

Sudhir Kumar Thakur, Sunil Kumar Singh and Kishorilal Jalan APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Acts Referred:

Citation : (2010) 10 PAT CK 0092

Judgement

1. As all these writ petitions involve common issues of facts and law, hence they have been taken up together for hearing and disposal on merits.
2. Upon perusal of the records of the proceeding it is to be found that although C.W.J.C. No. 13769 of 2004 and C.W.J.C. No. 15767 of 2004 were admitted for hearing vide order dated 9.10.2006 recorded in C.W.J.C. No. 13769 of 2004 but C.W.J.C. No. 1608 of 2004 being heard by a learned Single Judge of this Court, although was referred to the Division Bench under the order dated 26.11.2007 in view of the commonness of the issues raised in the three writ petitions but no orders admitting the same for hearing has been passed. In the aforesaid circumstances, C.W.J.C. No. 1608 of 2004 is admitted for hearing and has been taken up along with other connected writ petitions. As all the contesting parties to the proceedings have appeared and have filed their respective affidavits, no fresh notice needs to be issued.
3. For the sake of convenience, We shall be referring to the facts exposit from C.W.J.C. No. 1608 of 2004 and Annexures appended thereto unless specified with specific reference to the other writ petitions.
4. The facts in brief giving rise to the present proceedings is that a Land Acquisition proceeding was initiated by the State as far back as in the year 1981 when a Notification dated 25.3.1981 u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was published in the District Gazette, Bhagalpur on 1.4.1981 in connection with acquisition of 29.38 acres of land owned by a firm namely M/s Soorajmull Nagarmull situated within the Bhagalpur Municipality, Ward No. 3, Mohalla Barari (Sundarban), District-Bhagalpur for public purpose viz. Construction of the office of the Conservator of Forests and

for construction of residential premises. Copy of the Notification is placed at Annexure-A to the supplementary counter affidavit filed on behalf of the State respondents. Following the Notification u/s 4, a declaration was issued u/s 6 of the Act on 25.3.1981 which also was published in the District Gazette, Bhagalpur on 1.4.1981 (Annexure-B). As the acquisition was made under the emergency provisions of Section 17(4) of the Act, hence waiving the requirements as provided u/s 5A of the Act, the possession of the land was taken over on 20.8.1981 (Annexure-3 to C.W.J.C. No. 15767/2004) under the order dated 27.6.1981 (Annexure-D), whereby the State Government directed the Collector, Bhagalpur u/s 17(1) of the Act to take possession of the land in question upon expiry of 15 days from the date of declaration made u/s 6 of the Act. A mistake in relation to the area of proposed acquisition in the Notification and the declaration dated 25.3.1981 led to issuance of a corrigendum on 19.10.1981 (Annexure-C) which was published in the District Gazette on 16.8.1982.

5. Even while the proceeding initiated in 1981 remained inconclusive for reasons unknown, a second proceeding was initiated by the respondent State when they issued a notice u/s 4 of the Act dated 24.5.1995 published in the District Gazette, Bhagalpur on 1.6.1995 in relation to a proposed acquisition of land measuring 0.55 acres situated at Ward No. 3, Sundarban within the Bhagalpur Municipality. The said Notification was followed by another Notification dated 17.8.1996 issued under the emergency provisions of Section 17 of the Act, thus waiving of the requirements as provided u/s 5A of the Act. Copies of the Notifications are placed at Annexures-2 and 3 to the writ petitions. The petitioner Kishori Lal Jalan, the land owner, challenged the proceedings by filing a writ petition giving rise to C.W.J.C. No. 3339 of 1997 which was heard and allowed by a Bench of this Court vide order passed on 22.7.1998 (Annexure-4). The Notification dated 13.8.1996 was set aside. Following the order of this Court (*supra*), the respondents took steps to withdraw the second proceedings vide memo dated 8.9.2003 (Annexure-5) and 13.9.2003 (Annexure-6). The withdrawal proceedings culminated in a Notification issued u/s 48 of the Act dated 17.11.2003 which was published in the District Gazette, Bhagalpur on 24.11.2003 (Annexure-1). It is at this stage that petitioner Kishori Lal Jalan claiming partnership in the Land owner firm filed the writ petition giving rise to C.W.J.C. No. 1608 of 2004, seeking, inter alia, amongst others, a direction commanding the respondents to release the land in question and handover its possession to him after removing their movables. In and around the same time the Forest Department also filed a writ petition giving rise to C.W.J.C. No. 15767 of 2004, through the Divisional Forest Officer challenging the action of the State authorities in withdrawing the acquisition proceedings and seeking a further direction for restraining the concerned authorities of the State Government from dispossessing the Forest Department from the land in question which had since been declared a protected forest under the provisions of Section 29 of the Indian Forest Act. A Public Interest Litigation also joined the two writ petitions filed on behalf of a public spirited person Sunil Kumar Singh claiming to be an advocate,

a social activist and a public spirited person having keen interest in the protection of forest. The writ petition was registered as C.W.J.C. No. 13769 of 2004.

6. While the writ petitions were pending consideration before this Court an award purportedly in continuity of the 1981 Acquisition proceedings was made for an amount of Rs. 73,05,076/- on 27.9.2006 (Annexure-G) followed by a notice, issued u/s 12(2) of the Act on the same date by the Land Acquisition Officer (Annexure-H to the supplementary counter affidavit).

7. As the writ petitions raised common issues, hence they have been taken up together with a view to its final disposal.

8. Mr. Surjit Mitra, Learned Counsel appearing on behalf of the land owner, claiming precedence over Counsel representing other writ petitioners in view of the registered seniority of his writ petition, questioned the jurisdiction of the authorities of the State Government as well as Forest Department in not taking appropriate steps for handing over the possession of land in question despite the withdrawal notification as contained in Annexure-1. Learned Counsel with reference to the State amendment to Section 17 of the Act incorporated under the Land Acquisition (Bihar Amendment) Act, 1960 (11 of 1961), submits that as per the State amendment, Section 17(1) of the Act only applied to waste and arable land notwithstanding the extinction of forest, orchard or trees. He submits that the land in question is within the Bhagalpur Municipality and hence it is neither situate in a village nor can be termed as waste or arable. He thus submits that in absence of fulfillment of this prerequisite to Section 17(1) of the Act, the impugned action becomes sustainable. Learned Counsel in support of his submission relies upon a judgment rendered in the case of *Sadrudin Suleman Jhaveri v. J.H. Patwardhan and Ors.* reported in AIR 1965, Bombay 224 . Learned Counsel further with reference to Section 17(3) of the State amendment goes on to submit that in absence of any offer made and compensation paid in relation to the standing trees and orchards present over the land in question the said condition does not stand satisfied rendering the acquisition void ab initio. Learned Counsel relies upon a judgment rendered in the case of *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, in support of the proposition that where a statute prescribes that an act be performed in a particular manner, it can only be done in that manner alone and all other modes would be strictly forbidden. Learned Counsel contends that the very initiation of the second proceeding in and around the period 1995-96 by itself manifests that the first proceeding initiated in the year 1981 stood lapsed. Learned Counsel questioning the invocation of the urgency clause by the respondents for acquisition of the land in question submits that the very march of event belies the urgency clause invoked by the State. He further submits that the absence of proper expression in the Notification demonstrating urgency, also has vitiated the proceeding. It is contended that construction of residence and office does not satisfy the invocation of urgency clause. Learned Counsel in support of his submission relied

upon the following judgments of the Supreme Court:

(i) Union of India (UOI) and Others Vs. Shakuntala Gupta (Dead) by Lrs.,

(ii) Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, paragraph 16,21, 29 and 30.

9. Learned Counsel submits that the provisions of Section 17(4) of the Act entails a publication of declaration after the Notification and as in the present case both the Notifications u/s 4 as well as the declaration u/s 6 were issued on the same date i.e. 25.3.1981 and published in the District Gazette on 1.4.1981, hence they were issued in contravention of the explicit provisions of Section 17(4) thus vitiating the proceedings. Learned Counsel in support of his contention relied upon a judgment of the Supreme Court rendered in the case of Raghunath and Others Vs. State of Maharashtra and Others, paragraph-9.

10. Learned Counsel submits that though the respondents have published an award u/s 12(2) of the Act purported to be in continuation of the acquisition proceedings initiated in the year 1981 and copy whereof is placed at Annexures-G and H of the supplementary counter affidavit filed on behalf of the State but in view of the accompanying circumstances where the State itself treating the first proceeding as having lapsed and having gone in for a second acquisition proceeding which has since been quashed by a Bench of this Court and not questioned by any of the parties before any superior Court and thus having attained finality and having become binding on the respective parties, the award is wholly without jurisdiction and void ab initio. Learned Counsel submits that the action of the respondents in making the award in 2006 after having issued the withdrawal notification on 17.11.2003, published in the Gazette on 24.11.2003, is a malafide act aimed at circumventing the order passed by this Court quashing the 1996 acquisition proceedings. Learned Counsel, however, admits not having challenged either the first acquisition proceeding initiated in the year 1981 or the award published pursuant thereto as present at Annexures-G and H of the supplementary counter affidavit, inter alia, on grounds of the proceedings having lapsed as per the statutory provisions and the publication of award in the circumstances was void ab initio. Learned Counsel concluding his arguments submits that in view of the judicial pronouncement present at Annexure-4 of the writ petition, the respondent authorities of the State including the Forest Department are under a duty and obligation to forthwith remove their movables from the land in question and hand over its possession to the petitioners.

11. The arguments on behalf of the beneficiary Forest Department was led by Mr. Vinod Kumar Kanth, learned senior Counsel appearing for the Divisional Forest Officer, Sudhir Kumar Thakur in C.W.J.C. No. 15767 of 2004. As indicated, the writ petition was filed seeking a restraint from handing over the possession of the land in question to the land owner, inter alia, on grounds of the same having the only forest adjoining the township of Bhagalpur supporting a large flora and fauna including variety of birds and animals, some of which were on the verge of

extinction by reason of the growing menace of denudation of forests. The petitioner has also questioned the withdrawal Notification issued u/s 48 of the Act dated 17.11.2003 (Annexure-12 to C.W.J.C. No. 15767 of 2004) as well as the order dated 26.12.2003 (Annexure-13 to C.W.J.C. No. 15676 of 2004) issued by the Collector, Bhagalpur directing the Forest Officer to hand over the land in question to the petitioner in compliance of the order passed in C.W.J.C. No. 3339 of 2007.

12. Learned Counsel for the petitioner Divisional Forest Officer questioning the action of the authorities in issuing the Notification of withdrawal and the direction regarding handing over of the possession of the land in question to the land owner submitted that the directions are contrary to the express provision of the Land Acquisition Act. Learned Counsel with reference to a letter dated 13.11.1979 (Annexure-1 to C.W.J.C. No. 15767 of 2004), submits that the Commissioner, Bhagalpur Division had opined for establishment of a forest division at the Sundarban. Learned Counsel with reference to a judgment reported in Mangtoo Ram Vs. State of Bihar and Others, paragraph 13, submits that the Notifications under Sections 4 and 17(4) can be simultaneously issued. Learned Counsel with reference to a letter dated 27.6.1981 (Annexure-2 to C.W.J.C. No. 15767 of 2004) submits that a direction, in the light of the Notification u/s 4 and declaration u/s 6, was issued to the Collector, Bhagalpur for taking possession over the land in question and pursuant whereunto the possession was handed over on 20.8.1981 which is evident from the certificate issued under Form-19 placed at Annexure-3 of the writ petition. Learned Counsel with reference to a Notification dated 4.9.1990 (Annexure-7 to C.W.J.C. No. 15767 of 2004), submits that a declaration u/s 29 of the Indian Forest Act has been made declaring the land in question as protected forest. He submits that the withdrawal of the second proceeding in the light of the judgment and order passed by this Court in C.W.J.C. No. 3339 of 1997 in no manner affected the first proceeding initiated in the year 1981 and which remained valid as no Notification u/s 48 of the Act withdrawing the said proceeding was ever issued by the State. Learned Counsel for the petitioner submits that the records of the proceedings itself shows that the land in question indeed was acquired under the first proceeding initiated in the year 1981, the possession taken over and vested in the Forest Department as back as in the year 1981 itself and that the said proceeding could not be annulled simply by reason of initiation of the second proceeding. Learned Counsel in support of his proposition relied upon the following judgments of the Supreme Court, namely:

(i) Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, paragraph- 4, 5, 7 and 8.

(ii) Jethmull Bhojraj Vs. State of Bihar and Others, paragraph-10.

13. Learned Counsel further submits that the provisions of Section 11A is not applicable to an acquisition proceeding initiated under the urgency provisions of Section 17(1) of the Act and thus the delay caused in preparation of the award

pursuant to the 1981 acquisition proceedings would not vitiate the proceedings, however the Land owner would be at liberty to claim interest for the delay as per the statutory provisions. He relied upon the judgment of the Supreme Court reported in Satendra Prasad Jain and Others Vs. State of U.P. and Others, paragraph-14 and 15. He thus submits that the non-challenge of the first proceeding by the land owner pursuant where to the possession of the Lands have been taken over by the State and vested in the forest department has created a vested legal right in the Forest Department and which cannot be annulled by reason of the withdrawal Notification issued u/s 48 of the Act withdrawing the second proceeding initiated in the year 1996. He, with reference to the judicial pronouncement on the issue submits that a land acquisition proceeding initiated under the emergency provisions cannot be nullified merely on delay in the publication of the award nor can the possession vested in the beneficiary be nullified. He submits that these important relevant facts could never be brought to the notice of the learned Judge passing the order in C.W.J.C. No. 3339 of 1997 for the reason that the Divisional Forest Officer or the concerned department was never arrayed as a party respondent to the said proceeding.

14. Mr. Kanth, learned senior Counsel concluding his arguments submitted that in the circumstances that the 1981 proceeding was never put to challenge by the land owner coupled with the fact that the land in question has been declared protected forest and that the Forest Department is in possession of the land right since 1981 pursuant to emergency acquisition, the petitioners cannot be divested of their possession.

15. Mr. Shambhu Saran Singh, Learned Counsel appearing for the petitioner Mr. Sunil Kumar Singh in the Public Interest Litigation bearing C.W.J.C. No. 13769 of 2004 supported the arguments advanced on behalf of the Forest Department and submitted that any interference with the possession of the Forest Department over the land in question would adversely affect the flora and fauna of the area and that the area having been declared a protected forest u/s 29 of the Indian Forest Act, the occasion does not warrant interference with the possession of the Forest Department over the land in question in the larger Public Interest involved.

16. Mr. Lalit Kishore, learned Additional Advocate General No. 3 appearing on behalf of the State more or less proceeding from where Mr. Kanth and Mr. Singh had concluded their respective arguments, submits that the owner of the land in question was a firm by the name and style of M/s. Soorajmull Nagarmull having its registered office at Kolkata. He submits that the firm never chose to question the proceedings rather one of the partners has chosen to raise the issue before this Court. He submits that the acquisition proceeding initiated in the year 1981 was never questioned either by the firm or the present petitioner nor the same has been questioned in the present proceedings. He submits that in absence of any challenge to the 1981 proceeding the same would be deemed to be in accordance with law. Learned Counsel submits that the 1995-96 proceeding was

wholly unwarranted and could not have an effect of annulment of the earlier proceeding under which the title and possession had already passed on to the State. Learned Counsel with reference to the Notification issued u/s 17(4) read with Section 4 of the Act dated 25.3.1981 (Annexure-A) and the declaration u/s 6 of the Act dated 25.3.1981 (Annexure-B), submits that the same having been published in the District Gazette manifests the commencement of the acquisition proceeding and pursuant where to orders were issued to the Collector on 27.6.1981 for taking over of the possession of the land in question within 15 days of Section 6 declaration. Learned Counsel with reference to Annexure-3 of C.W.J.C. No. 15767 of 2004 dated 20.8.1981, submits that the same is a certification that the possession of the land in question was handed over to the Forest Department. Learned Counsel for the State submits that once the possession of the land was taken over by the State the title vested in the State and could not be annulled by any subsequent proceeding. He submits that the second proceeding initiated in the year 1996 was under a misconception and was rightly withdrawn under the Notification dated 17.11.2003 published in the Gazette on 24.11.2003 (Annexure-1). Learned Counsel for the State submits that the Notification dated 4.9.1990 declaring the land in question as protected forest u/s 29 of the Indian Forest Act further strengthens the cause of the State and the object for which the lands were acquired. Learned Counsel with reference to a judgment rendered in the case of P. Chinnanna and Others Vs. State of A.P. and Others, paragraph-10 submits that any infirmity in the subsequent Notification would not have an adverse effect on the earlier proceeding which can be driven to its logical conclusion following the provisions of the Act and the parameters set out thereunder. Learned Counsel in support of his submissions submit that the provisions of Section 11A does not apply to acquisition proceeding initiated u/s 17 of the Act and relies upon a judgment reported in U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, paragraph-3. Learned Counsel for the State concluding his arguments submits that though the writ petitioner-land owner was aware that the first proceeding initiated in 1981 was never withdrawn, he did not choose to challenge the said proceeding or to amend his relief and in which view no relief could be granted to the petitioner in the present proceeding. Learned Counsel in support of his submission relied upon a judgment rendered in the case of Smt. Mridula Chandra Vs. The State of Bihar and Others Paragraph-14.

17. Mr. Surjit Mitra, learned senior Counsel responding to the arguments made by the Learned Counsel appearing in the other two writ petitions as well as learned State Counsel submits that the subsequent development of declaration of the land in question as a protected forest cannot affect the issue as to whether the acquisition proceeding satisfied the procedural norms set out under the Act. He submits that neither the Counsel appearing on behalf of the State nor the Counsel appearing for the Department of Forest have responded to the issue raised by the petitioner that the nature of acquisition did not demonstrate any

urgency inasmuch as acquisition with purpose of construction of residential houses and office cannot be a good ground for invoking the urgency clause. He submits that there is no document on the record of the proceeding demonstrating the taking over of the possession by the Collector. He further submits that the State Government or the Forest Department have also not responded to the issue raised by the land owner regarding non compliance of the provisions of Section 17(3) of the State Amendment. Learned Counsel in response to the issue raised by the State and the Department of the Forest that in absence of the challenge to the 1981 proceeding no relief can be granted to the petitioner, submits that there was no requirement for the petitioner to challenge the same in view of the categorical statement made by the State Counsel in the earlier proceeding and taken note of by the learned Judge disposing of the writ petition bearing C.W.J.C. No. 3339 of 1997 that the earlier proceeding stood lapsed. He nevertheless submits that reply of the petitioner to the supplementary counter affidavit of the State contains all the challenges and objections to the acquisition. He submits that the vesting of title has to be in accordance with law and State cannot adopt a circuitous method contrary to the legal position. He submits that the case laws relied upon by the Department of Forest as well as State-respondent were in circumstances where the State authority was trying to avoid acquisition. Learned Counsel in support of the objection raised by the State regarding the locus of the petitioner to question the proceeding, submits that the petitioner being the only surviving partner in the firm had complete locus to question the validity of the proceeding. He thus submits that there is no merit in the contentions raised in the other two writ petitions or in the statement of the Learned Counsel appearing on behalf of the State and which are fit to be rejected and that the writ petition filed on behalf of the land owner bearing C.W.J.C. No. 1608 of 2004 is fit to be allowed in terms of the relief prayed therein and the possession of the land in question should be