
(2011) 11 PAT CK 0016
In the Patna High Court
Case No : LPA No. 681 2010

Mt. Prabhawati Mishra and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 11, 11A, 12(2), 17, 17(1)

Citation : (2012) 1 PLJR 339

Hon'ble Judges : Samarendra Pratap Singh, J;S.K. Katriar, J

Bench : Division Bench

Advocate : Manan Kumar Mishra, Veshwajeet Mishra and Awanish Kr. Pandey, for the Appellant; Lalit Kishore and Rabindra Kr. Priyadarshi for the State, for the Respondent

Final Decision : Dismissed

Judgement

1. Both the appeals have been heard analogous as facts and issues are common. The instant Letters Patent Appeals under clause 10 of the High Court of Judicature at Patna are preferred against the order dated 23.3.2010, passed both in C.W.J.C. No. 8653 of 2009 and C.W.J.C. No. 4817 of 2010, whereby the learned Single Judge rejected the prayer of the appellants for quashing the notification issued u/s 4, declaration u/s 6, making of an Award dated 1.4.2009 u/s 11, as well as award notices issued u/s 12(2) of the Land Acquisition Act (hereinafter referred to as "the Act") in Land Acquisition Case No. 9/2007-08. The relevant facts necessary for disposal of the appeals in short are as follows, The appellants are raiyats of lands situated in Village-Pokharbhinda and Domwalia in Bagaha Sub-Division in the district of West Champaran, detailed in Annexure-2A of the writ petition. In view of anarchy prevailing in the region, Bagaha Sub-Division has been upgraded as police district. The Superintendent of Police, Bagaha, vide his letter No. 374 General, dated 14.3.2000, addressed to the District Magistrate, West Champaran, made a request for making available suitable land for construction of police line at Bagaha. The Anchal Adhikari,

Bagaha, began search enquiry vide Case No. 1/2000-01, and submitted his proposal regarding availability of 26.40 acres of land in Village-Domwalia, Thana No. 145, and an area measuring 15.87 acres of land in Village-Pokharbinda, Thana No. 147, both falling within Bagaha P.S. (vide his letter No. 364 dated 14.7.2000), to the S.D.O., Bagaha. The S.D.O., Bagaha, forwarded the proposal to the District Land Acquisition Officer, Bagaha, which was numbered as L.R. Case No. 2/2002-03, The proposal finally reached the office of the Commissioner, Tirhut Division, for administrative approval. The Commissioner pointed certain defects and referred the matter to the Collector, West Champaran, for rectification. The Collector in his turn endorsed the file to the Circle Officer, Bagaha, for making necessary rectification. The Anchal Adhikari, Bagaha, the LR.D.C, Bagaha, the S.D.O., Bagaha, alongwith D.I.G. Police, Tirhut Range, Muzaffarpur, visited the site whereafter a new proposal was mooted for acquisition of 12.04 acres of land in Village-Domwalia appertaining Thana No, 145, and 33.04 acres in Village-Pokharbinda, of Thana No. 147. The Anchal Adhikari, Bagaha forwarded the proposal. The case record was processed and placed in the office of the Commissioner, Tirhut Division, on 8.7.2003. On 24.2.2004, the Superintendent of Police, Bagaha, made a requisition to the Collector, West Champaran, to acquire 45.05 acres of land on urgent basis in Village-Pokharbinda and Domwalia, detailed in Appendix-1, with further request vide details contained in Appendix-It, to dispense with enquiry u/s 5A of the Act, and to obtain necessary order of the State Government u/s 17(4) of the Act. The requisitions alongwith its Appendices were considered by the Land Acquisition Officer, West Champaran, on 3.9.2006, and Collector, West Champaran, on 27.9.2006. The Collector approved the draft of the notifications under Sections 4 and 6, which too was forwarded by the Commissioner, Tirhut Division, vide his recommendation dated 4.11.2006 to the Director, Land Acquisition, under letter No. 4999, dated 13.11.2006, for due consideration and taking approval of the Government. The matter was placed before the Government, and the Minister being satisfied gave approval to the proposal of acquisition u/s 17(4) of the Act for construction of police line on 2.2.2007. Pursuant to approval of the acquisition by the State Government in terms of sub-section (4) of Section 17 of the Act, the follow-up notification u/s 4 thereof, dated 9.2.2007, and declaration u/s 6, dated 13.2.2007, for acquisition of 45.05 acres of land were published. The declaration u/s 6 was also published in two newspapers, namely, Aaj and Farooqui Tanzeem, Both notification u/s 4, and declaration u/s 6, were published in the District Gazette on 15.3.2007. The Collector also caused and got published the substance of acquisition at local level on 30.3.2007.

2. The Collector on 25.4.2007, vide letter No. 48 requested the Commissioner, Tirhut Division to seek Government's approval for taking possession of the land in question in terms of Section 17(1) of the Act. The Commissioner forwarded the request to the Director, Land -Acquisition, vide his letter No. 2710, dated 20.6.2007, for obtaining necessary approval of the Government. The Director, Land Acquisition, placed the matter before the Government and the Hon''ble

Minister accorded approval on 4.7.2007. The Collector, West Champaran, was instructed to take immediate possession under letter No. 1605, dated 11.7.2007, which finds place at page 88C of the Land Acquisition file. After ascertaining the value of the land, the Collector approved the Award on 31.3.2009 in L.A. Case No. 9 of 2007-08. On 16.6.2009, the Collector issued notices u/s 12(2) of the Act calling upon the appellants and other landholders to receive the compensation amount. The District Land Acquisition Officer took possession of the land on 29.7.2009, and handed over the same to the Dy. S.P. (Hqr.), Bagaha, for construction of police line which the appellants have controverted.

3. The appellants submit that the impugned land acquisition proceeding is in the teeth of various provisions of the Act. They state that there was no legal and valid ground to invoke the provisions of Sections 17(1) and 17(4) of the Act to dispense with the provisions u/s 5A of the Act- The proceedings commenced in the year 2000-01, and notification and declaration under Sections 4 and 6 of the Land Acquisition Act were issued in the year 2007, hence there was no urgency in the matter and as such invocation of Section 17(4) was totally unjustified. The appellants state that the State Government was required to consider the need to dispense with the enquiry u/s 5A in spite of existence of an urgency or unforeseen emergency. There is need for application of the mind by the appropriate Government on the issue, but in the instant case the Minister has merely put his signature approving invoking of emergent provisions u/s 17(4) of the Act. In support of their submissions, the appellants have relied upon decisions in the case of Union of India & Ors. vs. Mukesh Hans, reported in 2004 SC 4307, Essco Fabs Pvt. Ltd. and Another Vs. State of Haryana and Another, Anand Singh & Anr. vs. State of U.P. & Ors. reported in (2010)XI SCC 242. The appellants state that the impugned award is time-barred in view of Section 11A of the Act, and the whole proceeding lapsed, as the award was not prepared within a period of two years of declaration u/s 6 of the Act. The appellants submit that the declaration u/s 6 was published in the newspaper on 13.2.2007, and in the district gazette on 16.3.2007. The local publication of the award was made on 30.3.2007.

4. They further state that it is evident from perusal of Section 11A of the Land Acquisition Act and the decision of the Hon'ble Apex Court in the case of Kunwar Pal Singh (Dead) by L.Rs. Vs. State of U.P. and Others, and other cases that the award is to be made within two years from the last mode of declaration of award u/s 6(2) of the Act.

5. They submit that the last mode of declaration of award was made on 30.3.2007, with its local publication. The award made on 1.4.2009 is after a lapse of 2 years. The appellants submit that the aforesaid facts would clearly show that the award has not been prepared within two years and the entire land acquisition proceedings had lapsed. In support of their submissions, the appellants have relied upon decisions in the case of Ashok Kumar and Others Vs. State of Haryana and Another, and Mohan & Anr. vs. State of Maharashtra & Ors.,

reported in 2007(2) PLJR 163 (SC).

6. The appellants also submit that no possession worth the name u/s 17(1) of the Act or 80% compensation was paid which was necessary for taking possession u/s 17(1) of the Act. The appellants state that the learned Single Judge while hearing the writ petition have passed the interim order on 25.7.2009, restraining the respondents from dispossessing the petitioners. However, in complete violation of the order, the respondents have claimed to have taken possession on 29.7.2009 on paper, though in fact as per the appellants, the possession is still with them. They state that so-called taking-over of possession on 29.7.2009 would not be valid possession in the eyes of law.

7. The appellants next contended that prior approval of the Government was taken by the Collector before making an award, hence the so-called award is illegal and without jurisdiction and non est in the eyes of law. In support of their submissions, the appellants have relied upon the decision in the case of Krishna Nandan Prasad Singh and Others Vs. State and Others .

8. The appellants lastly contend that the impugned action was visited with mala fide as the respondents could have utilized over 12 acres" of land of Kaisre Hind lying in the near vicinity. They submit that the factum of extremely low valuation has not been even touched by the learned Single Judge.

9. Mr. Lalit Kishore, learned Addl. Advocate General No. 1, submits that the Bagaha Sub-Division in West Champaran is very vulnerably situated, surrounded partially by forests which provides easy hide out to the miscreants both in the forest and across the Nepal, in order to meet such an alarming situation, the Bagaha Sub-Division has been upgraded into a police district with posting of an officer of the rank of Superintendent of Police. He submits that maintenance of public order is a constitutional obligation of the Government as provided under Entry 1 and 2 of List II, of the 7th Schedule of Constitution of India. He submits that the Government after considering the requisition of Superintendent of Police, Bagaha, the recommendation of the Collector, West Champaran, the Commissioner, Tirhut Division, the Director, Land Acquisition, and on being satisfied approved acquisition u/s 17(4) of the Land Acquisition Act, dispensing requirement of giving notice u/s 5A of the Act. Similarly after considering the proposal of various authorities, the Government granted approval to take possession u/s 17(1) of the Act, He submits that the acquisition under Sections 17(1) and 17(4) of the" Act is a matter of subjective satisfaction and it is better left to the discretion of me Government. It is merely to be seen whether all materials were placed before the Government or not and the decisions are not mala fide and based on no material. In support of his submission, the State has relied upon decisions in the case of First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another, He submits that the award u/s 11 was made on 31.3.2009, within two years of declaration u/s 6 of the Act. According to him, the award was filed in the Collector's office on 1.4.2009, and the notice for payment u/s 12(2) of the Act was made on 25.5,2009 and 16.6.2009, and

thereafter symbolic possession was taken on 29.7.2009. He thus submits that Section (s/c-sub-section) 3A of Section 17, which requires tendering of payment of 80% of the compensation for land acquired, was duly complied with. He lastly submits that many landowners have already received their compensation. He submits that the action of the Government is not accentuated with mala fide, but rather steps for acquisition has been taken in great public interest in view of the anarchy and turbulent situation prevalent in Bagaha Sub-Division.

10. The appellants in reply submitted that mere saying that there was urgency would not be sufficient in absence of valid ground for the same. The police line was sought to be constructed only 11/2 K.M. away from town which would cause inconvenience to the residents particularly the ladies. He submits that noting of the Deputy Secretary or the Director, Land Acquisition, do not refer to Section 17(4) or dispensation of enquiry u/s 5A of the Act. This shows that the Hon"ble Minister was not apprised of all necessary and relevant facts and there has been no proper application of mind. The so-called possession was taken before handing over the award money and even in case where possession is taken u/s 17(1) , the award has to be prepared within two.years.

11. We have heard Learned Counsel for the parties, and perused the records of land acquisition proceeding which had also been perused and referred in detail by learned Single Judge in the impugned order. One of the issues raised by the appellants is that the award is barred by Section 11A of the Act. The provision is quoted hereinbelow:-

11 A. Period within which an award shall be made.-(i) The Collector shall make an award u/s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

12. The appellants have asserted that the last mode of declaration u/s 6 was made on 30.3.2007, and award was made on 1.4.2009 beyond the period of two years and as such the entire land acquisition proceeding lapsed. The appellants in support of their submissions have referred to decisions reported in Eugenio Misquita and Others Vs. State of Goa and Others,

13. The case reported in Mohan & Another (supra) is on different issues, wherein the Hon"ble Apex Court was considering the jurisdiction of the District Judge to hear appeal against order passed by the Land Acquisition Judge/Subordinate Judge in matters of compensation under the Act. In the other decisions relied upon by the appellants, the issue under Sections 17(1) and 17(4) was not under consideration vis-a-vis u/s 11A of the Act. It is being respectfully stated that in the abovementioned cases, the Apex Court was not considering the land acquired under emergent provisions. The Apex Court in the circumstances held that the

award has to be made within two years of publication of declaration u/s 6 of the Act in view of Section 11A.

14. On the other hand, the Hon''ble Apex Court in the case of Awadh Bihari Yadav and Ors. vs. State of Bihar & Ors. heard analogous with Sita Ram Gope & Ors vs. State of U.P. & Ors., reported in (1995)6 SCC 31* held that Section 11A does not apply to cases of acquisition u/s 17. In view of the decisions of Hon''ble Apex Court on the point, we hold that the limitation u/s 11A would not come into play where acquisition is made under Sections 17(1) and 17(4) of the Land Acquisition Act. Even assuming that the award was made after two years, the same would not lapse in view of pronouncement of the Hon''ble Apex Court referred to above in the case of Awadh Bihari Yadav (supra).

15. The contention of the appellants is that there was no legal and valid ground for invoking Section 17(1) and 17(4) of the Act and dispensation of provisions u/s 5A of the Land Acquisition Act. There was no extraordinary urgency for invoking Section 17(4), as the proceeding was initiated in the year 2000-01, and notification u/s 4 and declaration u/s 6 were made in the year 2007. It was mandatory that the State Government was to further consider the need for dispensing with Section 5A, in spite of existence of unforeseen emergency. The appellants have placed strong reliance in case of Mukesh Hans (supra). In the aforesaid case, the Hon''ble Apex Court observed that right to representations and hearing contemplated u/s 5A are very valuable right of a person whose property is sought to be acquired and he should have an appropriate opportunity for persuading the authorities that the acquisition of his property should not be made. The Hon''ble Court further observed that subsection (4) of Section 17 requires the appropriate Government to further consider the need of dispensing with Section 5A of enquiry in spite of existence of unforeseen emergency. The appellants have also referred to the case of Anand Singh (supra). In the aforesaid case, the Hon''ble Apex Court observed that urgency provision of Section 17 to eliminate enquiry u/s 5A should be invoked only in cases of real emergency. The Government should apply its mind to the factum of urgency and should be able to justify that urgency is based on consideration, which has a reasonable nexus with the purpose for which it is to be exercised. Mere use of phraseology of urgency in notification is not enough. The Hon''ble Apex Court further observed that pre-notification and post-notification delay would have material bearing on the issues, particularly when no material justifies invoking urgency provision necessitating elimination of an enquiry by the Government. In case of Babu Ram vs. State of Haryana, reported in (2009)X SCC 115, the Hon''ble Apex Court exercised that great care have to be taken by the authority before resorting to Section 17(4) of the Act that there was an urgency of such nature which could brook no delay whatsoever.

16. It would appear that the Superintendent of Police, Bagaha, made a revised requisition dated 24.2.2004, requesting the Collector, West Champaran, to acquire 45 acres of land in Village-Pokharbhinda and Domwalia, detailed in

Appendix-I of the requisition. A further request was made to dispense with enquiry u/s 5A of the Act vide Appendix-II and to obtain approval of the State Government u/s 17(1) of the Act for immediate taking of suitable possession of lands to establish a police line to check unruly situation prevailing in the area. The requisition was considered by the Land Acquisition Officer, West Champaran, on 3.9.2006, and by the Collector, West Champaran, on 27.9.2006, while approving the draft of the notification u/s 4 and declaration u/s 6. The draft notification was forwarded to the Commissioner on 4.11.2006, who after considering the same forwarded it to the Director, Land Acquisition, under letter No. 4999, dated 13.11.2006, for obtaining the appropriate approval of the Government. The Minister before whom all the material facts were placed, approved the notification/declaration. Similarly, on the request of the Collector, West Champaran, contained in letter No. 48, dated 25.4.2007 (at page 51/C of file), as well as the Commissioner dated 20.6.2007, the Government granted permission to take possession of the land. In the case of First Land Acquisition Collector (supra), the Hon"ble Apex Court observed that acquisition under Sections 17(1) and 17(4) is a matter of subjective satisfaction and the matter regarding urgency is to be left to the discretion of the Government and it is only to be seen whether all materials were placed before the Government. In case of Anand Singh (supra), the Hon"ble Apex Court was examining acquisition for Housing Colony. In the instant case, it is respectfully stated that the acquisition was being made for establishing a police line for combating anarchy perpetrated by different gangs operating under the cover of forest as well as recluse to the bordering Nepal. The emergent provision was invoked for the security and safety of the people of the area and the State.

17. All such materials beginning from requisition made by the Superintendent of Police, Bagaha to the recommendation of the Commissioner, Tirhut Division, and Director, Land Acquisition, were placed before the Government which approved the same. In view of the emergent situation arising in Bagaha, invoking of Section 17(4) in the facts and circumstances of the case was not unjustified.

18. The appellants also contended that neither possession was taken pursuant to order u/s 17(4), nor 80% compensation amount was paid. It would appear from Annexure-5 series that notice for payment of compensation was tendered on 8.6.2009 & 18.6.2009, u/s 12(2) calling upon the appellants and others to receive compensation amount and only thereafter symbolic possession was taken after following due procedure. Thus, the argument of the appellants that 80% of the compensation amount was not tendered, prior to taking possession is unfounded. On the other hand, it was contended by the learned Addl. Advocate General No. 1 that many landowners whose lands were acquired had come forward and received compensation.

19. The appellants have contended that the Government could easily have taken over 12 acres of Kaisre Hind land, situated in the nearby vicinity. What land would be suitable for establishing a police line is to be best left on the

administrative and executive side, as they are the best person to judge the suitability, until it is shown that the action is perverse and arbitrary.

20. The appellants next contended that the acquisition is manifest with mala fide as it was done at the behest of a powerful local leader. It is apparent that the lands of many persons have been acquired and it has not been specifically contended whether the local leader bore malice against all the landholders and the accompanying cause for holding such malice. The appellants have also contended that the factum of compensation has not been considered by the authorities as well as by the learned Single Judge. this Court is of the view that the Government should reconsider the aspect of quantum of compensation with interest as lands which in case of majority of the landholders, can be the only source of their livelihood. The State Government would also reconsider the case of quantum of compensation with interest as well of those land-holders who have already received the award amount. With the aforesaid observations and directions, these appeals are dismissed.

S.K. Katriar, j.

I agree.