
(1965) 09 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Judicial Case No. 257 of 1965

Mt. Dhaneshwary and Others

APPELLANT

Vs

Land Acquisition Officer and Others

RESPONDENT

Date of Decision : 17-09-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17, 17(1), 17(3), 17(4)

Citation : AIR 1966 Patna 136

Hon'ble Judges : R.L. Narasimham, C.J; R.J. Bahadur, J

Bench : Division Bench

Advocate : S.C. Mukherjee, for the Appellant; T.K. Prasad, Chandra Bhusan Sahai and B.D. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is application under Articles 226 and 227 of the Constitution by twenty-six persons of Patna impugning the validity of two notifications, dated the 13th March, 1961 (Annexures 1 and 2), No. D. L. A. P.--269/61-3418-R and No. D. L. A. P.--269/61-3419-R, under Ss. 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). By the first notification the Government of Bihar intimated to the general public that a large block of land, having an area of 360.09 acres (1089 bighas, 5, kathas, 7.12 chitaks) in villages Rashidchak, Pahari and Ranipur, situated within the limits of the Patna Municipal Corporation, was required to be acquired for the public purpose of establishment of a Cattle-cum-Milk Colony in Patna.

In the first notification Government further stated as follows:

"In exercise of the powers conferred by Section 17(4) of the said Act the State Government have decided that in view of the urgency of the project, provisions of Section 5A of the Act shall not apply.

Certified that the land is waste and arable and there is no objection to the

acquisition of the lands on any general or specific grounds."

The second notification was issued u/s 6 of that Act, compliance with Section 5A having been dispensed with by virtue of the earlier notification. The second notification is, consequential to the first and its validity depends on the validity of the first notification. Hence in this judgment the first notification alone is referred to as the notification. The khala numbers and survey plot numbers of the lands to be acquired have been specified in detail in the notification. The twenty-six petitioners are owners of 27.47 1/2 acres of land included in the said notification, and the actual plots claimed by them have been given in detail in paragraph 4 of the petition.

2. The main contentions of Mr. Mukherjee for the petitioners are these:

(1) The lands in question are not "waste or arable" lands and, consequently, the Government of Bihar had no jurisdiction to issue the direction under Sub-section (4) of Section 17 of the Act and to apply the special provisions of that section.

(2) The notification does not indicate the materials on the basis of which the Government formed the opinion that the lands in dispute belonged to the class described in Subsection (1) of Section 17, and, moreover, there was no urgency for exercising the special powers u/s 17.

3. Before discussing these two contentions, I may dispose of two preliminary objections raised by the respondents to the maintainability of this petition. Firstly, it was urged that a joint petition by twenty-six persons who own different plots within the area under acquisition was not maintainable. In my opinion, this objection, being of a procedural nature, will not, by itself, suffice for rejecting the petition, unless prejudice is shown to have been caused. It is true that no two plots, even though they may lie adjacent to each other, may be alike, and it is possible to take the view that though one of them may be waste or arable land the other may be a building site. Hence it would have been much better if each of the petitioners had filed a separate application challenging the validity of the acquisition, so far as his plots were concerned, and filed necessary papers and affidavits to show that those plots were not arable or waste lands within the meaning of Section 17(1) of the Act.

But the petition is a joint one by all the twenty-six petitioners, and the allegations in the petition show clearly that they have asserted that all the lands are of the same quality, namely, that they are valuable building sites and not waste or arable lands. If the petitioners have chosen to take up this position and make a common cause, it will not be proper to throw out this petition in the absence of any evidence to show that prejudice has been caused to any of the parties. On the other hand, the filing of a common petition by all the petitioners has put them at a somewhat disadvantageous position, inasmuch as (as will be shown presently) admissions made by some of these petitioners in their application to the Chief Minister in the early stages of the acquisition proceedings regarding the nature of the land under acquisition may be used against all the

petitioners in this application. In my opinion, therefore, this preliminary objection must be rejected.

4. Secondly, it was contended by the respondents that there was inordinate delay in challenging the notifications and, consequently, the petition should be thrown out. The impugned notifications are dated the 13th March, 1961. whereas this application under Articles 226 and 227 was filed on the 5th April, 1965, more than four years later. But, in my opinion, the delay has been satisfactorily explained. There was another application, Miscellaneous Judicial Case No. 351 of 1962, filed by the owners of some of the plots under acquisition as early as 1962, and in that application the operation of the notification had been stayed.

A Bench of this court, by its order dated the 17th February, 1965 (see "1965 BLJR 272), allowed that application in respect of those plots, namely, plots Nos. 735, 646, 648, 624, 634 and 732, and vacated the order of stay of the operation of the notification in respect of the other plots. The petitioners may, therefore, reasonably contend that so long as the operation of the notification had been stayed by a Bench of this Court in another application there was no necessity for them to apply to this Court, and it was only when the said order was vacated on the 17th February, 1965, so far as their plots were concerned, that the necessity for them to apply to this Court for appropriate relief arose. Thereafter there has been a delay of only two months. Moreover, the jeopardy to the title and possession of the petitioners in respect of the disputed plots did not arise until the Collector issued the notification under Sub-section (1) and (2) of Section 9. of the Act, which according to the petitioners, took place only on the 13th March, 1965. From that date there has not been undue delay in applying to this Court. For these reasons I am not inclined to dismiss this application merely because of delay.

5. The main question for consideration is whether the disputed lands are "waste or arable lands" so as to justify the applying of the special provisions u/s 17 of the Act. Several decisions have been cited by Counsel for both sides where the said expression has been construed differently. The main controversy is as regards the true meaning of the expression "arable land", because admittedly none of the plots included in the acquisition proceeding can properly be called "waste land".

One view seems to be that "arable land" mentioned in Section 17(1) of the Act is land fit for cultivation or tillage but not actually used for the purpose of cultivation (see *Ganesh Narayan and Others Vs. Commissioner, Nagpur Division, Nagpur and Others*,). The other view is that culturable land is arable land irrespective of whether it was lying uncultivated on the date of acquisition or was actually used for the purpose of cultivation either before or at the time of acquisition (see the judgment of *Mahapatra and A. B. N. Sinha, JJ. in D. V. Jagtiani v. State of Bihar*, Misc. Judl. Case No. 1329 of 1961, disposed of on the 15th April, 1965 (Pat). To quote *Mahapatra J.*'s own words, "I am, therefore, of the view that the expression "arable land" in Section 17(1) includes land brought

under cultivation or tilled and not confined only to land fit to be ploughed but not already ploughed or cultivated".

6. I am inclined to accept the Patna view taken by the aforesaid Division Bench. The provisions of Section 17 of the Land Acquisition Act have been subject to amendments at various stages, and in construing those provisions we must bear in mind the amendments made by the State of Bihar and also the implications arising out of the language of Sub-section (3) of that section. By Bihar Act XVII of 1951 an explanation was added to Sub-section (1) of Section 17 in the following terms:

"Explanation.--This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees or temporary structure such as huts, pandals or sheds."

This explanation, therefore, shows that the narrow view of the words "arable land" to the effect that it includes only lands fit for cultivation and not actually brought under cultivation will not be justified in Bihar. Moreover, as rightly pointed out by Mahapatra, J. in the aforesaid judgment, such a narrow view completely overlooks the provisions of Sub-section (3) of Section 17. That sub-section says that in a proceeding under Sub-section (1) of Section 17 (where the expression "arable land" is used) the Collector shall offer compensation for standing crops to the person interested. This shows clearly that "arable land" mentioned in Subsection (1) may have standing crops on the same at the time of acquisition.

Thus, giving full effect to the explanation added to Sub-section (1) to Section 17 by the Bihar amendment of 1951, and the implications arising out of the express reference to the standing crops in Sub-section (3) of Section 17, the correct interpretation of the expression "arable land" is that it includes not only land culturable or fit for tillage, but also land actually brought under cultivation, in which either crops have been grown or orchards or trees have been planted. It will also include those lands in which huts, pandals or sheds have been erected. This extended definition has obviously been given so that the erection of temporary huts or sheds may not suffice to justify the claim that the land has ceased to be arable land and has become a building site. It is true that the Bihar amendment of 1951 was replaced by the Land Acquisition (Bihar Amendment) Act of 1961 (Bihar Act XI of 1961). But this amendment does not materially affect the discussion, because the same explanation was retained in Subsection (1) of Section 17 by that amendment. Hence the interpretation of the words "arable land" given in the Bombay decision mentioned above may not apply wholly in the State of Bihar.

7. Mr. Mukherjee, however, relied on a decision of a Bench of this Court in *Lachmi Mahto v. Collector of Patna*, Misc. Judl. Cases Nos. 33, 34, 36 and 37 of 1961, disposed of by Rama-swami, C. J. and Untwalia, J. on the 20th August, 1964 (Pat). But, in my opinion, that judgment does not help him. There also the

learned Judges observed as follows:

"We consider that in the context of Section 17(1) of the statute, the expression must be construed to mean lands which are mainly used for ploughing and for raising crops, and, therefore, the land which is a building site within the Municipal limits and situated in the developed part of the city cannot be regarded as arable land."

Here their Lordships have made it clear that the land used mainly for ploughing and raising crops would be arable land. They have not stated that merely because such land is within the Municipal limit it ceases to be arable land so long as it is used for the purpose of ploughing and raising of crops.

8. I may also refer to a Bench decision of Rajasthan High Court in *Kanwar Chandra Singh v. State of Rajasthan* ILR (1961) Raj 486 , where the learned Judges observed that, if the land was fit for cultivation, merely because it was situated in a town area and was reserved for building purposes, it did not cease to be arable land.

9. Bearing in mind the aforesaid interpretation of arable land, the next question for consideration is whether on the affidavits of the parties it can be held that the disputed lands are arable lands within the meaning of Section 17(1) of the Act. On behalf of the petitioners one Gouri Shankar Prasad, who is petitioner No. 3, has stated in his affidavit dated the 5th July, 1965, as follows:

"The lands are all situate within the Patna Municipal Corporation area and are all building sites and no part of the land was or is desolate, abandoned or marshy on the date of the notification or now. These lands lying within the Municipal Corporation are all building sites and are fit for construction of houses and they are contiguous or adjacent to the residences of the petitioners and adjacent to developed part of the town and are on or adjacent to important roads and there exists a hut with brick built pillars on S. P. No. 894: M. S. No. 3419 belonging to petitioners 1 to 4."

It will be noticed that in this affidavit of petitioner No. 3 there is a significant omission to state that the lands are not culturable, or else they were never under cultivation either in the past or on the date of acquisition. On the other hand, in the affidavit of Sri Madan Chandra Verma (respondent No. 1), the Land Acquisition Officer, it is stated that the lands are all cultivated lands shown as such in the Cadastral Survey. He has also stated that when he inspected the plots in question he found agricultural operations actually being carried on in the lands and submitted a report to that effect to the Collector. He has also attached a chart (Annexure I to his affidavit) which shows that in almost all the plots some crops, such as paddy, maize, sugarcane, were actually standing on the date of the affidavit.

A copy of the Cadastral Survey map, in which the plots under acquisition have been coloured yellow, has also been filed along with the affidavit. The strongest

corroboration of this statement of the Land Acquisition Officer is found in the statements made by most of the petitioners themselves to the Chief Minister in their petition of objection dated the 12th February, 1962, to the acquisition of these lands. In the supplementary affidavit filed by Sri Verma on the 6th September, 1965, the original objection petition filed before the Chief Minister was enclosed as Annexure VI series, and it was also stated by him that fifteen out of the twenty six petitioners in this case joined in that petition. Therein they described the lands under acquisition as follows:

"The site, situation, potentiality and the quality of the soil is best in the whole of Patna down. The lands yield four crops a year besides India-famed potatoes, onion seeds and green vegetables in abundance and have got very favourable market like Gulzarbeth Hat and Musallahpur Hat nearby for their produces."

It is also stated that the lands and the orchards are the only source of their livelihood and they were absolutely dependent on the produce of the same. In that petition it was repeated again and again that the petitioners were poor peasants with small holdings, that the lands were culturable and most fertile lands and that the potatoes which they grew on those lands since several generations were practically their main source of livelihood. There was no assertion that the lands were building sites and the petitioners intended to build houses thereon. On the other hand, in Annexure VI-C it was asserted that if the lands were acquired, no open land will be left for fresh air and public health would suffer, thereby implying that there could be no question of the lands being used for building purposes. This affidavit of Sri Verma was filed on the 6th September, 1965, along with the enclosures, and the petitioners were given a further opportunity to file a counter-affidavit if they so desired.

Only petitioner No. 3 filed a further counter on the 7th September, 1965, in which, apart from technically objecting to the admissibility of the affidavit of Sri Verma, he has not challenged the fact that most of the petitioners had stated in their preliminary objection filed before the Chief Minister that the lands under acquisition were purely agricultural lands yielding valuable crops and their livelihood depended on the same. Thus, when the petitioners themselves filed only a joint application to this Court under Articles 226 and 227, and when they have all along been urging that all the lands were of the same quality, namely, building sites, the facts stated in the preliminary objection filed before the Chief Minister by most of the petitioners regarding the nature of the lands must be taken as admissible against all of them, including petitioner No. 3.

These facts strongly support the affidavit filed by the Land Acquisition Officer to the effect that the lands were always cultivated lands, recorded as such in the Cadastral Survey and crops were actually standing on the lands on the date on which the affidavit was filed by him and he had actually seen agricultural operations being carried on the lands. In this connection great weight must be attached to the fact that the principal petitioner, namely, petitioner No. 3 Gouri Shankar Prasad, has not stated in any of his innumerable affidavits that the lands

have never been under the plough, or else that crops were not grown on them at any time.

10. Thus, on a review of the affidavits filed by the parties, it seems fairly clear that the disputed lands are agricultural lands used for growing valuable crops for a very long time, and agricultural operations were being carried on when the preliminary enquiry was made by the Land Acquisition Officer and crops were also standing on the same.

11. It is true that the lands are situated within the limits of Patna Municipal Corporation. It is also true that the Patna By-pass Road cuts across the disputed lands, as shown on the map filed by the Land Acquisition Officer. There are also other roads nearby, as stated by the petitioners. There are electric lights on these roads. But the further question for consideration is whether, merely because lands used for the purpose of agriculture and actually in use for such purpose on the date of the notification are within municipal limits and are close to public roads which are electrified, it would be proper for this court to hold that they have ceased to be arable lands and become building sites. No authority in support of such a contention has been put forward.

It is well known that while fixing municipal limits a large area, including several villages adjacent to the urban area, is included, so as to provide ample scope for expansion of the city later on. But merely because of such inclusion within the municipal area the land does not cease to be agricultural or arable land. With modern engineering skill it is not difficult to change even a low-lying paddy field in a municipal area into a building site by investing sufficient capital and labour, but on that account it cannot be said to have ceased to be arable land for the purpose of Section 17 of the Act till such change is effected.

As pointed out in *Navnitlal Ranchhodlal Vs. State of Bombay and Another*, , on which Mr. Mukherjee relied very much, whether a piece of land is arable land or not is an objective fact; and the nature of the land, the use for which it was actually put on the date of acquisition and also in the past are all relevant considerations. Its future potentiality arising out of its location within a municipal area or its proximity to public roads cannot be a decisive test. Thus even land which is not situated within the municipal area may not be arable land if it is part of a homestead in a village. Too much importance should not, therefore, be attached to the fact that the land is within the municipal limits or by the side of public roads, ignoring all other considerations mentioned above.

12. I am fully conscious of the fact that under some conditions even purely agricultural lands, whether situated within municipal limits or not, may become building sites, if the owner had done something on the lands, such as construction of a compound wall, or filling it up with earth, or by applying to the municipality or Union Board for permission to construct a building, thereby indicating clearly his intention to convert the land into a building site. Here, however, apart from a vague statement in the petition that the petitioners were

desirous of building houses on the same and that they are adjacent to their residences, nothing has been said to show that anything was done to change the land to a building site. The question as to the stage at which an agricultural land becomes a building site will depend on the nature of the evidence adduced in each case and no rigid rule can be laid down. But the various factors mentioned above are relevant for that purpose, though none of them taken individually can be said to be decisive, nor can they all be said to be exhaustive.

13. The decisions cited by Mr. Mukherjee are all distinguishable. No two plots are alike, and a decision with respect to one plot will not necessarily apply when considering whether another plot is arable land or not. Thus in the Bombay decision *Navnitlal Ranchhodlal Vs. State of Bombay and Another*, the main reasons for holding that the land in question was a building site and not arable land were as follows:

(1) The land was not only situated within the Municipal Corporation of Ahmedabad adjacent to public roads, but was just opposite the Income Tax office and the All India Radio House.

(2) The lands adjacent to the acquired lands were sold recently at a price of Rs. 24-75 nP. per square yard. Such high price can only be given for building sites and not for agricultural lands.

(3) The owner's intention to use the land for building purposes was apparent from the fact that he had already submitted plans for the construction of buildings for sanction and approval by the appropriate authorities.

(4) There was also no evidence to show that the lands were used for agricultural purposes for years before the date of acquisition or on the date of acquisition. These distinguishing features are not found here.

14. In Misc. Judl. Cases Nos. 33, 34, 36 and 37 of 1961, disposed of on the 20th August, 1964 (Pat), by this Court (already cited), the disputed land was undoubtedly within the Patna Municipal limits. But there was also a finding that it was within the developed part of Patna City. There were also residential houses close-by. There was no counter-affidavit challenging these statements. In the present case, however, it appeared from the affidavit of the Land Acquisition Officer, dated the 6th August, 1965, that though the By-pass Road was constructed more than ten years ago, not a single building has been constructed on either side of that road in that area and the lands have all along remained as cultivated lands. Similarly, in *Dhora Mahto v. Collector of Patna*, Miscellaneous Judicial Case No. 907 of 1961, disposed of on the 22nd April, 1965 (Pat) the lands in dispute were located in Sultanganj, District Patna. Though the lands were situated within the Patna Municipal limits, the plots under acquisition consisted of the petitioner's residential house with lands adjacent to the same. His allegation that they were good building sites and that he was desirous of building houses thereon was not controverted by any counter-affidavit by the respondents. Hence, on the peculiar facts of that case the decision that the lands

under acquisition were not arable lands was given.

15. I now take up for consideration the Bench decision in *Kunja Malaha v. Land Acquisition Officer, Patna* 1965 BLJR 272, on which Mr. Mukherjee has relied very much. As already pointed out, that decision related to six of the plots under acquisition under the impugned notification, namely, plots Nos 735, 646, 648, 624, 634 and 732. The petitioners in that case had clearly asserted that they were building sites and that they were desirous of building houses thereon. In the counter-affidavit filed by the Patna Improvement Trust, apart from mere denial of this assertion, it was not stated that the lands were actually used for cultivation all along and valuable crops used to be raised thereon. On the facts thus stated in the affidavits of the parties, the court accepted the petitioners' contention and held that the plots were building sites and not arable lands.

The map of the lands under acquisition filed by the Land Acquisition Officer in this case undoubtedly shows that the aforesaid plots are adjacent to some of the plots in dispute here, but the finding in that case cannot obviously be binding here in view of the affidavits filed by the parties fully discussed above. Hence that decision cannot be taken as sufficient for holding that the plots of the petitioners in the present proceeding should also be held to be building sites. For the aforesaid reasons I am satisfied that the lands under acquisition in this case are arable lands as described in Section 17 (1) and (4) of the Act.

16. The next question for consideration is whether the requirement of Sub-section (4) of Section 17 has been strictly complied with. Subsection (4) says that if in the opinion of the Government the provisions of Sub-section (1) are applicable, a direction may issue under that sub-section. The opinion of the Government is undoubtedly final on the subject and the court's jurisdiction to question the opinion is limited to those cases where the opinion of the Government is formed on the basis of reasons which are irrelevant for the purpose. Here, however, it cannot be said that the opinion of the Government that the disputed lands were arable lands was based on irrelevant consideration. The impugned notification contains a certificate to the effect that the land is arable land. The affidavit of the Land Acquisition Officer shows that after inspection on the spot and finding agricultural operations going on there he submitted a report on the 8th March, 1961, to the Collector, who forwarded it to the Government, and the Government, on the basis of that report, formed the said opinion. It cannot, therefore, be said that the Government's opinion was based on irrelevant considerations.

17. As regards the urgency, which is one of the grounds on which the special provisions of Section 17 can be resorted to, there can be no dispute. The land was required for the purpose of establishing a Cattle-cum-milk colony. The problem of supplying wholesome milk in Patna City was a very urgent problem and there was no undue delay between the date of the report of the Land Acquisition Deputy Collector, namely, the 8th March, 1961, and the date of issue of the impugned notification, namely, the 13th March, 1961. This case thus

differs from the Madras decision in Periathambi Mudaliar Vs. Special Tahsildar (L.A.) Planning Scheme, Coimbatore and Another, on which Mr. Mukherjee relied. There, though the acquisition proceedings were started in October, 1960, the notification u/s 4(1) of the Land Acquisition Act was issued 18 months later, on the 2nd May, 1962. The learned Judge, therefore, rightly observed that, on the facts of that case, real urgency for the purpose of exercising the special powers u/s 17 was not established.

18. For these reasons this application is dismissed with costs. Hearing fee Rs. 100.

Bahadur, J.

19. I agree.