

(1965) 04 PAT CK 0018

In the Patna High Court

Case No : Misc. Judl. Case No's. 335, 433, 434, 450 of 1961 and 1329 of 1964

Smt. Lakshmi Devi and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-04-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 17(2), 17(4), 5A, 6

Citation : AIR 1965 Patna 400

Hon'ble Judges : H. Mahapatra, J;A.B.N. Sinha, J

Bench : Division Bench

Advocate : S.N. Dutta, S.K. Jha and Ashwini Kumar Sinha, in M.J.C. Nos. 335, 433 and 434 of 1961, Naseem Ahmed, in M.J.C. No. 450 of 1961 and Ras Bihari Singh, in M.J.C. 1329 of 1964, for the Appellant; K.P. Verma, Standing Counsel, Rai Parasnath and Chandra Bhusan Sahay, in M.J.C. Nos. 335, 433 and 434 of 1961, K.P. Verma, Standing Counsel, Rai Parasnath and Chandra Bhushan Sahay in M.J.C. No. 450 of 1961 and K.P. Verma, Standing Counsel, Rai Parasnath and Chandra Bhusan Sahay, in M.J.C. 1329 of 1964, for the Respondent

Judgement

Mahapatra, J.—A notification u/s 4 of the Land Acquisition Act (Act I of 1894 as amended by Bihar Acts) was issued by the order of the Governor of Bihar saying that "for development of residential neighbourhoods to provide for housing facilities for various income groups along with various local services and modern amenities to facilitate planned growth of the City of Patna in the villages of Manipura No. 2, Rajapur No. 3, Dujra No. 4 and Dhakanpura No. 7 to be named as Shri Krishnapuri the Government of Bihar required certain lands to be acquired. The description of the land was given in the notification but it excluded the portions covered by houses and orchards. In exercise of the powers conferred by Section 17(4) of the Land Acquisition Act, the State Government decided that in view of the project, provisions of Section 5A of the Act shall not apply to the owners of these lands. The notification further stated that officers of the Land Acquisition Office, Patna, were authorised to enter upon and survey land and to do all other acts required for the proper execution of their work as

provided for or specified in Sub-section (2) of Section 4 of the said Act.

This notification was dated the 19th of January, 1961 but was published in an Extraordinary issue of the Bihar Gazette on the 24th of January 1961. Some of owners of the land made an application under Article 226 of the Constitution to this Court on the 11th of May, 1961, challenging that notification, on one of the grounds that no proceeding for acquisition of land could be taken under the Land Acquisition Act when the Patna Improvement Trust Act provided for acquisition of land for its purposes. That objection has now been finally overruled by the Supreme Court. Another ground was that exemption of the provisions of Section 5A from application to the proceedings, in exercise of the powers conferred by Section 17(4) of the Land Acquisition Act, was illegal and without jurisdiction. Thirdly, the petitioner alleged that the notification was tainted with discrimination, inasmuch as other owners, whose lands were proposed to be acquired in the vicinity, were not deprived of the advantage u/s 5A of the Act, in the notification issued u/s 4, in respect of their lands for the same purpose. It will be necessary to deal with those two objections in this petition.

2. A memorandum containing proposals for development of certain areas under the Patna Improvement Trust " was prepared on the 26th of February, 1960, and on that basis the Land Acquisition Officer Patna, sent a report to the Collector of Patna, on the 6th August 1960, stating therein what actual area, under cultivation should be notified u/s 4 of the Act, read with Section 17(4) exempting the operation of the provisions u/s 5A. Finally, the impugned notification was issued by the State Government. Section 4 is about preliminary investigation and provides for publication of preliminary notification, when it appears to the Government that land in any locality, is needed or is likely to be needed for any public purpose. The substance of such notification is to be given by public notice, at convenient places, in the locality. Section 5A provides that any person interested" in any land, which has been notified u/s 4, may within thirty days, after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be. Sub-clause (2) of that section says that such objections shall be made to the Collector in writing and the objector shall be given an opportunity of being heard, whereafter the Collector will submit the case for the decision of the appropriate Government with his recommendations and the decision of the Government on the objections shall be final. After the disposal of such objections, comes the declaration of intended acquisition u/s 6 by the Government.

Following that, public notice is to be given at convenient places on or near the land to be taken, u/s 9, giving the particulars of the land and asking all persons, interested in the land to appear before the Collector and state the nature of their interests in the land and the amount and particulars of their claim to compensation for such interests and also their objections if any, to the measurements made of the land. These are provided in Section 9. After hearing the parties and making any other enquiry that may be necessary, the Collector is

to make an award of compensation payable for the land u/s 11, The scheme of the Act thus shows that at the preliminary stage, when a notification is issued u/s 4, any person, interested in any land covered by such notification, has a chance to object to the acquisition itself and on consideration of the same, the Government may abandon their desire to acquire the land. If, in spite of such objection, the Government still thinks that the land should be acquired for any public purpose or for a Company, then they will make a declaration to that effect and publish the same in the official Gazette, giving the details of the land, the purpose for which it is needed and its approximate area. Such declaration is conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be. At that stage, and thereafter, it is no longer open to any one, interested in such land, to object to the acquisition. They can only put in their claim in respect of the amount of compensation payable to them or measurement of the land.

Thus, Section 5A which was introduced by an amendment in 1923 (Act 38 of 1923) gives a valuable right to a person interested in the land, sought to be compulsorily acquired by the Government. In the usual process, after making the award u/s 11, the Collector may take possession of the land which shall, thereupon, vest absolutely in Government, free from all encumbrances (Section 16). In cases of urgency, whenever the appropriate Government so directs, the Collector, before any award is made, may take possession of any waste or arable land needed for public purposes or for a Company and thereupon such land shall vest in the Government. This special power to take possession in cases of urgency has been given u/s 17 Sub-section(1). In Sub-section (2) similar power is given to take possession of any land for the maintenance of traffic of any Railway Administration etc. It is to be noticed that the power is not confined in this sub-section, to any particular kind of land, such as waste or arable land as stated in Sub-section (1). Sub-section (3) of that section provides that Collector, at the time of taking such urgent possession, shall offer to the persons interested compensation for the standing crops on such land and for any other damages sustained by them caused by such sudden dispossession. Sub-section (4) is important for our purposes. It provides:

"In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4, Sub-section(1)."

(Slightly modified by Bihar Act XXI of 1956, to be referred later.).

It is in exercise" of this power that, by the impugned notification, the Government directed that the persons, interested in the land mentioned in the notification, shall not have an opportunity of raising any objection u/s 5A, and that is challenged, in all seriousness, in these petitions.

3. On an analysis of the provisions under Sub-section (4) of Section 17. one can notice two things:

Absolute option has been given to the Government to exclude the operation of Section 5A and to publish the declaration u/s 6 forthwith after the notification u/s 4(1): but this option is exercisable in respect of any land to which Sub-section (1) or (2) of Section 17 can apply. In Sub-section(2), as I have already pointed out, there is no restriction in regard to the nature of the land, where the Government can take immediate possession after a declaration u/s 6 of the Act. In the present case, Sub-section(2) has no application because the land is not required for any of the purposes mentioned in that sub-section. Under Sub-section(1), power is given to the Government to direct the Collector to take immediate possession after declaration u/s 6, or with consent of the persons interested, after the notification u/s 4(1). But that is restricted to only two kinds of land, namely, waste or arable land. Any other land which may be needed for a public purpose or for a Company and can be acquired by the Government under the Land Acquisition Act will not be subject to the provisions of Sub-section(1) of Section 17, and, therefore, will not come within the purview of Sub-section (4) of that section, so as to exclude the application of Section 5A of the Act. In the present case, the petitioner can successfully challenge the impugned notification, in that respect, if they can show that the land, in which they are interested and which has been notified, does not come under waste or arable land. It is neither party's case that the land in question is waste land. For the State and for the improvement Trust, the land is claimed to be arable, whereas the petitioners contend that it is not so.

4. I find from the Oxford Dictionary that "arable means capable of being ploughed, fit for tillage." This is opposed to pasture or wood land A question arises, if the land which has already been brought under cultivation can come within "arable land." The expression "arable land" has been used in juxtaposition with waste land in Sub-section (1) of Section 17. According to Stroud's Judicial Dictionary (2nd Edition), "arable" does not only mean land actually ploughed up or in tillage, but also land capable or fit to be so Reference has been given to the case of *Palmer v. M'Cormick*. 25 Ireland 119, in this connection. In Halsburv Laws of England (II Edition, vol, 14, page 633 para 1187) arable field has been mentioned as including untilled land. Section 17 is a provision for making a departure from the normal procedure of taking possession of a land acquired under the Act. In Sub-section (2) no restriction has been imposed about the nature of the land. The proviso given to that sub-section is in respect of any building that may be taken possession of. In Sub-section (3) the Collector is required, at the time of taking possession, to offer to the persons interested compensation for the standing crops and trees, if any, on such land and for any other damage sustained by them caused by such sudden dispossession not except-ed in Section 24. The mention of standing crops in this sub-section is with reference to the land, of which possession can be taken in case of urgency, before the amount of compensation is determined or is paid u/s 6 as amended

by Bihar Act 17 of 1951. The expression "trees if any" has been omitted from Sub-section (3) by the Bihar Amending Act. Thus the Legislature thought, at the time of enactment, that there can be standing crops on the land mentioned in either of the two Subsections (1) and (2). In the Central Act 10 of 1870 (the Land Acquisition Act, 1870) Section 17 only provided that in cases of urgency, fifteen days after the publication of the notice u/s 9 possession could be taken of any waste or arable land needed for public purposes or for a Company. There was nothing like the present Sub-section (2) in that enactment for taking possession of any land for the traffic of any Railway Administration; yet, in the last paragraph of Section 17 in that statute, the Collector was required to offer to the person interested compensation for the standing crops and trees, if any, on such land. There can be no doubt that "standing crops" related to arable land, as mentioned in the first paragraph of that section. This is a clear indication about the meaning of "arable land" as used by the Legislature as early as in 1870. This is also borne out by the meaning given in the Strouds Judicial Dictionary. Furthermore, while amending Section 35 of the Central Act, Bihar Act 17 of 1951 added an explanation to Subsection (1) of that section. The explanation said:

"This sub-section shall apply to any waste or arable land, notwithstanding the existence thereon of forest, orchard or trees or temporary structure such as huts, pandals or sheds."

Section 35 is about temporary occupation of waste or arable land. Standing crops were not taken as included in arable land, the legislature should have mentioned that in the explanation so that no land with standing crops could be excepted from acquisition for temporary occupation. I am, therefore, of the view that the expression "arable land" in Section 17(1) includes land brought under cultivation or tillage, and not confined only to land fit to be ploughed but not already ploughed or cultivated. Subsection (4) of Section 17 was amended by the Bihar Act 21 of 1956 which came into force from the 6th October, 1956. in the following terms;

"In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the provisions of Section 5A shall not apply where the State Government so directs or where possession of the land has been taken with the consent of the person interested."

Another new sub-section was added as (5): "Where the description of any particular land, which in the opinion of the appropriate Government is needed for any public purposes or for a company and to which the provisions of Sub-section (1) or Sub-section (2) are applicable, is available it may direct that the provisions of Section 4 shall not apply, to the land." We are not concerned in the present case, with Sub-section (5). I quoted that to show that the legislature has provided for excluding the opportunity to object to the acquisition as given u/s 5A in regard to any land (not restricted to waste or arable) if only the description of such land is available to the Government, in which case the proceeding for compulsory acquisition will start with the publication of the declaration u/s 6

straightway. From Sub-section (4) it is clear that power has been given to the State Government to exclude the operation of Section 5A in respect of waste or arable land. In the impugned notification that has been done.

5. It will now be necessary to examine the nature of the lands in particular cases that have been notified, to find if they can come within the meaning of waste or arable land.

6. M.J.C. 335 of 1961:--The land in question is 7 kathas appertaining to plot nos. 900 and 901. This was purchased for Rs. 8400/- on the 16th April, 1959. A plan for construction of a house on this land was sanctioned by the Patna Improvement Trust on the 25th September 1959. The sanction was renewed on the 4th January, 1961. A building has, in the meanwhile, been constructed with an advance of loan given by the Government for building houses for middle income group. The land bears municipal holding no. 270 in ward No. 34, Circle No. 249 under the Patna Municipal Corporation. That it is a building site can admit of no doubt. The situation of the land, as revealed from the map further confirms that. Whatever the nature of the land might have been before, since its inclusion within the municipality as a house site bearing a holding number it has gone out of the ambit of arable land. Section 17(4) can have no application to such land. The notification excluding the operation of Section 5A in respect of this land has to be quashed. If there has been any declaration u/s 6, that will also not stand because the petitioner must have the opportunity of lodging objections, as may be available to her, u/s 5A, after disposal of which there can only be a declaration if at all u/s 6 of the Act. The impugned notification not wholly, but so far as it excludes operation of Section 5A, is therefore, quashed and the opposite parties are directed not to take any action whatsoever on that part of the notification. Parties will bear their own costs.

7. M.J.C. 433 of 1961.--Plot No. 902 is the land that has been notified u/s 4 read with Section 17(4). It was published in the Gazette on the 24th January, 1961. This land is situated in ward No. 34 of the Patna Municipal Corporation and bears holding no. No. 214/204. The grandfather of the petitioner had purchased this land on the 2nd April, 1947. He had obtained sanction of a plan for building a house on that land from the Patna Administration Committee. He however, died in 1956. In the record of rights, however, this land was described as Dhanhar, but that was about 50 years ago. The inclusion of this land within the bounds of the Municipal Corporation and the allotment of a holding number to the land is clear proof that it has become a house site and has ceased to be arable land long since. The sanction of a plan for a building by the appropriate authorities leaves no doubt about the nature of this land long before the impugned notification came. In that view, the petitioner cannot be deprived of his legitimate rights as provided u/s 5A of the Act in respect of the acquisition of this land. The exclusion of the operation of that section in the impugned notification is without the authority of law. The notification issued u/s 4, so far it excludes the operation of Section 5A, is, therefore, quashed and the opposite parties are directed not to

take any action whatsoever on and following that part of the notification. Parties will bear their own costs.

8. M.J.C. 434 of 1961:--This petition relates to survey plot Nos. 1483,1481,1490 and 1048. The affidavits filed in this case disclose that masuri, gram and tisi crops are grown on plot No. 1048 and masuri crop on plots Nos. 1481 and 1483. In the survey settlement, plot no. 1483 was recorded as dhanhar and the rest as bhit. There has not been any change in the nature of the land, since then, as crops are still being grown on the same In that view, this land was arable at the lime when the impugned notification was published. The State Government was empowered to exclude the operation of Section 5A u/s 17(4) of the Act.

Learned Counsel for the petitioner, however, argued that the notification has been tainted with discrimination inasmuch as similar lands in the neighbourhood were not treated in the same way by excluding the operation of Section 5A. From the land acquisition map, it is clear that wherever lands having any construction or house, or orchard, they were notified in the usual process u/s 4 of the Act, and in respect of lands, where there is no house or orchard, provisions under Sub-section (4) of Section 17 are applied. We do not find that any differential treatment, to the disadvantage of the petitioner, had been meted out. The impugned notification has, therefore, in its support the authority of law. The application is dismissed but in the circumstances of the case parties will bear their own costs.

9. M.J.C. 450 of 1961 :--Portions of survey plots Nos. 900, 902/2, 901 and 901/2, the former two under khata No. 16 and the latter two under khata No. 16 were notified u/s 17(4) of the Act. This land was purchased 25 years ago. A plan for building a house was sanctioned by the Patna Municipal Corporation on the 9th of June, 1960. There can hardly be any doubt that this land has become a house site long since, having been also included within the municipal area. Its location in the vicinity of the road is another factor in support of its changed nature. It cannot be said to be arable land at the time when the notification was made, and, therefore, the petitioner could not have been excluded from exercising his rights u/s 5A. For these reasons the impugned notification as far as it excludes the operation of Section 5A is quashed and the opposite parties are directed not to act on and following that part of the notification. Parties will bear their own costs.

10. M.J.C. 1329 of 1964:--The application was filed on the 29 Sept.. 1964. Survey plot nos. 1178,1179,1180 and 1181 in village Dujra, police station Diga, Patna, were notified u/s 4, read with section 17(4) on the 24th of January, 1961. These lands were purchased by the petitioner on the 21st of September, 1947. The affidavits disclose that all these lands are under cultivation. On the 5th of March, 1965, wheat, tisi, gram, masuri, sarso, arhar were on all these lands, as stated by the Land Acquisition Officer. It is not denied that on the date of notification these lands were under similar cultivation. That they were arable lands at that time, can admit of no doubt. The State Government was, therefore,

competent to invoke the powers provided under Sub-section (4) of Section 17 and exclude the operation of Section 5A. The argument that there has been discrimination by the Government inasmuch as, Section 5A was not excluded in respect of similar lands in the case of other owners has no merit. The land acquisition map shows a consistent plan and policy.

Another contention was that the close vicinity of this land, though arable, to the road side and other building sites, should bring this under the category of house sites. No holding number has yet been ascribed to this by the Municipality. Mere proximity to other sites will not alter the character of the land. The land may have the potentiality of being developed into building site. That will affect the market value for purposes of compensation but not alter the nature of the land as it was on the day of the notification so as to exclude the application of Section 17(4) of the Act. For these reasons this application cannot be allowed and the notification cannot be quashed. The application is dismissed but there will be no order for costs in the circumstances of the case.

A.B.N. Sinha, J.

11. I agree.