
(2011) 03 PAT CK 0066
In the Patna High Court
Case No : LPA No. 391 of 2010

Satya Narayan @ Satya Narayan Prasad and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Citation : (2011) 03 PAT CK 0066

Final Decision : Dismissed

Judgement

Samarendra Pratap Singh, J.—The instant letters patent appeal under Clause 10 of the High Court of Judicature at Patna is preferred against the order dated 10.12.2009, passed by a learned Single Judge in C.W.J.C. No. 18459 of 2008, whereby the writ application filed by the Appellants for quashing Land Acquisition Case No. 15 of 2007-08, initiated under emergent provisions of Section 17(1)(4) of Land Acquisition Act, 1894 (hereinafter referred to as "the Act, 1894"), was dismissed.

2. The facts of the case in short are as follows:

The Appellants are joint owners of plot nos. 293 and 295 of Mauza-Mubarrampur, Thana No. 137, Ward No. 2 (old), Circle No. 6 in the township of Patna. The Government decided to acquire land in Jamal Road including Appellants' land under emergent provisions of 17(1) and 17(4) of the Act, 1894, to smoothen the flow of traffic, and provide approach road to Chiraiyatand overbridge, giving rise to Land Acquisition Case No. 15 of 2007-08. The Government issued preliminary notification on 7.8.2007, which was published in daily newspaper "Hindustan" on 23.8.2007. The declaration that the land is required for public purpose was issued in terms of Section 6 of the Act, was made on 10.8.2007, and was published in the daily newspaper "Hindustan", on 24.8.2007. On 3.12.2007, notice u/s 9(1) of the Act in terms of Section 17(1) of the Act was issued calling upon the Appellants to accept 80% of the compensation amount. Thereafter the Respondents took possession of the land.

3. The Appellants submit that the land has been acquired in utter violation of the provisions of Land Acquisition Act. The entire land acquisition proceeding lapsed, as no award was prepared u/s 11 of the Act, 1894, within the mandatory period provided u/s 11-A thereof. In support of his submissions, learned counsel for the Appellants has relied upon the following decisions:-

- (i) Judgment of the Supreme Court in Nahar Singh Vs. State of U.P. and Others,
- (ii) Single Bench judgment of this Court in Ramchandra Prasad Sharma and Others Vs. The State of Bihar and Others,
- (iii) Single Bench judgment of this Court in Anandi Prasad and Anr Vs. The State of Bihar and Others,
- (iv) Judgment of the Supreme Court in Mohan and Another Vs. State of Maharashtra and Others,

4. As per the Land Acquisition (Bihar Amendment) Act, 1960 (11 of 1961), only arable and waste land could be acquired u/s 17(1) of the Act. He submits that the Appellants' land being in the heart of the township of Patna, indisputably would not come within the mischief of arable or waste land. He thus submits that the land could not have been acquired u/s 17(1) of the Act. He next submits that some of the provisions, i.e. Sections 4 and 6 of the Act at places have been wrongly labeled. He submits that these premises would fetch much higher price than what has been calculated by the Respondents, as it contained business establishments also. The Appellants state that no notice in terms of Section 9 of the Act was ever issued to them to receive 80% of the compensation amount.

5. Mr. Lalit Kishore, learned Additional Advocate General No.1 appearing for the State of Bihar submits that the land has been acquired in public interest, after following the procedure prescribed under the Act. He submits that the land adjoining the Chiraiyatand overbridge was acquired to tide over the traffic bottlenecks to provide approach road communicating overbridge. He submits that the Appellants' land and other lands adjoining the Chiraiyatand overbridge was acquired in compliance of the direction of the Division Bench dated 25.8.2004, passed in C.W.J.C. No. 2401 of 2003. He submits that Section 17(1) of the Act, 1894, was substituted by Act 68 of 1984 by the Parliament of India and it would have overriding effect under Article 254(2) of the Constitution to the extent of repugnancy between Bihar Amendment Act, 1960 and that of the amendment brought by the Parliament in 1984. He submits that wrong labelling of the provision of law would not make the proceeding illegal, if the source of power is there. He finally submits that all the issues raised were also raised in case of Bishnu Deo Narayan and Ramesh Narayan Vs. The State of Bihar and Others, which too was dismissed on 6.11.2009, vide L.P.A. No. 746 of 2008, by a Division Bench of this Court. In fact, Bishnu Deo Narayan happened to be own close relative of the present Appellants and they had their houses in the nearby vicinity of Appellants plots.

6. We have heard the learned counsel for the parties and perused the materials on record. The Chiraiyatand overbridge was expanded to ease the traffic bottlenecks in the town of Patna. It was equally essential to acquire land in adjacent locality including Mohalla-Jamal Road for construction of an approach road to connect flow of traffic to the newly constructed overbridge. In order to tide over the traffic bottleneck, a Division Bench of this Court way back on 25.8.2004, in C.W.J.C. No. 2401 of 2003, gave the following direction:-

Admittedly, the construction of the Chiraiyatand overbridge is in full swing. It is also admitted position that the land has been acquired under the provisions of the Land Acquisition Act. In that view of the matter, no direction can be issued not to acquire the land or take possession. On the other hand, the authorities are hereby directed to take possession of all the lands already acquired or acquire the land immediately even taking recourse to the " emergency provision in case any land has been acquired for the construction of the aforesaid overbridge.

7. It is the case of the Respondent State that in view of public interest and in view of direction of this Court, the Government decided to acquire adjoining land including Appellants' land to provide approach road to Chiraiyatand overbridge under emergent provisions of Section 17(1) and 17(4) of the Act. We find that necessary notifications u/s 4 and declaration u/s 6 of the Act have been duly issued. In terms of Section 17(1) of the Act, notice u/s 9 of the Act was issued on 3.12.2007, calling upon the Appellants to accept 80% of the compensation amount. The learned Single Judge has clearly stated in his order that all attempts to serve notice to the Petitioners were frustrated, as they refused to receive the same. The learned Single Judge noticed that process server on the reverse of the notice wrote that the Petitioners have refused to accept the same. Learned Single Judge has also observed that the Petitioners also negated the attempts of the authorities to serve compensation amount in the court. We find no reasons not to accept the findings of the learned Single Judge that steps were taken u/s 9(1), in terms of Section 17(1) of the Act, to pay 80% compensation to the Appellants. In course of hearing, we too made offer to the Appellants to receive the compensation amount in Court itself, which too was declined. We indeed record our extreme sense of displeasure that in spite of repeated reminders to the Appellants that the issue involved in this case were exactly similar to the issues concluded by the Division Bench in case of own relatives of the Appellants in parallel Land Acquisition proceeding no.15 of 2007-08 in case of Bishnu Deo Narayan v. The State of Bihar and Others (supra), learned counsel for the Appellants proceeded with the argument, which were advanced in the earlier case and rejected. It is on account of such unscrupulous litigations that the court is sagging under the weight of arrears. Indeed just the same counsel for the parties had appeared in the previous proceeding. The overbridge is now complete and has become functional quite a few years ago. We would not hesitate to state that all these years the traffic congestion underneath the bridge which necessitated expansion and widening of the same has been obstructed by the luxury of litigations.

8. In the backdrop of the aforesaid discussions, we do not find any merit in the contention of the learned counsel for the Appellants that requirement of notice and tender of compensation amount in terms of Section 17(1) of the Act was not followed.

9. We now come to the next submission of the Appellants whether State Amendment of Section 17 vide Land Acquisition (Bihar Amendment) Act, 1960 (11 of 1961), or the Central Amendment of Section 17 of Land Acquisition Act, 1894, would prevail. Land acquisition matter falls in list-3 of Schedule-7 to the Constitution (the concurrent list). The Bihar Legislature brought Land Acquisition (Bihar Amendment) Act, 1960 (11 of 1961), which provided special power of acquisition in cases of urgency only with regard to any waste or arable land needed for different purposes or for a company. In other words, emergency provision u/s 17 cannot be applied for acquiring land other than waste and arable land. It is not in dispute that the land of the Appellants is not arable or waste land. However, the Parliament amended Section 17 of the Act in the year 1984, which was within its power, as the subject matter came within concurrent list. By the amendment, the Parliament provided that in case of urgent necessity even without preparation of award on the expiration of 15 days from the publication of notice mentioned in Section 9 of the Act, the appropriate authorities can take possession of any land for public purpose. The underlining is ours for emphasis. Section 17(1) of the Act is quoted hereinbelow for ready reference:-

17(1). In cases of urgency, whenever the appropriate Govt. so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, subsection (1) [take possession of any land needed for a public purpose]. Such land shall thereupon vest absolutely in the Government free from all encumbrances.

10. The Central Amendment of 1984 authorized appropriate Government to acquire any kind of land under emergent provision as the Amendment has come subsequent to Bihar Amendment and would prevail over State Amendment of Section 17 of 1960. The Central Amendment of Section 17(1) and 17(4) of the Act would have an overriding effect over State amendments in terms of Article 254(2) of the Constitution to the extent of repugnancy between the State amendment and the Central amendment. Thus the State Government now was entitled to acquire any land u/s 17(1) of the Central Amendment of 1984, as the Bihar amendment of Section 17(1) of 1960, which limited acquisitions of waste and arable land under emergent circumstances, stood superseded.

11. We further hold that wrong labelling of the provision of law would not render an action without jurisdiction, if the source of power is available under the statute. In this respect, we may refer to the decision of the Hon"ble Apex Court in case of Indian Aluminium Company Vs. Kerala State Electricity Board, and Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India,

12. Another submission of the Appellants was that preparation of award within two years was mandatory in view of Section 11-A of the Act. In this respect, the Appellants had relied upon a decision in case of Nahar Singh v. State of U.P. and Others, Single Bench judgment of this Court in Ramchandra Prasad Sharma and Others v. The State of Bihar and Others, Single Bench judgment of this Court in Anandi Prasad and Another v. The State of Bihar and Others (supra). The decisions relied upon by the Appellants would not be of any help to them, as in the aforesaid cases emergent provisions u/s 17(1) of the Act was not invoked. In such circumstances, the Hon''ble Apex Court held that non-making of award within two years as provided u/s 11-A of the Act would render the land acquisition proceeding vitiated. On the other hand, in the instant case, notice as required u/s 17(1) of the Act was duly given to the Appellants to receive 80% of the compensation amount, whereafter possession was taken. Section 11-A does not apply to cases of land acquisition u/s 17 of the Act and in this respect we refer to the judgment of Hon''ble Apex Court in case of Awadh Bihari Yadav and Others Vs. State of Bihar and Others,

13. We reiterate that in identical case of Bishnu Deo Narayan, whose properties in Jamal Road were acquired for providing approach road to Chiraiyatand bridge in connection with analogous Land Acquisition Case No. 15 of 2007-08, the Division Bench of this Court rejected similar pleas raised in L.P.A. No. 746 of 2008. Furthermore, against the order of the Division Bench, Bishnu Deo Narayan, who happens to be the close relative of the Appellants moved the Hon''ble Supreme Court vide Special Leave to Appeal (Civil) No. 29694 of 2009, in which prayer to stay further proceedings in the land acquisition case was refused and notice was issued on limited question regarding determination of date of compensation. Thus, we find that submissions of Appellants are devoid of merit and the appeal is accordingly dismissed.

14. In the facts and circumstances of the case, there shall be no order as to costs.

S.K. Katriar, J.

I agree.