

(1956) 04 PAT CK 0014

In the Patna High Court

Case No : Misc. Judicial Case No's. 611 of 1955 and 214 of 1956

Sashibhusan Prasad Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-04-1956

Acts Referred:

Bihar Public Irrigation and Drainage Works Act, 1947 — Section 10, 11, 15, 5A, 9
Constitution of India, 1950 — Article 13, 19(1), 31(2)
Government of India Act, 1935 — Section 299, 299(2)

Citation : AIR 1956 Patna 493 : (1957) 5 BLJR 348

Hon'ble Judges : Ramaswami, J; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : B.C. Ghosh and A.C. Mitra, in No. 611 and H.K. Banerji, in No. 214, for the Appellant; A.G. and Basudeva Pd. and Angad Ojha, (in No. 611), General and Basudeva Pd. Advocate (in No. 214), for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—In M. J. C. No. 611 of 1955 the petitioner Sashibhusan Prasad Singh has obtained a rule from the High Court calling upon the respondent, namely, the State of Bihar, to show cause why a writ in the nature of certiorari should not be issued for quashing a notification of the State Government dated 30-7-1955, initiating proceedings u/s 3 (1) of Bihar Act 10 of 1947 with regard to a drainage work, known as Songhatta Drainage Scheme. Cause has -been shown by the Advocate-General on behalf of the respondent, against whom notice was directed to be given.

2. In Mouza Bagh Majhua there is a sheet of water known as Suhia Jhil spreading over an area of about twenty acres of land. The channel which drained the water had become silted with the result that the area became water-logged and bhadaï and rabi crops could not be cultivated. In order to improve the state of affairs the State Government proceeded to take action u/s 3 of Bihar Act 10 of 1947.

On 30-7-1955, the State Government issued a notification u/s 3 (1) of the Act

giving a description of the proposed scheme known as Songhatta Drainage Scheme. The complaint of the petitioner is that no notice of the scheme was given to the persons affected as required, by Section 3 (1) (a) and (b) of the Act and no time was granted to the persons affected for filing objections. The case of the petitioner is that there has been a violation of the peremptory conditions laid down in Section 3 (1) of the Act, and therefore, the notification of the State Government dated 30-7-1955, is illegal and ultra vires and the subsequent proceedings taken in pursuance of the notification are also illegal.

In a counter-affidavit the State of Bihar has submitted that the scheme was taken up for desilting the old drainage channel, the area of which was about 60 acres, and that the area to be benefited by the proposed scheme was about 500 acres. It was also stated on behalf of the respondent that the Scheme was taken up u/s 5-A of Act 10 of 1947, and so no special notice was given to the villagers affected.

3. There is a counter-affidavit filed also on behalf of Mahendra Singh and two other persons who are newly added respondents. They claim to be residents of village Bagh Majhawan and Sonaghatta. They alleged in the counter-affidavit that an identical scheme was the subject matter of dispute between the parties in Embankment Case No. 1 of 1950-51, decided by the Collector of Shahabad.

The people of Manikpur objected to the Scheme but the objection was overruled by the Collector, who decided that the channel should be re-excavated with the least possible delay. The order of the Collector is to the following effect.

"In view of all the above and as a result of my local inspection I am of the considered opinion that it is essential in the interests of the cultivators to avoid financial loss and damage to this property in the shape of their lands and also in the interests of national economy to re-excavate this silted up channel and thereby drain the water-logged area. I am satisfied that there is very little merit if any in the objections raised by the O. P. who will at the very most be deprived of additional yield from a negligible area. I, therefore, u/s 25, Bengal Embankment Act of 1882 order that the channel be re-excavated and in view of the emergency the work be taken up with the least possible delay."

4. It is alleged by the newly added respondent that Deoki Singh Braj Bihari Singh, Kripal Singh, Baijnath Singh, Basudeo Singh and others of village Manikpur were served with notices, that they appeared before the Collector and the Commissioner, and had full notice of the drainage scheme and their objections in the previous case before the Collector and Commissioner were rejected as frivolous.

5. On behalf of the petitioner the contention was put forward that Section 5-A of Bihar Act 10 of 1947 was constitutionally invalid since there was unreasonable restriction imposed on the right of property guaranteed under Article 19(1)(f) of the Constitution. Section 5-A of Bihar Act 10 of 1947 states :

""Notwithstanding anything contained in Sections 3, 4 and 5, the State Government, may, in cases of urgency, at any time after the publication of the proposed work under Sub-section (1) of Section 3, direct that the proposed work shall be executed with such modifications, if any, as the State Government may specify and it shall thereupon cause a detailed plan and estimate of costs of such work to be prepared."

Section 5-A was amended by Section 3 of Bihar Act 11 of 1955 which is to the following effect:

"In Section 5-A of the said Act, after the words, brackets, and figures "Sub-section (1) of Section 3," the words "with or without notice" shall be inserted and shall be deemed always to have been inserted."

The argument presented on behalf of the petitioners is that there is no provision in Section 5-A for giving notice to the persons adversely affected. There is also no provision made for filing objections, or for hearing and determining such objections by the prescribed authority. It was, therefore, submitted that the provision of Section 5-A was an unreasonable restriction from the procedural aspect. I am unable to accept this argument as correct.

In the first place, the provision of Section 5-A will be applied only in cases of urgency and not in all cases. I do not think that it is unreasonable in case of emergency, where there is danger to life and property, that the State Government should proceed to direct execution of the irrigation and private work without giving the notice prescribed by S, 3 (1) (a) and without hearing objections preferred by the parties affected. I do not, therefore, consider that Section 5-A violates any constitutional principle.

In the second place, Section 5-A expressly states that the State Government may proceed directly with the execution of the work only after the publication of the description of the proposed work under Sub-section (1) of Section 3. It is evident, that the publication of the proposed scheme of work by the State Government in the prescribed manner is itself tantamount to a notice to the parties affected. It is true that there is no provision for the parties affected to file objections and there is no provision for hearing such objections.

But, as I have already said, the provisions of Section 5-A are to be applied only in cases of emergency and it is not unreasonable for the Legislature to provide that the State Government may dispense with the service of the notice or hearing objections in cases of emergency. Lastly, it is important to notice that there is provision made in the State for giving compensation to the persons affected by the execution of the scheme.

Section 15 provides that the persons affected have a right to prefer a claim to the Revenue Officer for compensation. Section 16 of the Act indicates what is the procedure to be adopted by the Revenue Officer in determining the compensation and what are the matters he should take into account in determining such

compensation. Section 17 states that the Collector shall determine the compensation after considering the recommendation made by the Revenue Officer u/s 16.

Section 17 (3) provides that a person who does not accept the award of the Collector under Sub-section (1) may proceed, u/s 18 of the Land Acquisition Act, and "thereupon the provisions of Sections 19 to 34 of the said Act, shall so far as may be, apply." I am, therefore, unable to accept the argument addressed on behalf of the petitioner that Section 5-A of the Act violates the guarantee under Article 19(1)(f) of the Constitution, or that the restriction imposed u/s 5-A on the right of property is unreasonable.

6. The second objection put forward by Mr. B. C. Ghosh on behalf of the petitioner is that Section 9 of Bihar Act 10 of 1947, is invalid. It was submitted that Section 9 was an integral part of the Act and was not severable from the other provisions of the Act, and, therefore the entire Act must be held to be constitutionally invalid. Section 9 is in the following terms :

"Any land or interest in land, which in the opinion of the State Government, it is necessary to acquire for any sanctioned work, shall be deemed to be needed for a public purpose, within the meaning of the Land Acquisition Act, 1894."

It is also necessary to quote Section 10 which state :

""(1) Notwithstanding anything to the contrary contained in this Act or in the Land Acquisition Act, 1894, or in any other law or anything having the force of law, at any time after the application of a notification under Sub-section (1) of Section 4, Land Acquisition Act, 1894, relating to any land needed for any, sanctioned work, the Collector may with the previous approval of the State Government, take possession of such land, and such land shall thereupon vest absolutely in the Government free from all incumbrances :

Provided that, before or at the time of taking possession of any land under this section, the Collector shall offer to the persons interested compensation for the standing crops and trees (if any) of such land and for any damage sustained by them which is caused by such sudden dispossession and not excepted in Section 24, Land Acquisition Act, 1894, and if such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed in awarding compensation for the land under the provisions of the said Act.

(2) When the Collector takes action under Sub-section (1), the requirements of Section 5A, Land Acquisition Act, 1894, shall be dispensed with.""

7. It was contended on behalf of the petitioner that Section 9 made the subjective opinion of the State Government conclusive as regards the existence of public purpose and, therefore, the provision of section 8 was unconstitutional. The argument-is based upon the ratio of the decision of the Supreme Court in -- The State of West Bengal Vs. Bela Banerjee and Others, . The question at issue in that case was whether Section 8 of the West Bengal Land Development and

Planning Act, 1948, was constitutionally valid.

It was argued that the provisions of Section 8 made the declaration of the Government conclusive as to the public nature of the purpose of the acquisition, and, therefore, Section 8 was legally invalid. The argument was not accepted by the Supreme Court and it was held by a unanimous Bench that Article 31(2) of the Constitution made the existence of a public purpose a necessary condition of acquisition, and therefore, the existence of such a purpose as a fact must be established objectively, and, therefore, the provisions of Section 8, West Bengal Land Development and Planning Act (West Bengal Act 21 of 1948) making the declaration of the Government conclusive on the point were ultra vires the Constitution, and void.

I think there is great force in the argument of Mr. B. C. Ghosh and in view of the decision of the Supreme Court in *The State of West Bengal Vs. Bela Banerjee and Others*, , it is difficult to hold that Section 9 of Bihar Act 10 of 1947, is constitutionally valid. I do not wish, however, to express a concluded opinion on this point, because it is not necessary for the decision of the present case. I shall assume in favour of the petitioner that Section 9 of Bihar Act 10 of 1947, is constitutionally invalid.

Even so, I am of the opinion that Section 9 and the two other sections, namely, Sections 10 and 11, of Chapter 4 of the Act are severable from the rest of the Act. I am unable to accept the argument on behalf of the other provisions of the statute and that the whole Act is constitutionally invalid, I consider that the present case is not a case of acquisition u/s 9 of the Act but the present case falls under the provisions of Section 15 which makes provision for payment of compensation to the persons individually affected by the proposed scheme. Section 15 is in the following terms:

"(1) Whether any land other than the land acquired under the Land Acquisition Act, 1894, or otherwise for the purposes of this Act, or any right of fishery, right of drainage, right to the use of water or other right of property, is injuriously affected by any act done or any work executed under this Act, the person in whom such land or right is vested may prefer a claim by a petition to the Revenue Officer for compensation :

Provided that no person shall be entitled to claim compensation,

(a) for any damage sustained by him which, if caused by a private person, would not render such person liable to a suit; or

(b) for any damage caused by

(i) any stoppage or diminution of percolation or floods;

(ii) any deterioration of climate or soil.;

(iii) any stoppage of navigation or of the means of rafting timber or watering cattle.

(2) No claim for compensation shall be entertained unless it is made within three years after the date when the Act was done or the work executed by reason of which the land or right in respect of which compensation is claimed was injuriously affected."

Mr. B. C. Ghosh on behalf of the petitioner vehemently argued that the case was covered by Section 9. I do not think this argument has any substance. On the contrary I am definitely of the opinion that this case is covered by Section 15 which provides compensation for a tortious act on the part of the Governmental agencies. Section 9, on the contrary, provides for payment of compensation for acquisition of any land or interest in land. That section has obviously no application to the present case.

8. Lastly, the argument was addressed on behalf of the petitioner that Section 15 was ultra vires of Section 299, Government of India Act, 1935, which corresponds to Article 31. Learned Counsel referred to the decision of the Supreme Court in -- The State of West Bengal Vs. Subodh Gopal Bose and Others, , and on the basis of that case argued that the word "acquisition", occurring in Section 299 should be construed to mean not merely actual transference of ownership but deprivation of any kind or degree of proprietary right.

But the argument is untenable in view of a decision of the Supreme Court in -- Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another, , wherein Das C. J. expressly observed that the word "acquisition" in Section 299 had the limited meaning of actual transference of ownership and cannot be given the wide meaning of deprivation of any kind or degree of proprietary right. At page 786 the learned Chief Justice states :

"Learned counsel for the petitioners sought to raise the question as to the invalidity of the impugned Act even before the advent of the Constitution. Prior to the Constitution, when there were no fundamental rights, Section 299, Government of India Act, 1935, which corresponds to Art, 31 had been construed by the Federal Court in -- AIR 1944 62 (Federal Court) , and in other cases referred to in -- Rajah Sri Ravu Sweta, Chelapathi Ramakrishna Ranga Rao Bahadur, Rajah of Bobbili Vs. The State of Madras, , and it was held by the Federal Court that the word "acquisition" occurring in Section 299 had the limited meaning of actual transference of ownership and not the wide meaning of deprivation of any kind that has been given by this Court in The State of West Bengal Vs. Subodh Gopal Bose and Others, , to that word acquisition appearing in Article 31(2) in the light of the other provisions of the Constitution.

It is, therefore, not clear at all that the impugned Act was in conflict with Section 299, Government of India Act, 1935. Besides this objection was not taken or even hinted at in the petitions and cannot be permitted to be raised at this stage."

I, therefore, hold that the counsel for the petitioner. is unable to make good his

submission that there is any violation of Section 299, Government of India Act, 1935.

9. In M. J. C. No. 214 of 1956 the petitioners are different and the Scheme in question is known as Ganeili Irrigation Scheme. But the question of law arising in this case is exactly the same, namely whether the provisions of Sections 3, 4, 5, 5-A, 6 to 8 and 12 to 26 of the Act are ultra vires. The arguments addressed by Mr. B. C. Ghosh in this case are identical, and I hold for the reasons I have already given that these arguments have no substance. .

As I have already said, the provisions of Section 9 of the Act may or may not be ultra vires but even assuming that the provisions of Section 9 are ultra vires this is clearly severable from the rest of the Act. On behalf of the respondent the Advocate-General also pointed out that the work of the Scheme has been almost completed. In para 15 of the counter-affidavit it is stated on behalf of the respondent that

"the channel in plot No. 148 of Mania having already been re-excavated and the Head Regulator having been sufficiently constructed the petition of the petitioner has become infructuous and fit to be dismissed."

10. For all these reasons I hold that both the applications (M. J. C. Nos. 611 of 1955 and 214 of 1956) should be dismissed with costs. There will be one hearing fee of Rs. 100 which will be divided equally between the two sets of respondents.

Raj Kishore Prasad, J.

11. I agree.