
(1990) 02 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 747 of 1983

Smt. Laxmi Devi	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 21-02-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 17(1), 4

Citation : AIR 1990 Ori 196 : (1990) 69 CLT 805

Hon'ble Judges : R.C. Patnaik, Acting C.J.; K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : R.K. Mohapatra, U.C. Panda and K.S. Kar, for the Appellant; Addl. Standing Counsel, Ashok Mukherjee, D. Mohanty and J.P. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

K.C. Jagadeb Roy, J.—The petitioner whose lands have been notified for the purpose of acquisition by the State u/s 4(1) as well as under Sub-section (1) of Section 17 of the Land Acquisition Act (hereinafter referred to as the "Act") has approached this Court for quashing the said two notifications bearing No, 366 KA 322/77 -- Puri-R dated 16-5-1977 and No. 39228-KA-167/80 -- Puri-R dated 23-5-1980 as per Annexure-2 and the notification under Sec. 6 of the Act. This notification pertains to Ac. 1,000 dec. of land in village Kalarput, Thana -- New Capital No. 7, District -- Puri and the acquisition was as per the notification for public purpose, namely, the construction of New Capital.

2. The land of the petitioner as per, the details given in Annexure-I to the writ petition has been acquired.

3. Mr. R. K. Mohapatra learned counsel for the petitioner urged several points in this writ application. The Government Notification dated 16-5-1977 as per Annexure-2 stating that the lands were needed urgently "for construction of New Capital" in the village Kalarput Thana -- New Capital No. 7, District -- Puri is

vague and did not authorise the State Government to make acquisition of land in question by resorting to Sub-section (1) of Section 17 of the Act (as amended by Orissa Act 19 of 1959). Though Section 4 of the Act requires the Collector to cause public notice of the substance of the notification of acquisition to be given at a convenient place in the locality, such public notice though mandatory was not given, thereby vitiating the entire land acquisition proceeding under the said notification and the petitioner was deprived from making her objection to the acquisition of the land as required u/s 5-A of the Act. That apart the declaration u/s 6 of the Act was made at a very belated stage which by itself vitiated the entire land acquisition proceeding. Since the Government has not taken possession of the land in question till now even though the notification of acquisition was made on 2-3-1963 the State did not apply its mind to the urgency of the land acquisition, and as such, the notification u/s 17 was not called for and the notification as such be declared illegal, inoperative and liable to be quashed.

4. The notification dated 2-3-1963 refers to the plan of land pursuant to which the lands have been acquired as the notification specified that the plan of the land may be inspected in the office of the Collector, Puri. In the case of *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, , the notification stating that an area of 34,870 acres of land was needed for a public purpose such as the planned development of Delhi, was held to be a valid notification and the petitioners were held not to be prejudiced in any manner. In the present case, the party was not prejudiced inasmuch as if she wanted to know the nature of the construction that was needed in the area she could very well refer to the plan which was available for inspection in the office of the Collector, Puri and it is always not possible to give the exact details of the purpose for which the acquisition had been made and we do not think there is vagueness or indefiniteness of the purpose. If an area is required under the plan for the development of the Capital, it would certainly come within the public purpose and therefore the objection of the learned counsel in this respect is rejected.

5. Next, we would like to deal with the last contention, namely, whether the State Government was justified in making acquisition of the land by resorting to Sub-section (1) of Section 17 Obviously is a departure from the normal mode of acquisition, as in that case the appropriate Government is authorised to direct the Collector to take possession of any land needed for the public purpose on the expiration of the fifteen days from the publication of the notice mentioned in Sub-section (1) of Section 9 of the Act though no award has been made and as per the provisions of Section 17, the land shall thereupon vest absolutely in the Government free from all encumbrances. In the present case though the notification for acquisition was made on 2-3-1963, the Government has not made any attempt to take possession of the land until 23-12-1982 and the notice u/s 6 of the Act was only made on 16-5-1970 after lapse of nearly about 12 years of the preliminary notification u/s 4 read with Section 17(4) of the Act, it cannot be said that there was any urgency in the acquisition so as to resort to

Section 17 of the Act. It is true that on 7-4-1983 this court passed an interim order of injunction and this interim order continued. Learned counsel appearing for the State could not give any cogent reason as to why the State did not make any attempt to take possession till December, 1982 even though the emergency notification was made on 2-3-1963. This weighs in our mind to hold that the notification u/s 17 of the Act hence as per Annexure-2 dated 23-5-1980 acquiring the land u/s 17(4) of the Land Acquisition Act was not justified under law.

2A In an earlier case reported in (1969) 35 CLT 1067 (Bairagi Nayak v. State of Orissa), this Court held thus :

".....there is no doubt in our mind that the requirements provided u/s 17(1) of the Act are the requisite conditions, upon the existence of which exercise of jurisdiction u/s 17(1) is founded. Once any of the requisite conditions is missing, the special and extraordinary jurisdiction provided under the Statute in Section 17 cannot be called in aid.

xx xx xx If the special and extraordinary power is meant to inhere in the prescribed authority only in case of urgency, it follows that the existence of urgency is the condition precedentIf urgency cannot be found to have existed at the time when the notification was made, the notification was without authority of law and can, therefore, not be protected u/s 17(4) of the Act."

Later this Bench also in another case reported in ILR (1975) Cut 125 held in the following words :

"Upon the existence of the requisite conditions as prescribed u/s 17(1) of the Act, a notification u/s 17(4) of the Act is only justified. Once the requisite conditions are missing, the special and extraordinary jurisdiction provided in the Act cannot be invoked. Where the urgency required u/s 17(1) of the Act cannot be found to be existing when a notification u/s 17(4) of the Act is made, the notification must be held to be without the authority of law."

This view has also been accepted by a Division Bench of this Court in another case e.g. C. J. C. No. 2412 of 1984 decided on 30-3-1989 (reported in AIR 1989 Orissa 219) wherein this court held that where no justifiable explanation has been offered in the nature of an affidavit of the State indicating the delay of about three years between the notification u/s 17(4) and the declaration u/s 5 of the Act, the Court was not satisfied that there existed any urgency which warranted the notification u/s 17(4) of the Act and accordingly the notification u/s 17(4) of the Act was quashed. In the present case, as already said, Section 6 notification has been made after about 12 years of the notification u/s 17(4). Therefore, for the reasons stated above, the notifications cannot be sustained and is therefore quashed.

When Section 17(4) notification has been quashed, the notification u/s 6 as per Annexure-3 of this writ application cannot also be sustained as such a notification

has been made without affording the petitioner an opportunity to put forth her objection to the acquisition, as envisaged in Section 5-A of the Act. Accordingly Section 6 declaration as per Annexure-3 is also quashed.

The last point that was urged by the learned counsel for the petitioner was that the notification u/s 4 of the Act was also bad and liable to be quashed as the public notice of the substance of the notification of acquisition was to be made by the Collector at convenient places of the locality as is required in Section 4(1) of the Act. By order dated 10-1-1983 this Court directed the State to produce the records of the land acquisition proceeding at the time of hearing which was produced before us today. The learned Government Advocate who appeared in the case could not satisfy the court with reference to the records of the land acquisition proceeding that public notice of the substance of the notification was given at a convenient place as required u/s 4 of the Act, even though State had taken a stand in their counter that such public notice had been given. We find that such statement in the counter affidavit was not based on any record and in absence of this publication, the notification u/s 4 also vitiated for the illegality for non-compliance of the mandatory direction contained in the Act and is accordingly quashed.

A Notification u/s 4 of the Act is a starting point of the acquisition proceeding. The main object of issuing a notification u/s 4 is to make it known to the public that the land is going to be acquired for some public purposes and to prevent the person concerned whose land is being acquired from profiting by inflating the valuation of the land. Such a notification serves a two-fold purpose (i) enabling the Government to find out whether the land sought to be acquired was adopted for the purpose for which the acquisition was sought to be made and (ii) enabling the person interested to place his view-points with regard to the proposed acquisition. In other words, it is a warning to all persons interested in the land notified that the same may be ultimately acquired by issuing a declaration u/s 6, so that the person interested may file objections against the acquisition. It is, therefore, when a declaration u/s 6(1) of the Act is made to the effect that the land is required for a public purpose that the acquisition becomes conclusive.

In the present case, the publication of the substance of the (sic) acquisition was not at all given at a convenient place in the locality and thereby vitiated the entire of proceeding that followed.

6. In the result, therefore, we hold that while the purpose for which the land is being acquired though was for a public purpose the State Government had no basis to treat the notification as no urgent measure and to issue the notification u/s 7(4) of the Act and that the notification u/s 4 also suffers from infirmity due to non-publication of public notice of the substance of the notice of acquisition in a convenient place of the locality or at any place. As such the notifications dated 16-5-1977 and 23-5-1980 both u/s 4(1) and u/s 17(4) of the Act are quashed as invalid and inoperative and contrary to the provisions of the Act and we further hold that the declaration u/s 6 as per Annexure-3 is also bad and inoperative

being a declaration without affording opportunity to the petitioner to present her objection to the acquisition. However, while quashing all these Annexures-2 and 3, we make it clear that the notifications are only quashed relating to the land in question i.e., the lands belonging to the petitioner as detailed in Annexure-1 of this application. The writ petition is accordingly allowed but in the circumstances, there shall be no order as to costs.

R.C. Patnaik, J.

7. I agree.