
(2014) 05 OHC CK 0019
In the Orissa High Court
Case No : W.P. (C) No. 15543 of 2013

Shri Diwan Chand Garg

APPELLANT

Vs

Govt. of India and Another

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

National Highways Act, 1956 — Section 3(A), 3(C), 3A, 3A(1), 3C(1)

Citation : (2014) 05 OHC CK 0019

Hon'ble Judges : A.K. Goel, C.J.; Akshaya Kumar Rath, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Rath, J.—By this application under Article 226 of the Constitution, the petitioner has prayed, inter alia, to quash the notification dated 18.9.2012 issued by the Land Acquisition Officer & Competent Authority, National Highway No. 5 Project, Khurda, Bhubaneswar, in respect of his land appertaining to Plot Nos. 253, 254/1103, Khata No. 166, of Mouza-Bomikhal, Bhubaneswar, vide Annexure-1.

2. Shorn of unnecessary details, the short fact of the case of the petitioner is that he is the paramount owner of two plots appertaining to Khata No. 166, Plot Nos. 253, 254/1103 of Mouza-Bomikhal. He has constructed a commercial building over the said two plots. Out of the total area of Ac. 0.262 decimals, the proposed acquisition is Ac. 0.98 decimals of land. The description of the land given in the notification vide Annexure-1 is vague and indefinite. The proposed acquisition is likely to affect the single structure of the building.

3. Pursuant to issuance of notice, a counter affidavit has been filed by one Smt. Sravani Pattnaik, Special Land Acquisition Officer, (NH)-cum-Competent Authority, opposite party no. 2. The sum and substance of the case of the opposite party no. 2 is that the Govt. of India in Ministry of Road Transport & Highways, New Delhi vide Notification No. S.O. 2196(E), dated 18.9.2012 have

intended to acquire land for building, (widening/six-laning, etc.), maintenance, management and operation of National Highway No.-5, on the stretch of land from Km. 0.000 to Km. 62.000 (Bhubaneswar-Kolkata Section) U/s. 3(A) of the National Highways Act, 1956. Accordingly, the substances of above Gazette Notification have been published in two local newspapers, namely, Samaj & Sambad on 19.11.2012 inviting objection U/s. 3(C) of the National Highways Act, 1956 within 21 days. The petitioner filed an objection dated 8.11.2012 before the competent authority. The same was disallowed on 15.4.2013 in view of imperative purpose for acquisition for public purpose. The project in question has been designed based on the details study done by Detail Project Report (DPR) consultant, keeping in view the various relevant factors including intensity of heavy vehicular traffic and public interest at large. The ministry as well as the National Highways Authority of India (NHAI) has high degree of expertise in the field and they are using the best technical know-how for implementation of the project. The notification was issued u/s 3A of the National Highways Act, 1956 in the larger interest of public. The notification was duly published in the official gazette on the same date. The substance of the notification was also published in two local newspapers containing full descriptions of the land proposed to be acquired for widening of the National Highway. The names of the villages, the survey number including the nature, type and area of the land have been mentioned in the scheduled appended to the notification.

4. We have heard Mr. M. Mohanty, learned counsel for the petitioner and Mr. A. Das, learned counsel for the opposite party no. 2.

5. In course of hearing, Mr. Mohanty submitted that the description of the land in the notification is vague and indefinite. He further submitted that by the proposed acquisition, there is every likelihood that the building will be collapsed. Relying on the decision of the apex Court in Competent Authority Vs. Barangore Jute Factory and Others, , he submitted that the notification is liable to be quashed on the ground that only a part of the land was sought to be acquired, but the notification did not specify any such part.

6. Per contra, Mr. Das submitted that the proposed acquisition is for public purpose. He further submitted that the detailed description of the property including the area has been given. Furthermore, it is indicated in the notice that the land plan of the area and detailed description of the property are available in the office of the Competent Authority for perusal of the general public. Taking a cue from Union of India Vs. Dr. Kushala Shetty and others, >2011 AIR SCW 4460, he submitted that it was clearly mentioned that the land plans and other details of the land were available in the office of the Competent Authority and none of the land owners including the petitioner made any grievance that the notification issued u/s 3A(1) of the 1956 Act was vague.

7. An identical question came up before the apex Court in Kushala Shetty (supra). In para 19 of the said judgment, it is held as follows:-

19. In this case, notification dated 10.8.2005, which was published in the official Gazette of the same date and of which substance was published in two local newspapers, contained full description of the land proposed to be acquired for widening three National Highways. The names of the villages in which the land proposed to be acquired was situated, the survey numbers including sub-survey numbers, the nature, type and area of the land were also given in the schedule appended to the notification. Not only this, it was clearly mentioned that land plans and other details of the land are available in the office of the Competent Authority. This is the reason why none of the land owners (including the respondents) made any grievance that the notification issued u/s 3A(1) of the 1956 Act was vague or that due to lack of particulars/details, they were prevented from effectively exercising their right to file objections in terms of Section 3C(1). Of course, a grievance of this score was made in the objections dated 16.10.2006 filed by some of the land owners of Padavu Village, but that was clearly an afterthought and, in any case, the same did not require consideration because of non-adherence to the time schedule specified in Section 3C(1) of the 1956 Act.

8. We have carefully and meticulously scrutinized the notification issued u/s 3A of the National Highways Act, 1956, vide Annexure-1. In the notification, the detailed description of land has been mentioned. Moreover, it is clearly mentioned in the notification that the land plans and other details of the land are available in the office of the Competent Authority.

9. In view of the analysis made in the preceding paragraphs, we are of the opinion that the writ petition is sans of merit and deserves dismissal.

Accordingly, the writ petition is dismissed. No costs.

A.K. Goel, C.J.

I agree.