

(1974) 04 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 407 of 1973

Mulchand Chandak and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-04-1974

Acts Referred:

Constitution of India, 1950 — Article 258(3)
Land Acquisition Act, 1894 — Section 6

Citation : AIR 1974 Patna 380

Hon'ble Judges : Shambhu Prasad Singh, J;H.L. Agarwal, J

Bench : Division Bench

Advocate : B.C. Ghose, S.K. Chattopadhyaya, S.K. Ghose and P.K. Sinha, on behalf of Ghose, Chatterjee and Sinha, for the Appellant; K.P. Verma, Government Advocate, G.P. Jaiswal, J.C. to G.A., K.D. Chatterji, Chunni Lal, A.N. Sinha and Bipin Bihari Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Shambhu Prasad Singh, J.—The petitioners who constitute a firm registered by the name M/s. Hanuman Brick Works. Chaibassa, by this writ application under Articles 226 and 227 of the Constitution of India pray for quashing the notifications, Annexures 2. 2/1 and 2/2, issued under Sections 4 and 6 of the Land Acquisition Act (hereinafter referred to as "the Act") and directing respondent No. 1, the State of Bihar, not to interfere with the possession of the petitioners' firm in respect of plots Nos. 107, 247, 271 to 286, 298, 299, 310 and 311 in village Barapahar within Jadugora police station in the district of Singhbhum in pursuance of the said notifications. They further pray for quashing of the order of the Commissioner of Mines and Geology, respondent No. 2, dated 14th of March, 1973 (Annexure 5) vacating the stay in respect of plots Nos. 107, 298 and 299 and the entire proceedings pending before him upon the application of M/s. Ram Prasad Ram Madan Ram, respondent No. 4. They also seek issuance of directions from the Court to the respondents forbearing them from interfering with the possession of the petitioners' firm over the aforesaid lands and

forbearing M/s. Hindusthan Copper Ltd., respondent No. 5, from interfering with the possession of the petitioners' firm and carrying on their business of minor mineral on the aforesaid areas in respect of manufacture of bricks. It may be stated here that during the pendency of the writ application, the order of vacating the stay dated 14th of March, 1973 has been set aside by the appellate authority and in that view of the matter the prayer for quashing that order was not pressed at the time of hearing of the application. There was also a petition for amendment which was mostly concerned with the aforesaid prayer for quashing the order (annexure 5) and that too has not been pressed.

2. The relevant facts which form the basis for the aforesaid prayers of the petitioners which were pressed at the time of the hearing of the application as stated by them are as follows. The petitioners' firm have acquired title to and rights of possession over the aforesaid plots either by lease from the tenants Haripada Gorh and Kalipada Gorh, sons of Madan Gorh, or permit from the Government in respect of waste lands. Haripada Gorh and Kalipada Gorh executed a registered lease (annexure 1) in their favour on the 4th of November, 1967. Since then the petitioners' firm have been in peaceful possession of the aforesaid lands in pursuance of that deed and other documents obtained from the tenants thereof and carrying on works of bricks manufacturing over those lands. They also applied on 9th of November, 1967 for lease under the Bihar Minor Mineral Concession Rules, 1964, in respect of plots Nos. 247, 272, 279 to 286, 310 and 311 for the purposes of digging clay as a minor mineral. During the pendency of those applications the petitioners' firm were carrying on the works of manufacturing bricks by permits obtained from time to time from the mining authorities. Meanwhile on 26th of April, 1971, respondent No. 1, issued notification u/s 4 of the Act for acquisition of several plots including some of the plots upon which the petitioners' firm had been carrying on their business. NO notice of the notification was issued to the petitioners' firm nor they were aware of any such notice. The notification was not published as required under the provisions of Section 4 of the Act as amended by the Bihar Amendment Act (Bihar Act 11 of 1961). No notice was served upon the petitioners' firm although the Land Acquisition Officers, the local officers and the mining officers knew about the right of the petitioners' firm. Subsequently two declarations (Annexures 2/1 and 2/2) u/s 6 of the Act were published. The petitioners came to know of the notifications and declarations for acquisition only after the Deputy Survey Superintendent of Rakha Copper Project of respondent No. 5 wrote a letter to the mining authorities on the 23rd of March, 1972, informing them of the acquisition after the Deputy Commissioner, Singhbhum, had granted a lease to the petitioners' firm on 19th of March, 1972, in respect of the plots covering an area of 8.25 acres. The petitioners' firm thereupon made enquiries and obtained copies of the aforesaid notifications. They claim that the acquisition was invalid in law.

3. Three counter-affidavits have been filed, one by respondent No. 1, another by respondent No. 4 and the third by respondent No. 5. The substance of averments

made by them in their counter-affidavits is that the notifications concerning acquisitions were duly published as required by law, the acquisition was legal and valid and the writ application of the petitioners was not maintainable. It has further been averred that the acquisition was for the purposes of the Union Government and respondent No. 1 made the acquisition under powers delegated to it by the Union Government vide Annexure "A" of its counter-affidavit. If necessary, I will refer to the averments of the respondents in their counter-affidavits in greater detail while dealing with various arguments advanced in the case by learned Counsel for the parties.

4. Mr B.C. Ghose appearing for the petitioners has urged the following points:--

(i) As the notification under Section 4 was not published as required by the provisions of the said section as amended by the Land Acquisition (Bihar Amendment) Act, (Bihar Act 11 of 1961), the entire proceeding and acquisition were invalid.

(ii) Really the acquisition was "for the purposes of the Company", respondent No. 5, and as provisions of Part VII of the Act were not complied with, the acquisition was bad in law.

(iii) The lands of the petitioners' firm which have been acquired were neither arable nor waste and as such they could not be deprived u/s 17(4) of the Act of their right to file objections u/s 5A of the Act.

(iv) The acquisition not being for the purposes of the Union, respondent No. 1 cannot claim that the lands have been acquired by it on behalf of the Union of India in exercise of the powers delegated to it under Annexure "A" to the counter-affidavit of the State Government.

5. Point Nos. 1, 2 and 4 urged by Mr. Ghose may conveniently be taken up together, for, answer to the question whether the proceeding and acquisition were invalid on account of non-publication of the notification u/s 4 as required by the provisions of the said section as amended by the Land Acquisition (Bihar Amendment) Act, (Bihar Act 11 of 1961), will depend on the answer to the question whether the acquisition was for the purposes of the Union or for the purposes of the company. If the acquisition was for the purposes of the Union, then the Land Acquisition (Bihar Amendment) Act can have no application to the present case. This is manifest by Section 1 (2) of the Bihar Amendment Act which says that it shall apply to acquisitions of land made by the State Government except for the purposes of the Union. Mr. Ghose has contended that the acquisition was for the purposes of the company and not for the purposes of the Union. It may be stated here that Notification No. 2949 dated 26th of April, 1971, u/s 4 of the Act, which has been made Annexure 2 to the writ petition, is not the notification in respect of the plots in dispute. The real notification is notification No. DLA/Singh/ 42/71-2902/Rev. dated the 26th of April, 1971 which was published in the Bihar Gazette dated the 30th of June, 1971. Though this notification has not been made an annexure to the writ application, learned

Counsel for both the parties have referred to it at the time of their argument. The notification says that it was desired to acquire plots in dispute and other plots in village Barapahar for public purposes, namely, for the construction of concentrator plant and township for Rakha Copper Project at the cost of the Government of India and by the Government of India. According to Mr. Ghose, as the notification itself says that the acquisition was to be made for the purposes of Rakha Copper Project, which admittedly is a project of respondent No. 5, a company, the acquisition was for the purposes of the company. On the other hand, it has been contended by learned Counsel for the respondents that the notification recites that the acquisition was to be made for public purposes and at the cost of the Government of India, and that this was sufficient to prove that the acquisition was valid even if the provisions of Part VII of the Act were not complied with. In view of the decisions of the Supreme Court, discussed hereafter, the contention of learned Counsel for "the respondents must prevail.

6. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, it has been held that declaration as to public purpose by Government is final except where it is colourable exercise of power. It has been further held that it is enough that notification of declaration u/s 6 of the Act sets out the fact that the Government has decided to pay a part of the expenses of acquisition or even to state the extent to which the Government is prepared to make a part contribution to the cost of acquisition; it is not essential that the contribution by the State towards the cost of acquisition must be a substantial part of the value of the property sought to be acquired.

7. In the case of *B.C. Kame Vs. Nemi Chand Jain*, some lands were being acquired for a housing scheme prepared by a co-operative society, a company within the meaning of the definition of the term in Section 3(e) of the Act. One of the grounds on which the acquisition proceedings were challenged before "the Supreme Court was that the proposed acquisition was for a company and as no steps were taken under Sections 40 to 42 of the Act (these sections are in Part VII of the Act), the proceedings were vitiated. On behalf of the State it was conceded that the agreements contemplated by Sections 40 to 42 of the Act were not entered into, but it was urged that the acquisition in question was not for the purpose of a company but it was for a public purpose. The Supreme Court held--

"The expression "company" as defined in the Land Acquisition Act includes a co-operative society within the meaning of Co-operative Societies Act, 1912. The third respondent is one such Society. Therefore, it is clear that the proposed acquisition is one for "public purpose". It may also be noted that the State Government contributed a substantial sum towards the compensation payable for the acquisition in question. Therefore the contention of the appellant that the proposed acquisition is invalid inasmuch as there was no compliance with Sections 40 to 42 must fail."

8. In the case of *Jage Ram and Others Vs. State of Haryana and Others*, one of

the points urged before the Supreme Court was that the acquisition in question being one for a company, proceedings should have been taken under Sections 38 to 44(b) of the Act and the same having not been taken, the proceedings were void. In the notification issued u/s 4 it had been stated that the acquisition was made at public expenses for public purpose, namely, for the setting up a factory for the manufacture of China-ware and porcelain-ware including wall Glazed Tiles etc. Relying on the decision in Somawanti's case, the Supreme Court held--

"In view of the pleadings referred to earlier it is not open to the appellant to contend that the State Government had not contributed any amount towards the cost of acquisition. We were informed at the bar that the State Government had contributed a sum of Rs. 100/- towards the cost of the land which fact is also mentioned in the award of Land Acquisition Officer. That being so it was not necessary for the Government to proceed with the acquisition, under Part VII of the Act."

9. In the declaration u/s 6 of the Act which has been made Annexure 2/1 to the writ application also it is stated that the acquisition was proposed to be made for public purposes and at the cost of the Government of India. The petitioner has not been able to substantiate that the declaration was issued in colourable exercise of power. No doubt, in paragraph 30 of the writ petition it is stated that the plots of the petitioner were not acquired for Rakha Project but were sought to be acquired for the purpose of displacing the petitioners' firm and giving the land to respondent No. 4 and favouring them with the business of manufacturing bricks collusively and mala fide. By it is difficult to accept those allegations in absence of any cogent material on the record in support thereof. The declaration was not in respect of the lands of petitioners only, but it was in respect of other lands as well which formed the majority of the lands acquired. In the circumstances, it is difficult to even imagine that the declaration u/s 6 was issued in colourable exercise of power. In the circumstances it has to be held on "the authorities of the Supreme Court decisions, referred to above, that the acquisition was not bad for non-compliance of the provisions of Part VII of the Act. As "the entire cost of the acquisition was being met by the Government of India, it has also to be held that the acquisition was for "the purposes of the Union. As it appears from the language of Section 6 of the Act. acquisition of land for a public purpose is to be contradistinguished from acquisition of land for a company. Acquisitions of land from which ultimately a company may derive benefits, if in the opinion of the appropriate Government it is for a public purpose, it is not acquisition of land for a company and provisions of Part VII of the Act need not be complied with in such a case. Once the appropriate Government is satisfied that an acquisition is for a public purpose, unless it is proved to be a colourable exercise of power, courts are bound to hold that it is an acquisition for a public purpose and for the purpose of the Government which makes the acquisition. I accordingly hold that the acquisition with which we are concerned in this case was not for the purposes of the company, it was for the purposes of the Union and it was not bad for non-compliance of the notification u/

s 4 as required by the provisions of the said section as amended by the Land Acquisition (Bihar Amendment) Act. I further hold that the land was acquired by respondent No. 1 on behalf of the Union of India in exercise of the powers delegated to it by Notification No. F-26(5)/57/J.II, dated the 27th April, 1957, published by the Government of India, Ministry of Home Affairs (Annex. "A" to the counter-affidavit of respondent No. 1) entrusting the Government of Bihar with the consent of that Government the functions of the Central Government under the Act in relation to the acquisition of the land for the purposes of the Union in the State of Bihar.

10. Mr. Ghose, learned Counsel for the petitioners, has challenged the delegation of power to acquire lands by the Government of India to the State of Bihar on the ground that there could be no valid delegation unless provisions of Article 258 of the Constitution of India were complied with. He has relied on Clauses (1) and (3) of the aforesaid Article. Under Clause (1), any function of the Union of India can be entrusted to the State Government only with the latter's consent. In this case, the notification of delegation, Annexure "A" to the counter-affidavit of the State of Bihar, itself states that the delegation was with the consent of the State of Bihar. There is nothing on the record to show that that statement is not correct. Clause (3) of Article 258 of the Constitution makes provision for payment by the Government of India to the State Government in respect of any extra cost of administration incurred by the State in connection with the exercise of powers and duties entrusted to it either by agreement or in default of agreement as determined by an arbitrator appointed by the Chief Justice of India. What payment should be made by the Government of India to the State Government in respect of any extra cost of administration incurred by the State in connection with the exercise of those powers and duties is a matter between Government of India and the State and no third person can challenge the entrustment or delegation of powers and duties on the ground of absence of such payment. An agreement as to such payments "to be made is not a pre-requisite for entrustment or delegation of powers and duties by the Central Government to the State Government, for, Clause (3) of Article 258 of the Constitution itself provides that in absence of an agreement, payment to be made can be determined by arbitration. In my opinion, therefore, there is no substance in the contention of Mr. Ghose that the delegation was bad for non-compliance with the provisions of Article 258 of the Constitution.

11. Mr. Ghose has also drawn our attention to Article 19(6)(ii) of the Constitution to point out that the Constitution itself makes a distinction between a State and a corporation owned and controlled by the State. Relying on the decisions of the Supreme Court referred to above, I have already held that if acquisition of land is made by the State which meets the cost wholly or partially thereof and declares the acquisition to be for public purpose, even though the acquisition is made for the benefit of a company, it is not an acquisition for the purpose of the company and not bad on account of non-compliance with the provisions of Part VII of the Act. In the circumstances, nothing turns out on the provisions of Article 19(6)(ii)

of the Constitution.

12. I now take up the third point urged by Mr. Ghose that the lands of the petitioners' firm which have been acquired were neither arable nor waste and as such they should not be deprived u/s 17(4) of the Act of their right to file objections u/s 5A of the Act. It is remarkable that in the writ petition this point has not been taken specifically nor it has been alleged that the lands were not waste and arable. It has been contended, however, by Mr. Ghose that since it is stated in the writ application that some of the plots were used for brick manufacturing it should be held that they are not waste and arable lands. As already stated, the petitioners have not made the real notification u/s 4 of the Act an annexure to the writ application. What they want to be quashed is that notification u/s 4 of the Act which has been made Annexure "2" to the writ petition. In Annexure "2", there is no reference to Section 17(4) of the Act, for the lands mentioned therein are homestead lands. It is Notification No. DLA/Singh/52/71-2902/Rev. dated 26th of April. 1971, which refers to Section 17(4) of the Act and states that the Government have taken a decision that keeping in view the urgency of the project the provisions of Section 5A of the Act would not be applicable in the acquisition. There is no prayer for quashing that notification. Mr. Ghose has, however, contended that since the petitioners want a direction forbearing the respondents from interfering with the petitioners' possession, it was open to them to urge this point. In my opinion, there is no substance in this contention. Had the petitioners specifically pleaded that those plots which were being acquired were not waste and arable, the respondents would have placed materials to show that the allegations were not true. Merely because clay is taken from some land for manufacturing brick, the land does not cease to be waste or arable if it is of that nature. Of course, where kilns are set up for burning bricks the lands cease to be waste and arable, but on what exact portions of their lands the petitioners have set up kilns is a question of fact which requires investigation and in absence of a specific plea that all the lands of the petitioners which were subject-matter of acquisition or a specific portion thereof were not waste and arable lands, the petitioners cannot be allowed to urge the point that on account of nature of the lands they could not be deprived u/s 17(4) of the Act of their right to file objections u/s 5A of the Act and that the acquisition proceedings are invalid on that score. This contention of Mr. Ghose also must, therefore, fail.

13. It was urged on behalf of the respondents that the term of the lease in favour of the petitioners having expired, they were left with no legal rights on lands under acquisition and in absence of any legal right in them, their writ application was not maintainable. In view of the fact that the application has failed on merit. I do not consider it necessary to go into this aspect of the matter.

14. In the result, the application is dismissed with costs. Hearing fee is assessed at Rs. 250/- only.

H.L. Agarwal, J.

15. I agree.