
(1993) 12 GAU CK 0010
In the Gauhati High Court
Case No : Civil Rule No. 3049 of 1991

Pushpa Deka

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 21-12-1993

Acts Referred:

Constitution of India, 1950 — Article 166(1), 166(1)
Land Acquisition Act, 1894 — Section 4, 4, 6, 6

Citation : (1993) GLR 413 Supp

Hon'ble Judges : D.N.Baruah, J

Bench : Single Bench

Advocate : P.B.Majumdar, A.P.Mahanti, A.S.Choudhury, B.K.Das, S.Deka, M.Dev, S.N.Bhuyan, Advocates appearing for Parties

Judgement

1. The petitioner on behalf of 346 families has filed this writ petition seeking to quash Land Acquisition Case No. 14/91 and also Annexures14 and 19 notifications. By Annexure14 notification dated 13.3.91 issued, under Section 4 of the Land Acquisition Act, 1894 the Government notified that an area of land measuring more or less 1622 bighas was required for public purpose for construction of Indian Institute of Technology. This land comprises different blocks of area measuring 219 Bighas 4 Kathas, 1 Lechain Village Tilingaon, 1042 Bighas 1 Katha 6? Lechas in village Silagranta Town and 359 Bighas 4 K am as 4 Lechas in village Silagrantaon. These pieces of land are situated in Mouza Silasundarighopa, Subdivision Guwahati in the district of Kamrup. By the said notification the Government invited objections, if any, under Section 5 A from the person interested within the meaning of the said section. By Annexure19 declaration issued under Section 6 of the Land Acquisition Act it was declared that the land mentioned therein was required to be taken by the Government at the public expense for a public purpose, namely, for construction of Indian Institute of Technology at North Guwahati in the district of Kamrup.

2. The case of the petitioner is that out of 346 families, 53 families had periodic

patta, 18 families had Government MNP land and rest of the families were tenants. The tenants are landless cultivators and the said plots of land have been under their possession since long. In the land they constructed their houses and they have also been cultivating on some portions of land in their respective shares. They have been living with the members of their families out of the income derived from the said land. The petitioner further stated that the tenants residing on the land filed applications under Section 23 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 for acquisition of ownership right as envisaged under the said section. These applications had been pending at the time of filing of this writ petition. The petitioner further stated that earlier also attempts were made to take away the land measuring 1012 Bighas 18 Lechas for Assam Industrial Corporation as per Land Acquisition Case No. 12/86. The tenants having come to know about this submitted applications before the 2nd respondent. The Land Acquisition Officer, Guwahati fixed various dates for hearing of objections. However, no hearing took place. The Subdivisional Officer, Kamalpur Circle visited the land, but the Respondent 1 to 4 could not take possession of the land in question. According to the petitioner, during the British Regime the land was originally a Government Khas land and thereafter it was sculled with one Babulal Bharlia for special cultivation. However, no such cultivation was done. Said Babulal Bharlia tried many times to sell the land but could not do so due to occupation of the tenants. Thereafter, land was recorded in the name of 27 persons. These 27 persons had then given Power of Attorney to one Murali Singh for management of the land. Said Murali Singh also had been trying to dispossess the tenants and sell or to get the land acquired by the Government.

In 1955 these 27 persons tried to sell the land for construction of a Jute Mill. However, this attempt was also foiled by the predecessors in interest of the tenants. In 1961 another attempt was made and this attempt was also frustrated by the tenants. On both the occasions, the Deputy Commissioner initiated Land Acquisition cases and issued notices.

The petitioner further stated that the present Land Acquisition case was also initiated of the instance of the landholders through their Attorney to get compensation from the Government. A few tenants had been paying rent to landlords through their Attorney for 20/25 years and the said Attorney gave valid receipts to them. According to the petitioner those families acquired valuable rights under the facts and circumstances stated above.

After publication of Annexure14 notification the petitioner on behalf of the aforesaid families submitted various representations/objections to the Collector, Kamrup, but to no effect. The Collector did not give any opportunity of hearing to the tenants as required under Section 5A (2) of the Act. Thereafter, the State Government published the Annexure19 declaration under Section 6 of the Land Acquisition Act. The objections under Section 5A of the Act having not been disposed of, the Collector failed to comply with the mandatory provisions of law.

According to the petitioner, the Collector had no jurisdiction to take decision on the objection filed under Section 5A of the Act. The Collector can only submit report to the State Government containing his recommendation or objection together with record of the proceeding. The decision is required to be taken by the State Government after considering the objections and report of the Collector. However, this was not done. Therefore, the action of the respondents in publishing Annexure19 declaration is violative of mandatory provisions of law and is liable to be quashed. Hence, the present petition. 1st and 2nd respondents filed affidavit in opposition and petitioner also filed a reply affidavit.

3. Heard Mr. A. P. Mahanti, learned counsel for the petitioner and Mr. S. N. Bhuyan, learned Advocate General for the State of Assam.

4. The contentions of the learned counsel for the petitioner are as follows :

(1) Annexure14 notification issued under Section 4 of the Act does not indicate that this was issued by the Governor of Assam. Therefore, it violates Article 166 (1) of the Constitution of India. Hence, the notification is invalid and liable to be set aside.

(2) Annexure19 was issued by the Government without considering the objections filed by the objectors in violation of Section 5A of the Land Acquisition Act and, therefore, it is liable to be set aside and quashed.

(3) Annexure19 does not show that the Government of Assam was satisfied that the land was required to be taken for public purpose, therefore, the conditions precedent for exercising the power under Section 6 of the Land Acquisition Act was not complied with. Besides, all the materials required to be placed before the authority of the State had not been placed. At least Annexure19 declaration does not reflect so.

(4) Full particulars regarding the scheme for construction of I have not been set out in the declaration.

(5) At the time of issuing Annexures14 and 19 the Assembly was in animated suspension and the State of Assam was under the President's Rule. No person authorised by the President took the decision for issuance of the aforesaid notifications (Annexure 14 and 19) as required under the law.

5. Mr. S. N. Bhuyan, learned Advocate General for the Respondent submitted as follows:

That the petition was not maintainable in view of the fact that the petitioner had no locus standi to file this petition in view of the fact that he was not at all interested over the property. He further submitted that both the notifications under Sections 4 and 6 were issued in accordance with law. It cannot be said as vague inasmuch as all particulars were supplied. The notifications had been issued in strict compliance of Article 166. Mr. Bhuyan further submitted that original owner of (he grant was one Domrain. He defaulted to pay land revenue.

As a result, the entire grant was sold. One Tolaram Agarwal purchased the same in 1863. From Tolaram it was further transferred to (1) Chimanlal Bhartia, (2) Babulal Bhartia, (3) Anil Bhagat and (4) Munilal. There were 179 tenants in the said land and khatians were issued. They had been adequately compensated and they received compensation without any objection. The total land acquired was 1070 Bighas 4 Kalhas. The notifications impugned in this case were issued after proper scrutiny. Before publication of the notifications the competent authority had duly applied its mind in considering all the relevant matters. Mr. Bhuyan further submitted that all opportunities had been given for hearing of the objections under Section 5 A of the Act. The Collector gave his report only after considering the objections raised by the objectors. Learned Government Advocate, Assam had placed relevant records of the case.

6. On the rival contentions of the parties the following points require determination :

- (1) Whether the petitioner has locus standi to move this petition.
- (2) Whether the notifications under Sections 4 and 6 (Annexures 14 and 19) were issued in accordance with the provisions of law and in strict compliance with the legislative direction and whether the person interested were given due opportunity to make representation as envisaged under Section 5A of the Land Acquisition Act.
- (3) Whether the impugned notifications were issued by the Competent Authority in strict compliance of the provisions of Article 166 of the Constitution.
- (4) Whether proper authority had passed order for acquisition of land by issuing Annexures 14 and 19 notifications.

7. POINT No. 1 : Learned Advocate General submitted that the petition itself is not maintainable inasmuch as the petitioner had no locus standi to file the petition. The petitioner has filed this petition in the capacity of the Secretary, Shilagranti Rayot Parishad, Mouza Shilashindurighopa, etc. He claims to represent 346 families under the Parishad with a total population of 3000 family members. The petitioner is stated to be recognised as the Secretary of the said Parishad by the 4th respondent who is stated to be an Attorney for and on behalf of 27 pattadars of the patta although names of the pattadars have not been furnished. Nothing has been shown as regards the right of the 4th respondent in respect of the land.

Petitioner has not claimed any right under the pattadars. His claim is that he represented 346 families who are tenants. It has not been stated why the tenants could not come before this Court to establish their right. Nothing has been shown in that regard. Mr. Mahanti, learned counsel for the petitioner tried to show that it is a public interest litigation. The law regarding public interest litigation is well settled in *S. P. Gupta vs. Union of India* and another, reported in 1977 (Supp) SCC 87. In *S. P. Gupta* the Supreme Court held thus

"It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons."

Similarly, in *M. C. Mehta and another vs. Union of India and others*, reported in (1987) 1 SCC 395 also the Supreme Court held that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a Court of law for justice, it would be open to any publicspirited individual or social action group to bring an action for vindication of the fundamental or other legal right.

From the decisions of the Apex Court referred to above, it appears that any person can take up the cause of an individual or a group of individuals who because of poverty or disability or socially or economically disadvantaged position cannot approach a Court of law for justice. The petition does not disclose any such case. In this view of the matter I am inclined to accept the submission of the learned Advocate General and hold that the petitioner has no locus standi to file this petition. On this ground alone the petition is liable to be dismissed. However, assuming for argument's sake that this is a public interest litigation and the petitioner has locus standi to approach this Court, let me see whether the petitioner has any case on merit.

8. POINT No. 2 :

When it appears to the appropriate Government that a land in a locality is needed or likely to be needed for a public purpose, the appropriate Government shall notify it under Section 4 of the Land Acquisition Act. The object of notification under Section 4 is to give public notice that it is proposed to acquire the land mentioned in the said notification and any one who deals in that land subsequent to the notification would do so at his own risk. This preliminary notification under this Section 4 is only a proposal to acquire the land. A notification under this Section aims at twofold object. First, it is a pronouncement by the appropriate Government and a public notice by the Collector in respect of the land being needed or likely to be needed. Secondly, by this notification the departmental officers are authorised to survey and to do other acts by entering into the land. However, the proceedings under this section can be started only by the appropriate Government and not by the officers of the Government. The

satisfaction that the land is needed or likely to be needed for a public purpose or a company is primarily of the Government. Section 4, subsection (1) provides three cases, namely, the land which are needed and the land which are likely to be needed for acquisition and the land needed for a company. It is necessary to make survey in the first two cases. However, in the third case such survey is not necessary. The purpose of subsection (1) of Section 4 is to give public notice of the proposal and if therefore it is published in the locality and particularly the persons affected by the proposal are aware of such activities, the requirement of Section 4 (1) is fulfilled. Therefore, it will not be correct to say that any defect in the notification under Section 4 is fatal and shall vitiate the entire proceedings. (Sec AIR 1960 SC 1203).

It is true that a notice under Section 4 is mandatory and in the absence of such notice the entire proceeding is likely to be vitiated. Even in extreme urgent case the notification under the said section is a sine qua non. It is a condition precedent to exercise any further power under the Act.

After issuance of a notification under Section 4 the person interested in the land is to be given an opportunity of filing objection against the proposed acquisition as notified under Section 4. Such objections can be filed under Section 5A by any person interested in the land and after hearing the objections by the Collector, the Collector shall make a report to the appropriate Government along with his recommendation on the objections filed by the interested persons for decision by the appropriate Government. Even after considering the objections raise by the persons interested under Section 5A, if the Government is satisfied that any particular land is needed for public purpose or company, a declaration shall be made under the signature of the Secretary of such Government or such officers duly authorised to certify its order. Section 6 of the Act speaks of a declaration that a land is needed for a public purpose. After such declaration the Collector shall proceed to make acquisition of the land in accordance with the provisions of the said Act. The conditions laid down under Section 6 are essentially to be complied with before the Collector can claim jurisdiction to acquire the land. The jurisdiction to enforce the Act can arise only after the conditions stipulated under Sections 6 and 7 are observed. Once these conditions are observed, any subsequent irregularities cannot vitiate the proceeding.

The contention of the learned counsel for the petitioner is that notification (Annexure14) was not issued in the name of the Governor and, therefore, it violates Article 166 (1) of the Constitution of India. Similarly, Annexurc19 notification issued under Section 6 does not show that the Government of Assam was satisfied that the land was required to be taken by the Government for public purpose. Therefore, conditions precedent in exercising the power under Section 6 of the Act were not complied with. Besides all the materials required to be placed before the appropriate authority in taking a decision regarding acquisition of the land were not placed before it to arrive at a conclusion that the land was actually needed for public purpose. Therefore, both the notifications

were issued contrary to the provisions of law and liable to be set aside.

Learned Advocate General, Assam, on the other hand supported the said two notifications (Annexures14 and 19). According to the learned Advocate General these were issued after compliance with the provisions of law. Besides, according to him, the petitioner did not raise any objection at the material time and without approaching the appropriate authority had filed this case. Therefore, the petitioner cannot raise such objections at this stage.

I have gone through the impugned notifications Annexures14 and 19. I have also perused the record placed before me. Section 4 notification (Annexure14) was issued on 13.3.91 after due consideration of the matter by the Advisor to the Governor and other officers under him in view of the fact that at the relevant time the State was under the President's rule. The declaration under Section 6 of the Act was published after approval of the Executive Council in its meeting held on 5.4.91 in the Raj Bhawan. Therefore, I find that these two notifications (Annexures14 and 19) had been issued in compliance with the provisions of law. I do not find that the said notifications are vague and indefinite as submitted by the learned counsel for the petitioner. The record further shows that before putting up the proposal for acquisition of the land, the land was properly surveyed. It is true that in the notification the survey map was not enclosed. In my opinion, such inclusion is not necessary. I, therefore, hold that Annexures14 and 19 notifications issued under Sections 4 and 6 of the Act are in accordance with law and I do not find any reason to set aside the same.

Regarding hearing of objections, record shows that some persons filed objections and all those objections were considered by the Collector and only after considering the objections, report was sent to the Government as envisaged under Section 5A of the Act. Therefore, the submission of the learned counsel for the petitioner that Annexure19 notification was issued without disposing of the objections as envisaged under Section 5 A of the Act is contrary to the record. Hence, I do not find any force in the submissions of the learned counsel in this regard. Besides, all the persons interested received compensation without objection. I find sufficient force in the submission of learned Advocate General.

9. POINT No. 3 :

Learned counsel for the petitioner submitted that both notifications Annexures14 and 19 were defective for non compliance of the provisions of Article 166 (1) of the Constitution inasmuch as the notifications were not issued in the name of the Governor as required under Article 166 (1) of the Constitution. On the top of Annexure14 notification it is mentioned as "Government of Assam. Orders by the Governor" and the same was issued by the Deputy Secretary to the Government of Assam, Revenue (LR) Department. Annexure19 was also issued by the Deputy Secretary to the Government of Assam. According to the petitioner these notifications have got no force in view of non compliance of the aforesaid provisions.

Under Article 166 (1) all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. The Constitution, however, does not require any particular formula of words for compliance with Article 166 (1). The Court has to see whether there has been substantial compliance of this Article. The Supreme Court in *State of Bombay vs. Purushottam*, reported in (1952) S. C. R. 674 held that substantial compliance of Article 166 is enough. In that case notification was signed by a Secretary by order of the Governor and the Supreme Court held that there was substantial compliance of Article 166 (1). Similarly, in *John vs. State of T. C.* reported in (1955) 1 SCR 1011, the Supreme Court held an order signed by the Chief Secretary on behalf of the Government to be in substantial compliance with Article 166. In my opinion, there was substantial compliance of Article 166 (1) in publishing the notifications and I do not find any reason to interfere with the said notifications Annexures 14 and 19.

10. POINT No 4.:

On perusal of the record I find that proper authority had passed order for acquisition of the land by issuing Annexures 14 and 19 notifications.

12. In view of the above, I do not find any force in the submission of the learned counsel for the petitioner on merit also. Accordingly, the petition is dismissed. However, in the facts and circumstances of the case I make no order as to costs.