
(1999) 03 GAU CK 0038
In the Gauhati High Court
Case No : Civil Rule No. 4208 of 1997

Nityananda Bora	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Land Acquisition Act, 1894 — Section 17, 17(4), 4, 4(1), 5A
Land Acquisition Rules — Rule 21

Citation : (1999) 1 GLT 584

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : G.K. Bhattacharyya, B. Chakraborty, B.C. Kalita and P. Sarmah, for the Appellant; B.M. Sharma, for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution of India, the Petitioner has prayed for quashing the proceedings in Land Acquisition Case No. 4/92 and the notification dated 5.7.96 under Sections 4 and 17 of the Land Acquisition Act, 1894 (for short "the Act") and the declaration dated 31.8.96 u/s 6 of the said Act.

2. The Petitioner's case is that he along with his wife purchased two (2) Kathas of land in village Japorigog under Beltola Mouza covered by K. Patta No. 64(o)/123(n) and had their names mutated in respect of the said land. After taking possession of the said land, the Petitioner constructed a small Assam Type house and a "Namghar" in a portion of the land. But Land Acquisition Case No. 4/92 was instituted and notification dated 2.9.94 was issued stating that 61/2 lechas of the aforesaid land belonging to the Petitioner was likely to be needed for a public purpose, viz. for construction of Arunachal Path. By the said notification objections were invited to the acquisition u/s 5A of the Act. The Petitioner submitted an objection on 13.12.94 before the Deputy Commissioner, Kamrup, stating, inter alia, that the proposed Arunachal Path was not required for the persons in the elaka but the same was required for the encroaches of NF

Railway's land who were carrying out anti-social and criminal activities and requesting him to cancel the proposal for acquisition of the land. After receiving the said objection, the Petitioner was called for hearing and on 21.1.95 the Petitioner appeared before the Land Acquisition Officer, Kamrup and produced documents in support of his objection. Thereafter, the Petitioner received a notice dated 13.2.95 from the Land Acquisition Officer informing him that there would be a spot verification on 17.2.95 and he should remain present on the spot on that day with all relevant documents. The Land Acquisition Officer visited the spot on 17.2.95 but no action was taken thereafter in the land acquisition proceedings. By letter dated 7.12.95 of the Government of Assam in the Public Works Department to the Deputy Commissioner, Kamrup, the Deputy Commissioner was informed that on 11.10.95, the land acquisition case had lapsed as the notification u/s 4(1) of the Act had been issued on 12.10.94. In the said letter dated 7.12.95, the Deputy Commissioner, Kamrup was requested to submit a fresh draft notification u/s 4(1) of the Act along with a draft declaration u/s 6(1) under the urgency clause with a certification under the relevant Rules within 15 days. It appears that pursuant to the said request, draft notification and draft declaration were sent by the Deputy Commissioner to the Government and on 5.7.96 the impugned notification was issued under Sections 4 and 17 and on 31.8.96 the impugned declaration was issued u/s 6 of the Act declaring that the land was required to be taken by the Government at the public expense for a public purpose, viz. construction of Arunachal Path in the village of Japorigog. Thereafter, the Petitioner and his wife were informed by notice dated 11.7.97 of the Land Acquisition Officer that a compensation of Rs. 44,274.18 had been fixed for acquisition of the land measuring 6 1/2 lechas with house, etc. By the said notice, the Petitioner and his wife were informed to collect the said amount from the office of the Land Acquisition Officer on 25.7.97. Aggrieved, the Petitioner has moved this Court for appropriate relief and on 8.9.97 this Court while issuing notice passed an interim order directing the Respondents not to take possession of, the land from the Petitioner.

3. At the hearing, Mr. GK Bhattcharyya, learned Counsel for the Petitioner submitted that it would be clear from the letter dated 7.12.95 of the Government of Assam in the department of Public Works to the Deputy Commissioner that the only ground for invoking the urgency clause u/s 17 of the Act and for dispensing with the objection and hearing u/s 5A of the Act was that the delay in submission of fresh notification after lapse of the notification u/s 4(1) of the Act on 11.10.95 would lead to lapse of sanctioned amount for the purpose of acquisition of the land. According to Mr. Bhattacharyya this cannot be a ground for invoking the urgency clause in Section 17 of the Act. He contended that the whole process for acquisition of the land was started in the year 1992 and it lingered from 1992 to 1996 and the authorities could not all of a sudden invoke the urgency clause u/s 17 of the Act and dispense with the objection and hearing u/s 5A of the Act. He cited the decision of the Supreme Court in *State of Punjab and Another Vs. Gurdial Singh and Others*, , to the effect that compulsory taking of a man's

property is a serious matter and hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons and save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 and 19, dispense with an enquiry. Mr. Bhattacharyya, in particular, relied on the following observations of the Supreme Court in the aforesaid case:

...Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power.

According to Mr. Bhattacharyya, invocation of special emergency provision of Section 17 of the Act dispensing with enquiry and hearing u/s 5A of the Act in the present case is liable to be quashed in view of the aforesaid judgment of the Supreme Court in the case of Gurdial Singh (supra). Mr. Bhattacharyya therefore prayed that the impugned notification and the declaration u/s 17 of the Act ought to be quashed.

4. Mr. B.M. Sharma, learned Government Advocate, Assam, appearing for the Respondents, on the other hand, relying on the averments in the petition for vacating the interim order dated 8.9.97 filed by the Respondents numbered Misc. Case No. 73/98, contended that the land and construction of house have created a bottleneck on the road and the women and school-going children faced great difficulties to walk through the knee-deep water during rainy season on account of water-logging on the road and the 6 1/2 lechas of land of the Petitioner was acquired for the public of the locality so that the bottle-neck created by the Petitioner was removed. He produced the records of Land Acquisition case to show that the land was urgently required for the aforesaid purpose and cited the decision of the Supreme Court in Union of India and others Vs. Praveen Gupta and others, , in which it has been held that a decision on urgency is an administrative decision and is a matter of subject satisfaction of the appropriate Government. He further pointed out that pursuant to the impugned notification and the impugned declaration, possession of the land has also been taken over from the Petitioner and handed over to the authorities of the Public Works Department on 13.8.97 and therefore the land has vested in the Government prior to the interim order dated 8.9.97 passed by this Court directing the Respondents not to take possession of the land.

5. In the case of Gurdial Singh (supra), cited by Mr. Bhattacharyya, the Supreme Court found that the State Government had resorted to Section 17 of the Act under political influence and not for any real urgency and was therefore of the view that a slumbering process for acquisition pending for years could not be immediately converted into an urgent process u/s 17 of the Act and the rights of the land owner for a hearing u/s 5A of the Act could not be dispensed with. The aforesaid decision of the Supreme Court in Gurdial Singh's case (supra) was considered by the Supreme Court in the case of Praveen Gupta (supra) and the Supreme Court held:

...It is true that in Dora Phalauli and Gurdial Singh cases, the two-Judge Bench of this Court in each of the cases held that enquiry u/s 5-A may not be dispensed with in a cavalier manner denying the opportunity to file the objections, unless real urgency is shown. Each case has to be considered on its own facts. The very objection or enquiry u/s 5-A is whether the land proposed to be acquired is needed or is likely to be needed for the public purpose mentioned in the notification and whether any other suitable land other than the acquired land is needed for the said public purpose. In this case, the entire land in two villages was acquired. It is seen that timber business is being carried on in the walled city of Old Delhi. It has become a source of traffic congestion and that it requires to be shifted urgently from the existing place to relieve the congestion by acquiring the concerned land for the public purpose, namely, establishment of timber depots. It is true that a mention was also made that unauthorised construction has been made in the area proposed to be acquired. If the enquiry was conducted, delay would defeat the very public purpose of acquisition for shifting of timber business from the walled city and establishment of the timber depots outside the walled city. Therefore, the urgency mentioned in exercising the power u/s 4(1) was justified....

According to decision of the Supreme Court in the aforesaid case of Praveen Gupta (supra), each case has been to be considered on its own facts and if on the facts of a particular case it is found that the enquiry u/s 5-A of the Act would cause a delay which would defeat the very purpose of acquisition, invocation of urgency provision u/s 17 and notification u/s 4(1) of the Act would be justified. In the said judgment in the case of Praveen Gupta, the Supreme Court has further held that it is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. The Supreme Court has further observed that there was no need to pass any reasoned order to reach the conclusion that there was urgency so as to dispense with the enquiry u/s 5-A in exercise of power u/s 17(4) of the Act. The Supreme Court has however cautioned that the language of the notification is not conclusive but the Court is required to consider the material whether there is any urgency to exercise the power u/s 17(4) of the Act.

6. Thus, the Court will have to examine whether there is material in the present case to justify invocation of urgency provision u/s 17 of the Act so as to dispense with the enquiry u/s 5-A of the Act, and neither the language of the impugned notification nor the language of the letter dated 7.12.95 of the Government of Assam, Public Works Department to the Deputy Commissioner, Kamrup was conclusive as to whether or not there existed any emergency for exercising the power u/s 17 of the Act. It appears from the materials on record in this case that the Land Acquisition case was instituted as far back as in the year 1992 and the first notification u/s 4(1) of the Act was issued on 2.9.94. The Petitioner however filed his objection and also appeared for hearing and submitted his documents in the enquiry u/s 5-A of the Act but no decision could be taken on the said

objection of the Petitioner. In the meanwhile, as would be evident from the averments made in para-5 of the petition for vacating the interim order dated 8.9.97 numbered Misc. Case 73/98, women and school-going children faced great difficulties having to walk through knee-deep water during rainy season on account of water-logging in the area caused due to bottle-neck created by the Petitioner on account of construction on the land. Further, due to bottle-neck, Fire Brigade or Ambulance or vehicles carrying drinking water could not pass along Arunachal Path. It is for these reasons stated in the said petition in Misc. Case 73/98 supported by an affidavit of Additional Deputy Commissioner, Kamrup that a certificate was issued by the Deputy Commissioner-cum-Collector, Kamrup, under Rule 21 of the Land Acquisition Manual that in view of the urgency of the works of construction of Arunachal Path, adoption of urgent procedure was justified. The said certificate is available on record produced before the court and it is only pursuant to the said certificate that the impugned notification was issued invoking the urgency clause u/s 17 of the Act and dispensing with the enquiry u/s 5-A of the Act and was followed up by the impugned declaration. There were therefore materials on record in the present case on the basis of which decision was taken by the appropriate Government to exercise the emergency power u/s 17 of the Act and to dispense with the enquiry u/s 5-A of the Act and it is not a fit case where this Court should take a view as in the case of Gurdial Singh (supra) that resort to Section 17 of the Act was arbitrary and unfair and was a travesty of emergency power under the said provision of the Act.

7. It further appears from the record that on 13.8.97, the possession of the said land was taken over by the Circle Officer, Dispur Revenue Circle and was handed over to the Department. The letter dated 16.8.97 of the Deputy Project Superintendent, Brahmaputra Bridge Approach Construction Project Jogighopa to the Deputy Commissioner, Kamrup in this regard is extracted hereinbelow:

To

dt 16.8.97

The Deputy Commissioner Kamrup, Guwahati-1.

Sub: Eviction in acquired land on Arunachal Path near 5th by-lane of R.G. Barua Road.

Ref: Your No. LA/92/165 dtd.

Sir,

With reference to the above, I have the honour to state that the possession of the above mentioned land was handed over to this Department on 13.8.97 by the Circle Officer, Dispur Revenue Circle.

But as there are some permanent structure (sic) are to be evicted immediately to facilitate construction of road work. Therefore, I request you to take

immediate action for eviction of the same.

Once the possession of the land was taken over by the Collector through the Circle Officer, Dispur Revenue Circle from the Petitioner pursuant to the notification under Sections 4 and 17 of the Act, the land stood vested in the State Government and the High Court would not ordinarily quash the acquisition proceedings in exercise of its power under Article 226 of the Constitution.

8. For the foregoing reasons, the writ petition has no merit and is accordingly dismissed. The interim order passed by this Court on 8.9.97 is vacated. Considering the entire facts and circumstances of the case, the parties shall bear their own costs.