

(1993) 08 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 1854 of 1993

Ram Krishna Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-08-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 48

Citation : AIR 1995 Patna 73 : (1994) 42 BLJR 988

Hon'ble Judges : S.B. Sinha, J; R.N. Prasad, J

Bench : Division Bench

Advocate : Siya Ram Shahi, for the Appellant; A.K. Keshari, Govt. Pleader, for the Respondent

Judgement

1. In this application, the petitioners have inter alia prayed for quashing of a notification dated 7-5-1986 issued u/s 4(1) of the Land Acquisition Act (hereinafter referred to as the Act) and the declaration dated 4-5-1987 issued u/s 6 thereof as also the award dated 28-9-1987 issued by the Land Acquisition Officer, Begusarai and further for issuance of a writ of or in the nature of mandamus directing the respondent to withdraw from the acquisition of the land of the petitioner and further commanding the respondents not to interfere with the physical possession of the petitioner.

2. The fact of the matter lies in a very narrow compass.

3. The petitioners were originally the owners of lands in question. By notification dated 7-5-1985 issued u/s 4(1) of the said Act the lands of the petitioners appertaining to Khata Nos. 455, 391 and 625, Khasra Nos. 467, 468 and 617 covering an area of 5.68 acres were sought to be acquired for the rehabilitation of Ganga eroded persons of village Kashimpur. The petitioners filed their objections u/s 5(a) of the Act. However, the said objection was rejected by an order dated 2-5-1987 and on 4-5-1987 a declaration u/s 6 of the Act was issued.

4. A notification u/s 9 of the said Act was issued on 23-5-1987 whereby

objections were invited from the interested persons. An award was made and published on 28-8-1987. However, accordingly to the petitioners they have not been served with the said award, a copy whereof had been annexed as Annexure 3 to the writ application. The petitioners have contended that the purpose of acquisition has been frustrated as the purpose of acquisition was to rehabilitate the Ganga eroded persons of village Kasimpur but they have refused to be rehabilitated on the lands in question. The petitioners, therefore, filed an application before respondent No. 4 that the lands in question may be released from acquisition.

5. An application thereafter was filed by the petitioners before the Minister, Land Reforms and by an order dated 8-10-1987 the Hon"ble Minister directed the Collector not to acquire the lands of the small farmers and to inform the Government about the action taken in that regard. By letter dated 14-4-1988 as contained in Annexure-6 to the writ application respondent No. 6 opined that the purpose for which the lands were to be acquired being no more in existence as the people of Kasimpur were not ready to be rehabilitated on the land to be acquired in Mauza Sonapur, the said lands should be released.

6. On 16-8-1989 the Sub Divisional Magistrate who was the requisitioning Authority recommended to respondent No. 6 for cancel the proposal of acquisition, a copy where of is contained in Annexure 7 to the writ application.

7. A draft notification was prepared on 2-2-1990 for withdrawal of the acquisition proceeding and a request was made to respondent No. 2 to accord his concurrence to the said proposal. Respondent No. 2 by his letter dated 24-2-1990 asked the respondent No. 4 to send all relevant papers relating to land Acquisition proceeding. Thereafter, it appears that several correspondence passed amongst the authorities. As no final decision was taken in the matter by the Respondents, this writ application was filed on 2-2-1993 alleging therein that they are still in possession of the lands in question. They however, filed this writ application on the apprehension that the acquisition authorities are going to distribute the lands of the petitioners amongst the landless persons.

8. A Division Bench of this court by an order dated 5-3-1993 passed the following interim order:--

"Put up this case on 24th March, 1993 before an appropriate Bench.

Till that day the lands in question shall not be distributed, if the same has not been distributed as yet."

The State thereafter took adjournments on 24-3-1993, 30-4-1993 and 2-7-1993. A counter affidavit, however, was filed on behalf of the respondents on 24-6-1993 which was sworn by the Land Acquisition Officer where in it was admitted that the lands in question were in possession of the petitioners till 17-2-1993. It was however, stated as follows: --

"With regard to the statements made in paragraph No. 24 of the writ petition, it

is respectfully submitted that Ganga eroded family of village Kashimpur did not turned up for rehabilitation on the acquired land petitioners are in possession over the land in question till 17-2-1993. After the S.D.O. Begusarai managed to rehabilitate the other displaced families of village Nayagawan who were also the victim of Ganga erosion in recent year and unfortunately they had taken shelter on the Gupta Lakshminia Bandh."

It was further stated as follows:--

"With regard to the statement made in paragraph No. 27 of the writ petition, it is respectfully submitted that the S.D.O. Begusarai had already distributed the land amongst the Ganga eroded families after 17-2-1993, and as such purpose of the acquisition has been fulfilled."

9. However, the petitioners in reply to the said counter affidavit alleged as follows:--

"In reply to the statements made in paragraph Nos. 7, 9 and 10 of the counter affidavit, it is stated that in Annexure 10 the respondent No. 2 has accepted the fact to the effect that the award had not been paid to the petitioners and as such the statements with regard to the notice is wrong and misleading. So far as the distribution of land by the S.D.O. Begusarai in between 17-2-1993 to 22-2-1993 is concerned, the deponent states that the S.D.O. has distributed the land after the stay order passed by this Hon''ble Court on 5-3-1993. The present writ application had been filed on 22-2-1993 and this Hon''ble court has been pleased to grant stay on 5-3-1990.

That the action on the part of the respondent No. 5 is arbitrary, illegal and without jurisdiction As to when the entire matter is pending before the State Government u/s 48 of the L. A. Act then in that case the S.D.O. had no jurisdiction to distribute the land.

The respondent No. 5 has distributed the land without obtaining possession from the Land Acquisition Authority. The petitioners had filed application for information on 19-3-1993 to the effect that whether the acquisition authority has obtained possession or not. From perusal of the information furnished by the respondent No. 6 (deponent) on 27-3-1993 it is clear that no delivery of possession has been given to the acquisition authority. That the respondent No. 5 has distributed the land after 5-3-1993 and just to escape from the contempt of courts proceeding, the deponent has falsely stated that the S.D.O. Respondent No. 5 has distributed the land in between 17-2-1993 to 22-2-1993.

10. On 6-7-1993, learned G.P. 6, took adjournment for filing a rejoinder to the said reply to the counter affidavit, which was filed on 27-7-1993. In the said rejoinder, it has been stated as follows: --

"That however, in the meanwhile evacuee villages (sic) namely Balahpur and Nayagaon has taken shelter on the Gupta Lakshminia embankment which was passing eminent danger to safety of the embankment and there for in the public

interest the then S.D.O., Begusarai thought it essential to rehabilitate those evacuees to some other place so that the safety of the Gupta Lakhminia embankment be made secured and for this purpose the then S.D.O. Begusarai rehabilitated those evacuees on the land in question in between 17-2-1989 to 22-2-1993 after displacing them from the embankment in question and accordingly family members of 165 families which were living on the said embankment were displaced from the said embankment and land in question was distributed amongst them in between 17-2-1993 to 22-2-1993 and the said allottee were put into possession of the land in question in the aforesaid period."

In the said rejoinder, however, it was also stated as follows:--

That it is fact that the possession of the land in question had yet not been handed to the S.D.O. Begusarai but in view of the urgency and in public interest to secure the safety of Gupta Lakhminia Embankment the evacuees of flood affected people were a displaced from the said embankment and possession were given to them in between 17-2-1993 to 22-2-1993 and therefore there was no mala fide intention behind the aforesaid action."

11. The Land Acquisition Act is a complete Code in itself. It is now well settled that the property acquired under the said Act may be released only in terms of Section 48 thereof i.e. before possession of the lands under the said Act is taken.

12. Mr. Keshri, when questioned, conceded that Sub Divisional Magistrate is not a statutory authority under the said Act. He, therefore, had absolutely no jurisdiction to distribute the lands in question amongst the landless persons for whose benefits the lands had not been acquired. The Sub Divisional Magistrate, therefore acted most arbitrarily in distributing the lands in question. He even did not have any authority in that regard. However, the question which arises for consideration is as to what relief can be granted in favour of the petitioners.

13. Having given our anxious consideration to the matter, we are passing the following order:--

(i) Because of the high handed acts on the part of the Sub Divisional Magistrate, the petitioners shall be paid exemplary costs which is quantified at Rs. 10,000/-.

(ii) The State may realise the aforementioned amount from the Sub Divisional Magistrate, Begusarai.

(iii) The State may take suitable actions against the Sub Divisional Magistrate, Begusarai.

(iv) The petitioners' application u/s 48 of the Act must be disposed of by the State within one month from the date of receipt of a copy of this order.

(v) In the event, it appears to the state that the lands should not have been acquired, the persons amongst whom purcha have been granted or who have been given shelter thereon by the Sub Divisional Magistrate may be rehabilitated at some other place at the cost of the State.

(vi) However, in the event, the Govt. does not pass any order in terms of Section 48 of the Act, possession would be deemed to have been delivered under the said Act and a copy of the award would be served upon the petitioners who would be entitled to file an application for reference of the matter to the Land Acquisition Officer in terms of Section 18 of the said Act, if in the event, they are not satisfied with the quantum of compensation paid to them.

(vii) The amount awarded to the petitioner as also other lawful dues of the petitioners must be paid within one week from the date of final decision taken by the State of Bihar.

14. This application is disposed of with the aforementioned observations/directions.