
(2014) 05 PAT CK 0082

In the Patna High Court

Case No : CWJC Nos. 15594 of 2012, 4976 and 7431 of 2014

Sanghmitra Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 4, 4(1), 5-A, 6

Citation : (2015) 2 PLJR 128

Hon'ble Judges : N.P. Singh, J.

Bench : Single Bench

Advocate : Rakesh Kumar Singh, for the Appellant

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.?All these three writ petitions have been taken up together as question of law involved therein is common. In C.W.J.C. No. 15594 of 2012 (Sanghmitra Singh v. State of Bihar & Ors.), pleadings are complete. So far as other two writ petitions i.e. C.W.J.C. No. 4976 and C.W.J.C. No. 7431, both of 2014 are concerned, they are fresh writ petitions, but both learned counsel for the petitioners and learned counsel for the State that both these writ petitions challenge the land acquisition proceedings and the notification issued thereunder, which question has already been dealt with and notifications have been set aside by a Division Bench of this Court in L.P.A. No. 1082 of 2011*, decided on 29.1.2014. With consent of the parties, all the three writ petitions have been taken up together and heard at length for their disposal at this stage itself.

2. Shri Rakesh Kumar Singh, learned counsel for the petitioners submits that all the three writ petitions relate to steps taken by the Government to acquire land for Maulana Mazharul Haque Arabic and Persian University. First in 2010, a notification under Section 4 of the Land Acquisition Act (for short "the Act") was issued in respect of 20.99 acres of land. Section 4 notification was issued on 21.7.2010. In the said notification itself, it was stated that the provision of Section 5-A of the Act is being dispensed with in view of urgency as per Section

17(4) of the Act. This was followed by a declaration in terms of Section 6 of the Act issued on 22.7.2010. These notifications are under challenge in C.W.J.C. No. 4976 and C.W.J.C. No. 7431, both of 2014. The total area of land sought to be acquired as per these notifications was 20.99 acres as noted above and the ground of challenge is that there being no such urgency, the only safeguard available to the citizen in terms of Section 5-A of the Act ought to have not been dispensed with. In other words, what was submitted was that there was no urgency at all justifying invocation of provisions of Section 17(4) of the Act. I need not delve upon this issue; inasmuch as this Court has already considered the same very notifications in *Yogendra Prasad Vs. The State of Bihar and Others*, which has been allowed on 29.1.2014 and the declaration under Section 6 of the Act, holding that it was not a case for invoking of emergency procedure, was set aside.

3. However, learned counsel for the petitioners submits that once declaration under section 6 the Act is set aside, even if liberty is given to the State to proceed from the stage of Section 5-A of the Act, State cannot do so. This is because Section 6 of the Act itself provides that no declaration under Section 6 of the Act can be issued after one year of notification of intention to acquire as notified under Section 4(1) of the Act. The notification of intention to acquire under Section 4(1) of the Act was issued on 21.7.2010. Now even if objections are invited, a declaration issued in terms of Section 6 of the Act would be grossly barred in time. The legislature have prohibited issuance of any such declaratory notification. Thus, the whole proceedings would lapse.

4. Having considered the matter, in my view, the said submission is legally correct. Let it be noted that there was no stay granted by this Court at any point of time. Once this Court held that emergency proceedings could not be invoked then as a natural consequence the declaration under Section 6 of the Act without complying with Section 5-A of the Act cannot be sustained. Thus, Section 6 declaratory notification in respect thereof has to be set aside. The consequence would be that after complying with Section 5-A of the Act and hearing objection, fresh notification has to be issued. This declaratory notification would obviously be in terms of Section 6 of the Act, which prohibits issuance of Section 6 notification after one year of Section 4(1) notification. If that be so, the natural consequence, in the facts of the present case, of setting aside Section 6 declaratory notification, would be that the entire acquisition proceedings would lapse. This, however, does not take away the right of the State from initiating fresh proceedings in accordance with law.

5. The third case i.e. C.W.J.C. No. 15594 of 2012 also challenges the acquisition proceeding for the same purpose, but in this case Section 4(1) notification with the aid of Section 17(4) of the Act was issued on 20.6.2012 and it was followed by Section 6 notification on 22.6.2012 and is in relation to 3.61 acres of land for the same very University. For the reasons as noticed above, there being no case of urgency and the substantive acquisition proceedings already having been held

to have lapsed, for the same very reason even those notifications dispensing with objections cannot be sustained and, accordingly, declaration under Section 6 of the Act should be set aside. Consequence as noted above would be that the proceedings for acquisition as a whole would lapse.

6. Learned counsel for the State, however, submits that as Section 6 declaration was issued within the prescribed time originally and if fresh notifications are issued under Section 6 of the Act, now they will not be covered by the provisions or inhibitions as contained in Section 6 of the Act.

7. In my view, the said submission of learned counsel for the State is misconceived. In this connection, I may refer to the provisos to Section 6(1) of the Act, which are quoted hereunder:

"Provided that no declaration in respect of any particular land covered by a notification under Section 4, subsection (1)--

(i) published after the commencement of the Land Acquisition (Amendment & Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification, or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of notification).

.....

Explanation-1.--In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded."

8. The said proviso does not talk of first notification under Section 6 or second notification under Section 6. It prohibits publication of declaratory notification under Section 6 after one year of notification under Section 4. There are no exceptions carved out nor this Court can read any exception in the said section. The only exception, that is to be found, is by virtue of Explanation-I, wherein it has been provided that if proceeding in furtherance to notification under Section 4(1) has been stayed by a court of competent jurisdiction, the period of stay granted would be excluded. Thus, when a procedure has been laid down by the legislature, then such procedure has to be followed and it is not upon this Court to invent a new procedure in an effort to validate otherwise any invalid proceeding. I can only quote from the judgment of the Apex Court in case of *Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others*, which also dealt with land acquisition proceedings, wherein this is what their Lordships had held in paragraph No. 6 as follows:--

".....We see no reason why the Division Bench should have departed from the

procedure prescribed by the statute. The observation of the procedure laid down by statute before depriving a person of his property is necessary to generate the feeling that rule of law prevails in this country. When a procedure is prescribed by the legislature, it is not for the court to substitute a different one according to its notion of justice. When the legislature has spoken, the judges cannot afford to be wiser."

9. Thus, in my view, Section 6 of the Act in clear terms prohibits the State from issuing declaration after one year of notification under Section 4. Then the natural consequence of setting aside the Section 6 declaration would be, in the facts of the present case, that no declaration can now be issued in terms of Section 6 of the Act as the earlier notification under Section 4 of the Act was issued more than two years from this day.

10. This Court cannot read any exception in the section because legislature has also provided the exception in terms of Explanation-I to Section 6(1) of the Act.

11. It was next contended by learned counsel for the State referring to a decision of the Apex Court in case of Dev Sharan and Others Vs. State of U.P. and Others, , that the Apex Court gave liberty to the State to proceed with the matter after hearing objections.

12. In my view, that is not correct. If we read paragraphs 40 and 41 i.e. concluding part of the judgment, the Apex Court is clear. What it says is that as Section 5-A was not complied with and wrongly excluded, both Section 4 and Section 6 notifications have to be set aside. Liberty was, however, granted to reinstitute acquisition proceedings afresh, which only means that there would have to be a fresh notification with intention to acquire under Section 4 and following the procedure thereafter there would be a fresh declaration in terms of Section 6. In any way, this judgment goes against the proposition, for which it is being cited.

13. Thus, in my view, all the three writ petitions have to be allowed and the acquisition proceedings have to be held invalid as a consequence of notifications under Sections 4 and 6 of the Act having been set aside. For the reasons aforementioned, these three writ petitions are allowed.