
(1998) 07 PAT CK 0095
In the Patna High Court
Case No : C.W.J.C. No. 5216 of 1989

Prem Lata Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5A(2)

Citation : (1998) 3 PLJR 270 : (1999) 1 RCR(Civil) 204

Hon'ble Judges : D.S. Dhaliwal, J;Aftab Alam, J

Bench : Division Bench

Advocate : Sunil Kumar, Subodh Kumar and Madhuresh Prasad, for the Appellant; Samrendra Pratap Singh and Kamal Kishore for the State, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner seeks, on various grounds, quashing of the proceedings for acquisition of a piece of her land under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). The subject of acquisition is a piece of land, 9.28 acres in area, forming part of survey plot nos. 17 and 18 (with a total area of 13.98 acres) and situate at villages Ashikpur and Mugraura on the road connecting Jamalpur to Munger. The land was required for the construction of Block-cum-Circle Office, Jamalpur. The facts of the case are brief and can be stated thus. On a requisition made by the District Development Officer, Munger, vide his letter no. 650, dated 29.3.1984 a land acquisition proceeding was started by the District Land Acquisition Officer, Munger. There is some confusion concerning the date of publication of the notification u/s 4 of the Act. In para 4 of the counter affidavit, it is stated that, "the notification u/s 4 of the Land Acquisition Act was published in the newspaper on 20.7.1987 - - -" whereas in para 7 it is stated that, "- - - the notification u/s 4 of the Land Acquisition Act was published in the district gazette as well as in the newspaper "Aaj" on 1.8.87". It is, however, the admitted position that a copy of the

notification dated 20.7.87 issued to the petitioner u/s 4(1) of the Act, as amended and substituted by the Land Acquisition Act, 1960 (hereinafter referred to as "the Bihar Amendment") was received by her on 25.9.1987. The petitioner filed objections to the acquisition of her land, inter alia, on the ground that it was an orchard and contained a large number of fruit bearing and timber yielding trees and the proposed construction would lead to the cutting down of all the trees, some of which were very valuable. The District Land Acquisition Officer, Munger after affording the petitioner an opportunity of hearing rejected her objections by order, dated 14.12.1987 (Annexure 3).

2. The petitioner then filed representations against the acquisition of her land before the Prime Minister of India, the Chief Minister and the Revenue Minister of the State and the Environmental and Pollution Control Board. She also filed a review petition before the Land Acquisition Officer. It appears that the representation filed by the petitioner was passed on to the Revenue & Land Reforms Department of the State Government which treated it as an application in terms of the proviso to sub-section (2) of Section 5A of the Act as amended and substituted by the Bihar Amendment. The State Government asked the Collector, Munger to give his comments on the petitioner's representation. The Collector submitted parawise comments, dated 19.8.1988 (Annexure "B") in which it was accepted that the land under acquisition had a large number of trees.

3. The State Government, however, rejected the petitioner's application with a direction that at the time of construction of the Block-cum-Circle Office, the engineers should take care that a minimum number of trees are cut down. The decision of the Government was communicated to the Collector, Munger by letter, dated 10.4.1989 (Annexure 6) with a direction to give the necessary Intimation to the petitioner. The decision of the Government was duly communicated to the petitioner on 22.4.1989.

4. Shortly after the order passed by the State Government rejecting the petitioner's application, the Collector on 19.4.1988 made the declaration u/s 6 of the Act. A copy of the declaration was served upon the petitioner on 23.12.1988 (Annexure 5).

5. In the counter affidavit, it is cryptically stated in para 7 that the declaration was also published in the newspaper "Patliputra Times" on 12.5.1988. A notice u/s 9 of the Act was then issued on 24.4.1989 (Annexure 7) which was received by the petitioner on 1.5.1989. At this stage, the petitioner came to this Court with this writ petition.

6. In these facts and circumstances, Mr. Sunil Kumar, counsel appearing for the petitioner submitted that the acquisition proceedings suffered from three fatal irregularities which were as follows :

(i) The objections filed by the petitioner were rejected u/s 5A(2) of the Act by an order passed by the Collector and not by the State Government. The State

Government only considered (as a revisional authority) the application submitted by the petitioner after her objections were rejected by the order, dated 14.12.1989 passed by the Collector. Mr. Sunil Kumar submitted that the Land Acquisition (Amendment & Validation) Act (Act 13 of 1967) introducing some amendment is Section 5A(2) substituted in the Central Act by the Bihar Amendment of 1960. As a consequence, the position existing before the Bihar Amendment of 1960 would be restored and the power to take a decision on the objections filed u/s 5A(1) would once again vest with the appropriate Government alone. According to him, therefore, the order passed by the Collector In this case rejecting the petitioner's objections was without jurisdiction.

(ii) Mr. Sunil Kumar next submitted that the admitted position was that the notification u/s 4(1) and the declaration made u/s 6(1) were each published in only one newspaper and not in two newspapers as required by law. Mr. Kumar contended that the failure to publish the notification (under section 4) and the declaration (under section 6) in two newspapers would vitiate the entire acquisition proceedings.

(iii) Mr. Sunil Kumar lastly submitted that the Collector's insistence on acquiring the land in question which was an orchard and his refusal even to consider any alternative pieces of land was quite unreasonable and arbitrary and amounted to a colourable exercise of power.

7. The three questions which arise for consideration on the basis of the submissions made on behalf of the petitioner can be formulated thus :

(a) Whether the amendments introduced in Section 5A(2) by the Land Acquisition (Amendment and Validation) Act (Act 13 to 1967) and Land Acquisition (Amendment) Act (Act 68 of 1984) will have the effect of impliedly repealing the amended Section 5A(2) substituted by the Bihar Amendment of the year, 1960 ? In other words, whether in the State of Bihar the Collector still had the legal authority to take the decision on the objections filed u/s 5A(1) of the Act even after the amendments introduced in Section 5A(2) by the amending legislations enacted by the Parliament in 1967 and 1984?

(b) Whether the requirement to make publication in two daily newspapers as provided in sections 4(1) and 6(2) was mandatory and was, therefore, required to be strictly complied with or whether a substantial compliance of the provision, e.g., making publication In only one newspaper would satisfy the requirement of law and would save the proceedings from being rendered invalid.

(c) Whether an orchard was exempt from acquisition proceedings and whether the authorities were bound to consider an alternative piece of land suggested by the land holder in lieu of the land under acquisition ?

8. Re. (a) Power of the Collector to decide objections u/s 5A(2) : The challenge to the Collector's power is based on the plea that as a result of the amendments

introduced in section 5A(2) of the Central Act (by Act 13 of 1967 and later by Act 68 of 1984) a repugnancy had arisen between the provision substituted by the Bihar Amendment Act of 1960 in place of Section 5A(2) and the amended Section 5A(2) of the Central Act. Therefore, the provision substituted by the Bihar Amendment of 1960 must be held to be impliedly repealed in terms of the proviso to Article 254 (2) of the Constitution of India. The plea, though pressed laboriously by Mr. Sunil Kumar must be rejected in view of the Full Bench decision of this Court in T.S. Griha Nirman Samiti Limited vs. State of Bihar, 1992 (1) P.L.J.R. 264. In that case this Court considered the same plea with regard to Section 4(1) of the Act and by a majority decision came to hold that the amendment introduced in Section 4(1) of the Central Act (by Act 68 of 1984) did not have the effect of repealing the provision substituted by the Bihar Amendment of 1960 in place of Section 4(1). Para 56 of the report which is part of the judgment of S.N. Jha, J. (who was one of the members of the Full Bench) may be usefully quoted below :

56. Applying the aforesaid tests and the principles it has now to be seen whether the Bihar Amendment Act (Act XI of 1961) and the Central Amendment (Act 68 of 1984) are repugnant to each other inasmuch as the two enactments are so irreconcilable that they cannot stand together or whether they operate in the same field and there is possibility of both the statutes coming into collision with each other. The extent of the Bihar Amendment and the subsequent Central Amendment has been indicated above. A bare comparative look of the provisions of sub-section (1), as it originally stood prior to the Bihar Amendment, as it stands after the Bihar Amendment and as it stands after the Central Amendment would make it clear that the Bihar Amendment had effected a basic change in the mode of publication of the notification, providing for such publication at the office of the Collector, at the office of the Subdivisional Officer and so on, in place of publication in the "official gazette" as provided in the Central Act. What the Central Amendment has done is only to provide an additional mode of publication in the two daily newspapers of the locality, apart from publication in the official gazette. Now, sub-section (1) as substituted by the Bihar Amendment, will be read as subject to the Central amendment providing for an additional mode of publication, without creating any "repugnancy" i.e. inconsistency or conflict between the two. In other words, the mode of publication of the notification at the office of the Collector and so on will be deemed to be a substitute for publication in the official gazette as understood in the ordinary sense to mean State gazette. Thus, the Central Amendment of 1984 providing for additional mode of publication in the two daily newspapers can stand together with the publication of the notification at the office of the Collector. It would, thus, appear that notwithstanding the Central Amendment of 1984, the Bihar Amendment continues to hold the field and it cannot be said that the two provisions providing the mode of publication of the notification are mutually inconsistent to the extent that they are irreconcilable to each other and they cannot stand together. In my considered opinion, therefore, there is no repugnancy between the Central

Amendment of sub-section (1) of Section 4 and the Bihar Amendment of 1961. It would, accordingly, follow that if the notification u/s 4(1) of the Act has been published by the Collector in the document, which is known as District gazette, it cannot be said to be in conflict with the provisions of the Central Act, notwithstanding the amendment of 1984.

9. What has been said in the above quotation in respect of Section 4(1) can be said with equal, if not greater force, with regard to Section 5A(2) of the Act.

10. It may be noted that u/s 5A(2) of the Central Act it is the appropriate Government which is empowered to take the decision on the objections filed u/s 5A(1) of the Act. The provision in the Central Act does not give the Collector the power to take any decision on the objections. All that the Collector is required to do is to give the objector an opportunity of hearing and after hearing the objections and making such further enquiry as he may think necessary, to make report(s) in respect of the land notified u/s 4 to the appropriate Government, containing his recommendations on the objections together with the record of the proceedings held by him, for the decision to be taken by the Government. In this regard, that is, on the question of the authority empowered to take the decision on the objections filed u/s 5A(1), the provision in the Central Act has remained the same without ever undergoing any change. The later Parliamentary enactments, in 1967 and 1984, introduced some marginal amendments in Section 5A(2) without in any manner touching upon the authority of the appropriate Government to take the final decision on the objection. However, before proceeding to examine the amendments introduced by the Parliament (in 1967 and 1984) in Section 5A(2) it would be appropriate to have a look at the provision substituted in its place by the Bihar Amendment of 1960. The State amendment vested the Collector with the power to hear the objections and to take the decision on those objections. A proviso to the sub-section, however, provided that the State Government, either of its own motion or on application of any person interested in the land, might call for the record of the proceedings held by the Collector and pass such order as it thought fit. The State Amendment thus brought about a basic change by substituting the Collector in place of the appropriate Government as the authority empowered to take decision on the objections with the State Government retaining sort of a revisional power over the order passed by the Collector.

11. Later the Parliament enacted Act 13 of 1967 substituting the following words in sub-section (2) of Section 5A :

Either make report in respect of the land which has been notified u/s 4, sub-section (1) or make different report in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.

12. Then Act 68 of 1984 introduced another minor amendment in Section 5A(2)

of the Central Act, the 1984 amendment simply allowed the objector to be heard by the Collector through any person authorised by him.

13. It is, thus, to be seen that neither of the two Central amendments were concerned even remotely with the authority empowered to take the final decision on the objections.

14. Having given my careful consideration to the State amendment and the two Central amendments made later, I fail to see any repugnancy, direct or indirect between the provision substituted by the Bihar amendment of 1960 and those introduced by the later Central amendments and I see no difficulty why the two provisions may not stand together. By virtue of the Central amendment of 1967 the Collector while taking decision on the objections would be able either to pass one order in respect of the land notified u/s 4 or different orders in respect of different parcels of the notified land. Similarly following the Central amendment of 1984 it would be open to the objector to be heard by the Collector in person or by any (other) person authorised by him. But the authority to take the decision on the objections would continue to vest in the Collector in accordance with the provision of Section 5A(2) as amended and substituted by the Bihar Amendment, 1960. The challenge to the acquisition proceedings on the plea that the order, dated 14.12.1987 passed by the District Land Acquisition Officer was without jurisdiction must, therefore, be rejected.

15. Re: Publication of the notification of declaration in only one newspaper : It may be noted that Section 4(1) of the Act (before its amendment by Act 68 of 1984) provided for the notification to be published in the official gazette and in addition to this the Collector was required to cause public notice of the substance of the notification to be given at convenient places in the locality. Section 4(1) of the Act was amended and substituted by the Bihar Amendment of 1960. The State amendment provided for publication at the office of the Collector, and other specified offices/places as the mode of proclamation in place of publication in the official gazette. The second mode of announcement, by way of public notice as provided in Section 4(1) of the Central Act was similarly replaced by personal service of the notification to all persons known or believed to be interested in the land. Later on, Section 4(1) of the Act was amended by Act 68 of 1984 and following the amendment it stands as follows:

4. Publication of preliminary objection and powers of officers thereupon.?(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose (or for a company) a notification to that effect shall be published in the Official Gazette & in two daily newspapers circulating in that locality of which at least one shall be in the regional language,) and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of notification).

16. It is thus to be seen that the requirement of publication in two newspapers has been inserted right between the other two modes of proclamation which were there from before, namely, publication in the official gazette and causing publication of the substance of the notification to be given in the locality.

17. In view of the Full Bench decision in the case of T.S. Griha Nirman Samiti (supra) it is no longer open to question that the requirement of publication in two daily newspapers introduced in sections 4(1) as the third mode of announcement must also be read into the provision substituted as Section 4(1) by the Bihar Amendment of 1960. A question, however, arises as to the consequence in case the requirement was complied with only partially and not fully as in this case. It is noted above that the notification u/s 4(1) was published in the district gazette and a daily newspaper "Aaj". A copy of the notification was also served on the petitioner personally who was thus able to file her objections before the Collector. It is, thus, obvious that no prejudice was caused to the petitioner due to the failure of the authorities to publish the notification in the newspapers. Notwithstanding this, the counsel for the petitioner contends that the failure to publish the notification in two newspapers must be held to have vitiated the entire proceedings. This would be the position if the provision for making publication in two newspapers is held to be a mandatory requirement of law.

18. At this stage, it needs to be recalled that long before the introduction of publication in newspaper as the third mode of announcement the Supreme Court in Narendrajit Singh vs. State of U.P., AIR 1973 S.C. 552 had held that the obligation to cause public notice of the substance of the notification to be given at convenient places in the locality was mandatory and the failure to do so would vitiate the whole acquisition. It was further held that the public notice could not be avoided even in a case where the applicability of Section 5A was dispensed with in terms of Section 17(4) at the time of the issuance of the notification u/s 4(1) of the Act. It is, thus, evident that the Union legislature while enacting Act 68 of 1984 was fully aware of the legal position regarding the mandatory nature of Section 4(1) demanding compliance with both the modes of proclamation regardless of any prejudice being caused to the person concerned. That was the legal position when the Parliament thought it fit to add a third mode of announcement by requiring the notification to be published in two newspapers and made the amendment in a manner so as to insert the additional mode right between the two modes prescribed from before and each of which was held to be mandatory by the apex Court.

19. I find it difficult to conceive that the Parliament intended to sandwich a means of announcement, merely of a directory nature, between two other means which were already held by the Supreme Court to be mandatory. I am, therefore, of the view that like the two modes prescribed from before the third mode of publication in two newspapers must also be held to be mandatory and must be complied with exactly.

20. It may be recalled that one of the rules of interpretation is that in case

different provisions are connected with the same word "shall", and if with respect to some of them the intention of the legislature is clear that the word "shall" in relation to them is to be given a mandatory meaning, it may indicate that with respect to other provision also the same constructions should be placed (see Supreme Court decisions in Hari Vishnu Kamath vs. Ahmad Ishaque, AIR 1955 S.C. 233 and in Ram Avtar Singh Bhadauria vs. Ram Gopal Singh, AIR 1975 S.C. 2182). In my view, this principle of interpretation can be appropriately applied to bring out the true import of the requirement of publication in two newspapers.

21. Looking at the question from a practical point of view the value of publication in two newspapers cannot be over estimated. In urban centres particularly the publication in two newspapers would clearly constitute the most reliable and important means of announcement. I am, therefore, of the view that on the ground of practical utility too the requirement of publication in two newspapers must also be held to be mandatory like the other two modes of proclamation.

22. I am further supported in my view by the decision of a learned Judge of this Court sitting singly, in Baldeo Prasad and others vs. State of Bihar and others, 1998(1) P.L.J.R. 316. On facts the case of Baldeo Prasad was almost identical with the present case and in that case too the notification u/s 4(1) besides being published in the official gazette and being personally served on the person concerned was published in the newspaper "Aaj". The learned Judge held that the notification riot having been published in two newspapers the proceedings were rendered invalid.

23. For the reasons discussed above, it must be held that the requirement of publication of the notification in two daily newspapers, one of which must be in the regional language, is mandatory and the failure of the authorities to publish the notification u/s 4(1) in two newspapers has rendered the proceedings invalid and liable to be quashed.

24. Re : Acquisition of an orchard : Nothing was brought to our notice which would come in the way of the appropriate Government or the Collector from taking into acquisition a piece of land with trees planted there. As regards the obligation to consider an alternative site suggested by the objector, I would only wish to observe that the appropriate Government or the Collector are indeed free to make their own selection of the piece of land for acquisition and are not bound in any manner by the suggestion concerning an alternative piece of land made by the objector. But in case a sincere and earnest suggestion is given regarding a piece of land which would not only be suitable for the public purpose but also available at much cheaper price it is desirable that the order rejecting objections should atleast show an application of mind to that aspect of the matter.

25. In this case, I do not wish to go any further on this question as this case is fit to be allowed on the other ground of non-publication of the notification in two newspapers. For the reasons stated above, the proceedings in L.A. Case No. 5 of 1987-88 pending before the Land Acquisition Officer, Munger are quashed. In the

result, this writ petition is allowed but with no order as to costs.

D.S. Dhaliwal, J.

I agree.