

(1988) 03 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurn. Case No"s. 1041 with 1197 of 1987 (R)

Sachidanand Lal and Another etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-03-1988

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 4, 6

Citation : AIR 1989 Patna 181

Hon'ble Judges : Satyeshwar Roy, J;B.P. Singh, J

Bench : Division Bench

Advocate : P.K. Sinha, for the Appellant; S.B. Gadodia, Standing Counsel, Pradeep Modi, Jr. Counsel to Standing Counsel, S.N. Rajgarhia, B. Poddar and B.K. Jallan, for the Respondent

Final Decision : Dismissed

Judgement

Satyeshwar Roy, J.—The facts involved in these two writ petitions and the law applicable thereto are the same, they were heard together and are being disposed of by this judgment.

2. On 16th July, 1982, a notification u/s 4 of the Land Acquisition Act, 1894 (the Act) was published in Ranchi District Gazette for acquisition of number of plots for setting up an Industrial Area in Lohardaga, copy of notification is Annexure 1 to the writ petition. On 1st. Feb., 1985, a declaration u/s 6 of the Act was published in Ranchi District Gazette, copy of which is Annexure 2 to the writ petition. Award was published on 5-11-1987. According to the petitioners, since award has not been published within two years from 24-9-1984 when Section 11-A of the Act came into force, it was invalid.

3. In the counter-affidavit, inter alia, it has been stated on behalf of respondent 4 that some of the persons had moved this Court challenging the validity of the acquisition, the subject matter of Annexures 1 and 2; that was registered as C.W.J.C. No. 319 of 1985(R). In that writ petition, a Bench of this Court on

24-4-1985 passed an interim order to the effect that pending further orders. The respondents are restrained from making any award with respect to the land in question. On 4-4-1986 on the basis of a petition filed by the petitioner in that case and the Collector, respondent in that case in which it was stated that the land of the petitioners of that case had been de-notified, the case was disposed of. It is the case of the Respondents that in view of the order of stay passed on 24-4-1985 in that writ petition which automatically stood vacated on 4-4-1986, that period, shall have to be excluded for computing the period of two years from 1st. Feb., 1985 and if that is done, it is their further case, the award has been published within the time prescribed u/s 11A of the Act.

4. The question that is necessary to be answered is : what was the effect of the order of stay passed by this Court in C.W.J.C. No. 319 of 1985(R) on the land acquisition proceeding.

5. It was urged on behalf of the petitioners that by order dt.,24-4-1985, the respondents were restrained from making any award with respect to the land which was subject matter of that writ petition and the respondents in this case cannot be heard to say that they are entitled to exclude the period during which that writ petition was pending as the subject matter of this writ petition was not the subject matter of that writ petition. According to the respondents, since the order of stay was with regard to any action or proceeding to be taken in pursuance of the declaration as contained in Annexure-2, the period during which the stay order was operative shall have to be excluded. Reliance was placed in the case of Balak Ram Gupta Vs. Union of India (UOI), .

For various development projects vast areas of land throughout the country was required to be acquired. It is common experience that in the past in large number of cases, after notification u/s 4 of the Act was made for acquisition of land for public purpose, no further steps in that regard were taken for a number of years for publishing the award Which resulted in serious pecuniary loss to the owners of the lands sought to be acquired as they were entitled to the value of the lands at the date of the publication of the j notification u/s 4 of the Act. This fact was also judicially noticed. To remove this, the Parliament amended the Act by inserting new sections and also amending the existing sections inter alia, by prescribing time limit for publication of declaration u/s 6 and for publishing the award. This was done by the Land Acquisition (Amendment) Act, 1984 which came into force on 24th. Sept., 1984. Section 11A was introduced by the Amendment Act which reads as follows : --"The Collector shall make an award u/ s 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of land shall lapse :

Provided that in a case the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation :-- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded".

6. Admittedly, in an earlier writ petition, order of stay was passed by this Court in publishing the award with regard to the land in question in that writ petition. According to the petitioners, since the order of stay specifically referred to the land involved in that writ petition, the respondents cannot be heard to say that because of the order of stay, they did not publish the award and were entitled to claim exclusion of the period when the order of stay was operative. Should the explanation be interpreted in a narrow sense and confine it to the land involved in the earlier writ petition or should it be interpreted in a broad sense and held that the order affected the whole land acquisition proceeding in question ?

7. As a broad proposition of law, it cannot be disputed that order of stay order of injunction operates between the parties to the lis and with regard to the subject matter; but such order may have indirect effect to the action or proceeding with regard to property which may not be directly involved in that lis in which the order of injunction or stay has been passed. Further, in interpreting the explanation, we must keep in view the object for which it was introduced and should interpret it to give effect to that object.

8. From the report of Balak Ram Gupta Vs. Union of India (UOI), it appears that a number of writ petitions were filed in Delhi High Court challenging the validity of the declaration made u/s 6 of the Act on the ground that it was made beyond the period prescribed in that section. Respondents in that case pleaded that as order of stay had been passed in writ petitions challenging the validity of the notification u/s 4, the period when the orders of stay were operative shall have to be excluded. This was countered by the other side by stating that the order of stay operated only with regard to land involved in those writ petitions and had no effect on the whole proceeding.

9. The Delhi High Court noticed a large number of decisions of different High Courts and the Supreme Court and held that even if the order of stay or order of injunction was with regard to a portion of the subject matter of the acquisition, the prohibition or stay had the effect on the whole proceeding to be taken in pursuance of notification made u/s 4 of the Act. Explanation-1 to Sub-section (1) of Section 6 of the Act was applicable to the facts to those cases. The Court held that the words used in the explanation are of widest amplitude and there is no justification whatever to confine its terms and operation only to the cases in which the stay order is actually obtained. I do not think it necessary to exercise over it again as the language of Explanation 1 to Section 6(1) and that to Section 11A is same. With respect, I accept the reasoning given by the Delhi High Court and hold that the language used in Explanation to Section 11A is of widest amplitude. The order of stay passed in the earlier writ petition by this Court in C.W.J.C. No. 319 of 1985(R) had the effect of staying the whole of the proceeding after the declaration was made under Section 6 of the Act.

10. In this particular case, as noticed above, a large track of land consisting of a large number of plots was sought to be acquired for setting up the Industrial Area. For giving effect to that, it was necessary for the respondents to take into consideration the total area available for the purpose of laying down roads, constructing sheds where the entrepreneurs may put up their factories, providing sewerage, drinking water and such other amenities and facilities which are essentially to be provided in such area. The respondents were also required to take into consideration the fact that entrepreneurs may have to be given other facilities keeping in view the provisions of the Indian Factories Act, 1948, for instance canteen, creche etc. It must also be kept in mind, that the Industrial Area is to be set up on a composite block of I land. The plan for setting up the Industrial Area can be executed only if the whole of the area sought to be acquired is available at a time. We are informed that the area involved in, the earlier writ petition was 14.70 acres | and the total area sought to be acquired under Annexures 1 and 2 is 51.17 acres, more or less.

It will thus be noticed that substantial area out of the total area sought to be acquired was the subject matter of the earlier writ petition. That being the position, the respondents could not have been expected to proceed with the acquisition of the balance area when nobody knew whether the area which was the subject matter of the writ petition would be ultimately available to be used as a part of the Industrial Area. This also is a ground for which the Explanation must be given a broader interpretation and it must be held that the order of stay passed in earlier writ petition had the effect of staying the land acquisition proceeding itself.

11. For all the reasons aforesaid, I am of the opinion that the period from 24-4-1985 to 4-4-1986 shall have to be excluded for computing the period of two years from the date the declaration u/s 6 was made. That being the position, the award published on 5th Nov., 1987 was within the period prescribed u/s 11 of the Act.

12. In the result, both the writ petitions are dismissed, but I shall make no order as to costs.

B.P. Singh, J.

13. I agree.