

(1997) 05 SIK CK 0002
In the Sikkim High Court
Case No : Write Petition No. 32 of 1996

Pem Eden Bhutia and Others

APPELLANT

Vs

State of Sikkim and Others

RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Citation : AIR 1999 Sikk 14

Hon'ble Judges : Malay Sengupta, Acting C.J.

Bench : Single Bench

Advocate : A. Moulik, for the Appellant; U.P. Sharma, J.B. Pradhan, Asst. Govt. Advocate for Respondents 1 to 3 and G.P. Roy, for Respondents No. 4, for the Respondent

Judgement

Malay Sengupta, Actg. C.J.

1. This is an application under Article 226 of the Constitution of India for alleged violation of the rights guaranteed to the petitioners under Articles 14, 19, 21 and 300-A of the Constitution of India.

2. The fact of the case is that for the purpose of construction of a very big hydel power project known as Rothangchu Hydel Project, the Government of Sikkim in general and the Power Department of the State Government in particular needed considerable amount of land. Most of such lands belonged to the petitioners before us. The allegations of the petitioners is that the lands were acquired without complying with the necessary formalities and statutory requirements prescribed under the Sikkim Land Acquisition Act of 1977 or the Land acquisition Act, 1894. Illegal method of acquisition, non-payment of compensation, encroachment of lands outside the acquired lands are the main objections of the petitioners.

3. The State-Defendant contest the suit by way of filing written statements wherein the maintainability of the writ itself has been challenged on the ground that the petitioners all along conceded to the acquisition of land, fixing of

compensation and ultimately took huge amount towards compensation. On this background the petitioners cannot be allowed to challenge the acquisition proceedings at least at this belated stage. It has also been contended that the ground for which acquisition has been attempted to be challenged are frivolous and the same cannot be properly dealt with by the Court exercising writ jurisdiction. In fine, the remedy if at all available to the petitioners is at a different forum.

4. The respondent No. 4 who is one of the awardees contest the claim of the petitioners by filing a separate affidavit-in-opposition. This respondent claims that no unfair means was adopted in the process of acquisition of lands in question. He has urged further that he has unnecessarily been dragged to this writ proceeding as no relief has been claimed against him.

5. Admittedly there was no notification u/s 4 or 9 of the Land Acquisition Act, though the jurisdiction of the Act was extended to the State of Sikkim with effect from 8-9-77. It is obvious that statutory requirements of such an Act is mandatory and absence of any of such mandatory provisions vitiates the entire proceeding. We may refer to the decisions reported in *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, and *Nutakki Sesharatanam Vs. Sub-Collector, Land Acquisition, Vijayawada and others*, . We may also keep in mind that wherever certain procedures are prescribed under any law, the same should be complied with in the manner as prescribed. Decisions reported in *Dr. H.S. Rikhy and Others Vs. The New Delhi Municipal Committee*, paragraph 13, and *State of Mizoram Vs. Biakchhawna*, are relevant in this context. Hence the allegations brought by the petitioners cannot be said to be without any base. The case of the respondents on this point is that the lands were acquired through negotiations and the concerned parties agreed to such stand and also after some bargaining they conceded to the rate of compensation or price as it may be said. A document signed by the petitioners and other owners of lands acquired in this connection, has been shown to us. It is some sort of an agreement which was signed by the petitioners, other interested persons, local government officials and political personalities on 12-6-1992.

6. The contention of the respondents is that since the petitioners agreed to hand over the lands on the amount of compensation so settled by negotiation there was no necessity of issuance of any notification. The contention of the petitioners on the other hand is that lands of private persons could be utilised for public purpose if the same was acquired under the Land Acquisition Act of this State or of the Government of India. The Government may, however, purchase the same straightway. In the case of purchase it must be by a registered deed since the properties are immovable in nature and the price of each of the pieces of land exceeded Rs. 100/-. As neither any step under Sections 4, 9 or any other relevant sections of the Land Acquisition Act were taken nor any registered deed had been executed the entire acquisition must fail.

7. It has been contended on behalf of the State that it is too late an hour of the day to challenge the acquisition process at this stage and that too after receipt of full compensation without any protest. It is admitted that compensations were paid sometimes in May/June 1993. On the day of closing of arguments of this case, lists showing amount of compensation etc. were filed on behalf of the respondents. It was never pleaded on behalf of the petitioners that either they did not receive any compensation or received the compensation under protest.

8. The petitioners spelt out the alleged illegalities or irregularities with respect to each of the petitioners at paragraph 24 of the Writ Petition. Probing into such allegations would need going through detail evidence. Because complicated questions of facts are involved in it and such facts are under controversy. Decisions reported in *Sohanlal Vs. The Union of India (UOI)*, at para 5; *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, at para 14; *D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others*, at para 18; *Jai Singh Vs. Union of India and Others*, at para 4; are relevant on this point. In exercise of extraordinary writ jurisdiction it is neither permissible nor feasible for the High Court to enter into such questions as detailed in paragraph 24 of the writ petition.

9. Now comes the question of alternative remedy available to the petitioners. It is needless to mention that when alternative remedy is available, no writ should ordinarily be entertained. Decisions reported in *Dhanyalakshmi Rice Mills and Others Vs. The Commissioner of Civil Supplies and Another*, para 28; *Jai Singh Vs. Union of India and Others*, para 4; *Swadeshi Cotton Mills case*, (1975) 4 SCC 378, are quite relevant on this subject. The question remains if the petitioners have any other forum available to them for redress of their grievance. It has been contended on behalf of the contestant respondents that even if no steps under the Land Acquisition Act upto the stage of Section 9 was taken, the award which was made and pursuant to which payment was received by the petitioners was only u/s 11 of the Land Acquisition Act. Therefore, it was always open to the petitioners to challenge the award in various forms or stages prescribed under the Land Acquisition Act with ultimate reference to the Court u/s 18 of the said Act.

10. It is obvious that the award was made by the Collector in respect of the acquired portion of land and the parties received payment more than three years before the filing of the writ petition. Prior to that stage including the time of taking payment no words of protest came from the sides of the petitioners or other awardees. It is too late to challenge the acquisition on the grounds of non-compliance with the provisions of the Land Acquisition Act at least from Sections 4 to 9. When the award was made the petitioner could have lodged protest even in a writ Court but nothing was so done. Receipt of compensation makes the award of the Collector final (as contemplated u/s 12 of the Act). The awardees might have lodged a complaint against the inadequacies or otherwise of the award urging for making reference to the Court u/s 18 of the Act only if the

payment was not taken or taken under protest. The parties could have even gone to the other Civil Courts for their redress on grounds other than those specified under S. 18 of the Act. Nothing has been so done in the instant case. Even when a lawyer's notice was sent by a few of the petitioners on 24-2-1996 only the adequacy of the compensation was questioned and not any other matter relating to the stages prior to the passing of the award.

11. On scrutiny of the entire situation we cannot agree to entertain the writ petition which is belated and which gives rise to complicated questions of disputed facts. A question has been raised from the side of the petitioners that the title over the properties cannot be passed over to the State-respondents as the procurement or acquisition of land was not made by any registered document. The consequence of the manner in which the acquisition has been made is not the point at issue in this writ petition. Whether the Government would defend its position u/s 12(4) of the Land Acquisition Act or under any other provision of any law is a matter which the State should take care of.

12. In view of such observations we hold that the writ petition cannot be entertained by this Court at this stage. Hence the writ petition is dismissed on contest without any order as to costs.