

(2016) 04 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19606 of 2012

Surendra Rajak and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, Section 11A, Section 11-A, Section 12,
Section 12(2), Section 17, Section 17(3A), Section 17(3B), Section 17(4), Section 31,
Section 4, Section 4(1), Section 5A

Citation : (2016) 04 PAT CK 0042

Hon'ble Judges : Birendra Prasad Verma, J.

Bench : Single Bench

Advocate : Nawal Kishore Agrawal, Sr. Adv., for the Appellant; Pushkar Narayan Shahi, AAG-10 and Ajay Kumar Sharma, AC to PAAG, for the Respondent

Final Decision : Allowed

Judgement

Birendra Prasad Verma, J.—1. Heard the parties.

2. In compliance of the order dated 04.04.2016, Mrs. Rachana Patil, the District Magistrate, Vaishali, Hajipur and Mr. Vinod Kumar, the District Land Acquisition Officer, Vaishali, Hajipur are in appearance in person with the relevant records of Land Acquisition Case No. 10 of 2009-10.

3. Heard Mr. N.K. Agrawal, the learned senior counsel appearing on behalf of the petitioners and Mr. Pushkar Narayan Sahi, learned AAG-10 assisted by Mr. Ajay Kumar Sharma, learned AC to PAAG appearing on behalf of the respondents.

4. All these petitioners claim to be poor persons and claim to have purchased parcels of lands of plot Nos. 378, 379, 380 and 381 of village Akbar Malahi, P.S.-Sarai (Bhagwanpur), District-Vaishali (hereinafter to be referred to as the "lands in question") through different sale deeds to the extent of purchase made by them or their parents/ancestors, which all have been mentioned in the aforesaid

sale deeds. Some of the sale deeds along with the rent receipts etc. have also been brought on record by the petitioners along with their supplementary affidavit(s).

5. The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the government notification dated 01.09.2011 issued under Section 4 read with Section 17(4) of The Land Acquisition Act, 1894 (in short "Act"), as contained in Annexure-8 to the writ petition, which has also been brought on record as Annexure-B to the counter affidavit filed on behalf of the respondent Nos. 3 to 5, as also the validity and correctness of the declaration made under Section 6 of the Act by notification dated 02.09.2011, which is part of Annexure-B to the aforesaid counter affidavit. The petitioners have further prayed for quashing of all the consequential actions taken by the respondents in the aforesaid Land Acquisition Case No. 10 of 2009-10 for the purposes of acquiring 1.50 acres of the lands in question.

6. Learned senior counsel appearing on behalf of the petitioners submits that these petitioners are purchasers of the lands in question through different transfer deeds and, if the lands in question are allowed to be acquired by the State of Bihar, then they will become practically landless persons. He further submits that at no point of time any notice/information was given to the petitioners for the purposes of acquiring the lands in question. It is specific case of the petitioners that notice under Section 9 of the Act was never served upon them. It is next contended that the procedure prescribed under the Act has not been followed and final award under Section 11 of the Act has not been prepared within the period of two years from the date of declaration made under Section 6 of the Act. Therefore, according to him, the whole impugned land acquisition proceeding is bad in law and is fit to be set aside and quashed by this Court.

7. Learned AAG-10 appearing on behalf of the respondents has contested the matter. He submits that, in fact, after issuance of notification under Section 4 of the Act on 01.09.2011 for the purposes of acquisition of the lands in question for construction of police station building at Sarai in the district of Vaishali, a declaration under Section 6 of the Act was made by a notification dated 02.09.2011 (Annexure-B to the counter affidavit). According to him, the notices have been issued to the land holders/interested persons for receiving 80% of the compensation amount for the purposes of acquisition of the lands in question. In support of his above contentions, he has placed reliance on the averments made in the counter affidavit and supplementary counter affidavit filed on behalf of the respondent Nos. 3 and 5. However, neither in the main counter affidavit nor in the supplementary counter affidavit any averment has been made regarding preparation of award under Section 11 of the Act determining 100% compensation payable to the land holders/interested persons for the lands in question. On a query made by this Court, learned AAG-10, after looking into the entire records of the Land Acquisition Case No. 10 of 2009-10, which is available

with the respondent Nos. 3 and 5, physically present in the Court, has fairly conceded that the award under Section 11 of the Act has not been prepared till date, though the notices have been issued to the land holder/interested persons for receiving 80% of the award amount purportedly under Section 12(2) of the Act.

8. After having heard the parties and on consideration of the materials available on the record, this Court finds that so far these petitioners are concerned they claim to be purchasers/transferees of the lands in question through different valid documents/sale deeds/mutation orders/rent receipts etc., yet no notice was ever issued or served to them in terms of Section 9 of the Act. Therefore, there has been violation of mandatory provisions of Section 9(3) of the Act. This Court further finds that though the declaration under Section 6 of the Act was made by the notification dated 02.09.2011 (Annexure-B to the counter affidavit), but the award under Section 11 of the Act has not been prepared till date. Therefore, in view of the mandate of Section 11A of the Act, the entire land acquisition proceeding in question has lapsed. It would be relevant to mention here that payment of 80% compensation amount is required to be made/tendered in terms of Section 17(3A) read with Section 17(3B) of the Act, once the emergency clause under Section 17(4) of the Act is invoked. Issuance of notice purportedly under Section 12(2) of the Act for receiving 80% of alleged award amount, without actual preparation of an award under Section 11 of the Act is contrary to the scheme and mandatory provisions of the Act, which cannot be countenanced.

9. For better appreciation relevant provisions of Section 9, 11A, 12 and 17 of the Act are reproduced hereinbelow:--

" 9. Notice to persons interested.-.....
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(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

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"11A. Period within which an award shall be made.-(1) The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement."

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"12. Award of Collector when to be final.- (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

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"17. Special Powers in cases of urgency.-.....

... ..
(3-A) Before taking possession of any land under sub-section(1) or sub-section(2), the Collector shall, without prejudice to the provisions of sub-section (3),-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) Pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-section (2) (except the second proviso thereto, shall apply as they apply to the payment of compensation under that Section.

(3-B) The amount paid or deposited under subsection (3A), shall be taken into account for determining the amount of compensation required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of Collector's award, be recovered as an arrear of land revenue."

(4) 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 under Section 6 in respect of the land at any time [after the date of the publication of the notification] under Section 4, sub-section (1)."

10. On examination of the scheme of the Act vis-?-vis the facts appearing in the present case, this Court is of the opinion that once a notification under Section 4

of the Act is issued for the purposes of acquisition of any plot of land or several plots of lands, as the case may be, the interested person has a right to file objection under Section 5A of the Act and only after disposal of such objection(s) declaration under Section 6 of the Act can be made to the effect that the land is required for the public purpose. However, if special powers in case of urgency is invoked in terms of Section 17(4) of the Act, then the interested person(s)/land holders are deprived from filing objection(s) under Section 5A of the Act. Yet, despite invocation of urgency clause under Section 17(4) of the Act, the Collector is required to issue public notice to the interested persons under Section 9 of the Act. Section 9(3) of the Act further mandates that the Collector will have to serve notice to that effect on the occupier of such land and all such persons known or believed to be interested therein. Indisputably, in the present case, all the petitioners claim to have their possession over the lands in question. They claim to have purchased the lands in question through valid documents of transfer, whereafter the lands in question were mutated in their favour and rent receipts were issued to them, but no notice under Section 9 of the Act was either issued to the petitioners or were ever served upon them. Apparently, there has been a violation of mandatory provisions of Section 9(3) of the Act, which renders all the subsequent actions in the impugned land acquisition proceeding as bad in law.

11. This is not the end of the matter. Under the scheme of the Act, an enquiry is required to be conducted by the Collector, if some objection has been filed by some interested persons. Section 11A of the Act mandates that the Collector shall make an award in terms of Section 11 of the Act within a period of two years from the date of publication of the declaration under Section 6 of the Act and, if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. So far the present case is concerned, indisputably, the declaration in terms of Section 6 of the Act was made by the notification dated 02.09.2011, which is part of Annexure-B to the counter affidavit filed on behalf of the respondents. However, learned AAG-10 appearing on behalf of the respondents, after looking into the entire records of the Land Acquisition Case, has fairly conceded that no award under Section 11 of the Act has been made till date, which has already been noticed in the preceding paragraphs. The contention of learned AAG-10 that notices have been issued to the interested persons for receiving 80% award amount purportedly under Section 12(2) of the Act cannot be taken as preparation of award under Section 11 of the Act. This is simply putting a cart before the horse. Unless and until a determination is made under Section 11 of the Act about 100% compensation amount payable to the interested persons/land holders, notice under Section 12(2) of the Act cannot be issued. In fact, under the scheme of the Act, 80% of compensation amount is required to be tendered/paid to the land owners/interested persons, as per the provisions contained in Section 17(3A) of the Act, if urgency provision under Section 17(4) of the Act has been invoked. As a matter of prudence, Section 17(3A) and (3B) of the Act are required to be read conjointly. 80% of the compensation amount is required to be tendered under

sub-section 3A of Section 17 of the Act, but it is subject to final determination and preparation of award under Section 11 of the Act, which is evident from sub-section 3B of Section 17 of the Act. If payment made under Section 17(3A) of the Act is found to be surplus/excess to the amount of award determined under Section 11 of the Act, then such surplus/excess amount is required to be returned by the land holder/interested persons in terms of Section 31 of the Act by virtue of mandate of Section 17(3B) of the Act, but in no case payment of 80% of the compensation amount can be termed as determination/preparation of award under Section 11 of the Act.

12. In the impugned land acquisition proceeding since award under Section 11 of the Act has not been made within two years from the date of declaration made under Section 6 of the Act; therefore, whole land acquisition proceeding with respect to the lands in question has lapsed under the mandate of Section 11A of the Act. Besides that there are several other infirmities with respect to the land acquisition case in question, which all have been noticed in the preceding paragraphs.

13. For coming to the above conclusions, this Court finds support from the principles enunciated in paragraph 5 by the Hon'ble Apex Court in the case of State of U.P. v. Rajiv Gupta [, (1994) 5 SCC 686], which reads as follows:--

"Its bare reading indicates and emphasizes the limitation within which the award should be made and has been statutorily determined, namely, the Collector shall make an award within a period of two years from the date of the publication of the declaration. It is common knowledge that after declaration was published, years used to roll by to make the award and the owners of the lands were put to great hardship. Parliament intended to relieve the owners of the lands from this hardship and pegging of the price prevailing as on date of publication of Section 4(1) notification. It is, therefore, a mandatory duty cast on the Land Acquisition Collector to make the award strictly in accordance with the limitation under Section 11-A. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. In other words, on expiry of two years from the date of the publication of the declaration unless the proviso is attracted, if no award is made in the meantime, in the eye of law the proceedings initiated under Section 4(1) of the Act culminated in the declaration made under Section 6 shall stand lapsed and not proceedings, in the eye of law thereafter do exist, to take further action."

14. For the reasons recorded above, the impugned notification dated 01.09.2011 (Annexure-8) issued under Section 4 read with Section 17(4) of the Act, the impugned declaration made under Section 6 of the Act by the notification dated 02.09.2011 (Annexure-B to the counter affidavit filed on behalf of the respondent Nos. 3 and 5) and the entire proceedings of Land Acquisition Case No. 10 of 2009-10 are hereby quashed and set aside on the ground of infraction of Section 9(3) and Section 11-A of the Act, as indisputably no award under Section 11 of the Act has been prepared within the period of two years from the

date of declaration made under Section 6 of the Act. However, this shall not come in the way of the state authorities to initiate a fresh proceeding for acquisition of the lands in question strictly in accordance with law. But, if such a proceeding is started, then the petitioners must be given reasonable opportunity of hearing to raise their valid objections, which may be available to them, and procedure prescribed under the law must be followed.

15. In the result, the writ petition stands allowed to the extent indicated, but with the observations and directions made above. However, the parties are left to bear their own costs.

16. The original records of the Land Acquisition Case in question, so produced, is being returned to the District Collector, Vaishali, Hajipur, who is present in the Court.