitioner in this case, relied upon also by learned counsel for the petitioners of the said case,

their writ application was dismissed.

6. After going through the said order of the learned Single Judge passed in CWJC No. 1482 of 2013, this Court finds that large number of villagers had moved this Court challenging the very same Notifications of the Ministry. In the said case, reference was made by learned counsel for the petitioner of the case of Raghbir Singh Sehrawat (*supra*) and arguments were advanced in respect of non-compliance of Section 3C of National Highways Act. Learned counsel for the respondents had, on the other hand, placed reliance on the judgment of the Apex Court in the case of Union of India vs. Dr. Kushala Shetty (*supra*). The learned Single Judge considered the judgments and provisions of law and did not find any error in the procedure adopted by the respondents in taking steps under National Highways Act, 1956 for acquisition of the lands and, therefore, dismissed the writ application by a reasoned order.

7. This Court finds that the judgment of the case of Raghbir Singh Sehrawat (*supra*) was delivered by Hon''ble Mr. Justice G.S. Singhvi, the Presiding Judge of the Bench. The case was in respect of acquisition of land under the Land Acquisition Act for development of some industrial area in Section 38 of Sonapat in the district of Haryana. The Hon''ble Judge, on facts found that the possession of land had not been taken over and no proper opportunity was afforded to the affected parties and the recommendation of the Collector did not reflect objective application of mind to the objections. Though in the judgment there are some observations that the agencies and authorities should, as far as possible, use the Government land, if available, leaving out the private fertile land of the people, but there is no finding in this respect for its universal application in all cases. The other judgment in the case of Dev Sharan (*supra*) was also by a Bench of Hon''ble Mr. Justice G.S. Singhvi and Hon''ble Mr. Justice A.K. Ganguly which was delivered by Hon''ble Mr. Justice A.K. Ganguly. In the said case, acquisition of private land in the State of U.P. for construction of District Jail of Sahjahanpur was under challenge. The judgment was delivered by Hon''ble Mr. Justice Ganguly only on the issue that the State Government was not justified, in the facts of the case, to invoke the emergency provisions of Section 17(4) of the Land Acquisition Act. Clearly these two judgments were delivered, in the facts of the respective cases and in relation to action taken by the State Governments under the Land Acquisition Act, 1894 for setting up of industrial area or construction of a jail premises, locations of which were possible to be shifted taking into account comparative rights, interests of the affected parties and public purpose. As against this, the judgment of the Apex Court in the case of Union of India vs. Dr. Kushala Shetty (*supra*) was delivered in case of widening of highways in the State of Karnataka under the National Highways Act by the NHAI in terms of its duties and powers under the National Highways Act, 1956. The Bench constituted of Hon''ble Mr. Justice G.S. Singhvi and Hon''ble Mr. Justice A.K. Ganguly and the judgment was delivered by Hon''ble Mr. Justice Singhvi. The observations of his Lordship, made in paragraph 24 of the judgment, have been produced and considered by the learned Single Judge in the order passed in

CWJC No. 1482 of 2013. However, this Court considers it useful to reproduce the observations in the said paragraph herein also for easy reference:--

24. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.

(emphasis supplied)

8. The observations of the Court as reproduced above shows that in exercise of powers of judicial review an acquisition in such matters can be nullified only on two grounds viz. (i) it is found to be ex-facie contrary to the mandate of law, or (ii) it is found to be tainted due to mala fides. In the present case, learned counsel for the petitioner has totally failed to make out any case of mala fides in exercise of powers by the respondents or to demonstrate their action ex-facie contrary to the mandate of law. The plea of violation of Section 3C of the Act was considered by the learned Single Judge of this Court in his said order and learned counsel for the petitioner has failed to point out any error in the said order of a coordinate Bench and to persuade this Court to take a different view. Moreover, this Court finds that, after the order of the Division Bench in the P.I.L., the matter was heard, opportunities were granted and the objections of the objectors were disposed of by the Collector by a reasoned order, as impugned in Annexure-5, in which this Court finds that proper consideration was made by the Collector to the objections of the objectors.

9. As observed by the Apex Court in the case of Union of India vs. Dr. Kushala Shetty (supra) the NHAI being an expert body, had made proper exercise, as appearing from its affidavit (and not challenged by the petitioners), which finally led to the issue of Notifications by the Ministry, as contained in Annexure-2 and Annexure-6A. The loss of property and hardships to the villagers may be a matter of concern for the authorities fixing compensation to be paid to them, but

that cannot be a ground for exercise of power of judicial review by this Court and interfere with the execution of the project, required to be executed as per the international norms and rigid specifications. This Court also does not find any reasons to differ with the views of the coordinate Bench contained in its said order dated 11.2.2013 passed in said CWJC No. 1482 of 2013. In the circumstances, this Court does not find any merit in the writ applications and the same are dismissed.