

(1986) 09 PAT CK 0031

In the Patna High Court

Case No : Letters Patent Appeal No. 65 of 1985

Syed Mohammad Zakaria

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-09-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 4, 4(1), 6

Citation : AIR 1987 Patna 185

Hon'ble Judges : S.S. Sandhawalia, C.J.; Lalit Mohan Sharma, J.; Birendra Prasad Sinha, J

Bench : Full Bench

Advocate : Kamal Nayan Chaubey and Subhash Chandra Dubey, for the Appellant; J.N. Pandey, G.P. II and Dharni Dhar Prasad Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—Does Section 4 of the Land Acquisition Act (as amended by the Land Acquisition (Bihar Amendment) Act, 1960) inflexibly mandates that the notification under Sub-section (1) thereof declaring that it appears to the appropriate Government or the Collector that the land is needed for the public purpose, must issue under the signature or hand and seal of either of the said two authorities alone -- is the core question necessitating the reference of this Letters Patent Appeal to the Full Bench. Pointedly at issue is the correctness of the observations in Bokaro and Ramgur Vs. Additional Collector and Another, .

2. Herein the land was sought to be acquired for the admitted public purpose of the expansion of the Government hospital at Sasaram. The notification u/s 4 of the Land Acquisition Act (as amended by the Land Acquisition (Bihar Amendment) Act, 1956) (hereinafter to be referred to as the Act) was issued by the Additional Collectors, Sasaram, and published in the District Gazette on 24th/31st Mar. 1976. This was followed by the requisite notification u/s 6 of the Act by the same authority. In challenging the acquisition proceeding by way of a writ petition, the present appellant had taken the stand that his residential house

is located in municipal survey plot No. 208 under Ward No. 3 of the Sasaram Municipality and adjoining the same there are three permanent mazars and two katcha graves which are used for the religious rituals by the Muslim community. It was averred that Urs and other cultural programmes are held over this land and the appellant has also constructed six shops which were let out to the tenants and the income derived therefrom was utilised exclusively for the purpose of religious and cultural causes of the Muslim community. After notice of the acquisition proceedings was served on the appellant, he submitted his objection u/s 5A of the Act alleging that the area in question had already been exempted from acquisition as it is used for religious and cultural purposes of both the Hindu and Muslim communities. Apparently the petitioner's (appellant's) objections were rejected and notices of eviction against his tenants and further requiring him to receive compensation: at the rate of Rs. 480/- per katha were issued to the petitioner (appellant). Aggrieved thereby the writ petition was preferred.

3. In the counter-affidavit filed on behalf of the respondents it was categorically stated that the land had been taken possession of by the Collector way back on 27th Aug. 1980 u/s 16 of the Act. Further, it is the stand that all formalities were duly observed and the notification u/s 6 was published thereafter in the Rohtas District Gazette on 1st Sept. 1976. It has also been stated that there is only one pucca grave in the area covering 20 decimals and the same has been scrupulously excluded from the acquisition. The two alleged kutchha graves are said to be fictitious and false and indeed have been deliberately manufactured and manipulated for the purpose of this case. It was also stated that the pucca mazar is situated on survey plot No. 286 and not on plot No. 208 as claimed.

4. In the writ petition the acquisition was sought to be assailed on a wide variety of grounds. However, before the learned single Judge pointed reliance was placed on Bokaro and Ramgur Vs. Additional Collector and Another, for persistently contending that the impugned notification u/s 4 (annex. 3 to the writ petition) had been issued by the Additional Collector, Rohtas, but it stated that it appeared to the Collector of Rohtas and the Government of Bihar that the land was required to be taken for a public purpose at public expense. This alleged deviation from the supposed requirement of Section 4(1) was submitted to be fatal to the acquisition proceedings which would be vitiated thereby. The learned single Judge, inter alia, repelled the said contention and by his impeccable judgment dismissed the writ petition.

4A. This Letters Patent Appeal was originally placed for hearing before the Division Bench. Before it learned counsel for the appellant again pinned himself on para 18 of the report in Bokaro and Ramgur Vs. Additional Collector and Another, for contending that the event of the notification being issued by the Additional Collector he can only declare his own satisfaction about the need of the land for a public purpose and, consequently, the declaration in the name of the Collector or the Government of Bihar was unwarranted in law. With

hypertechnicality it was urged that this alleged infraction would invalidate the notification u/s 4 which being the foundational base. the acquisition proceedings would necessarily fall thereby. To counter this stand a frontal challenge was raised to the correctness of the relevant observation in M/s. Bokaro and Ramgur's case (supra) (which undoubtedly lent a handle to the appellant's stand) on behalf of the respondent State. Expressing serious doubt about the correctness of the view therein, the appeal was referred to the Full Bench, and that is how it is before us.

5. On the larger prospect, Mr. Choubey, learned counsel for the appellant, highlighted that the acquisition of the appellant's properties was in the exercise of the power of eminent domain by the respondent State and, therefore, the same should be narrowly construed. He also invoked the larger principle that if a statute prescribes the manner of doing a thing then it can be done only in that manner and in no other. Advocating for the strictest construction of Section 4(1) the submission was that unless the declaration of the Collector or the State Government is notified by the self-same authority, the whole proceeding would necessarily stand vitiated. Inevitably, the observation in paragraph 18 of the report in Bokaro and Ramgur Vs. Additional Collector and Another, was the kingpin of the submission.

6. Despite the ingenuity with which the argument aforesaid has been projected, it appears to me that the same is necessarily fallacious. Since herein we are called upon to construe Sections 3(c) and 4(1) as amended in the State of Bihar, it is apt to read the same at the outset :--

"3. Definitions.-- In this Act, unless there is something repugnant in the subject or context,--

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(c) the expression "Collector" means the Collector of a district and includes a Deputy Commissioner, Additional Collector, Additional Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector, under the Act except the functions under Sections 4, 5-A, 6, 35 and 38."

XX XX X

"4. Publication of preliminary notification and powers of officers thereupon. --(1) Whenever it appears to the appropriate Government or the Collector that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published at the office of the Collector, at the office of the sub-divisional officer, at the offices of the smallest revenue administrative unit and Gram Panchayat, if any, constituted under the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948), and at some conspicuous place in the village in which the land is situated; and the Collector shall cause copies of the notification to be served on all persons known or believed to be interested in

the land.

xx xx x"

At the threshold an ancillary contention raised on behalf of the appellant attempting to draw an unwarranted distinction between a Collector and an Additional Collector may be first disposed of. It seems somewhat patent that this argument has no legs to stand upon in view of the aforequoted Clause (c) of Section 3. It calls for pointed notice that the Bihar amendment completely equates the Additional Collector with the Collector and in terms says that the one means the other. By this provision the Additional Collector is not an officer specially appointed by the appropriate Government to perform the functions of the Collector which forms a separate class in Clause (c). The statute in terms declares the Collector and the Additional Collector as an exact equivalent itself and no further authorisation or empowerment is required. Though the matter appears to be clear on the language of Section 3(c) and on principle, it is equally covered on all fours by the binding authority. In an identical situation u/s 3(c) of the Mysore Land Acquisition Act their Lordships in *State of Mysore and Others Vs. Hutchappa and Another*, whilst reversing the High Court judgment, held as follows : --

"We see no force in the argument which has appealed to the High Court. It is easy to see from a bare reading of Section 3(c) that the expression "Deputy Commissioner" has been expressly made to include an "Assistant Commissioner" in charge of a Sub-Division; only other officers are required to be specially appointed by the Government to perform the functions of a Deputy Commissioner. The Assistant Commissioner does not require such separate empowerment or authorisation. The High Court thus erred in its construction of Section 3(c) of the Act. We set aside the order of the High Court and allowed the appeals."

In view of the aforesaid enunciation no finical distinction in this context can now be drawn betwixt the "Collector" and the "Additional Collector".

7. Adverting now to the main contention, it would appear on a plain reading of Section 4(1) that the same consists of two distinct facets. The first and the primal one is with regard to the factum of the appropriate Government or the Collector being satisfied about the immediate or the likely need of the land for a public purpose. This primal question is obviously an issue of fact, namely, whether such a conclusion, satisfaction or appearance has been arrived at by either of the two prescribed authorities in the section, namely, the appropriate Government or the Collector. Once that is done, all that the section mandates is that a notification to that effect shall be published. This is in a way the procedural aspect for the avowed purpose of informing the public in general and the concerned parties in particular of the intended acquisition of land. This is particularly so in the Bihar amendment which requires such publication at the offices of the Collector and the Sub-divisional Officer. Further it mandates such

publication at the offices of the smallest revenue administrative unit and the Gram Panchayat, if any has been constituted. Still further, it must be so done at some conspicuous place in the village in which the land is situated and service of the copies of the notification is mandated on all persons believed or intended to be interested in such land. It seems unnecessary to labour the point as it appears manifest that the requirement of a notification to that effect is for giving the widest publicity to the primal satisfaction or conclusion of the Government or the Collector for the need of acquisition for a public purpose.

8. What perhaps is of equally great significance is the fact that Section 4(1) does not even remotely, prescribe that such a notification must necessarily be issued under the signature of or in the name of or under the hand and seal of the appropriate Government or the Collector as such. Herein by way of analogy reference may be made to Section 6 of the Act giving concrete shape to the declaration of the intended acquisition. This requires that the declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders. The employment of such language is conspicuous by its absence in Section 4(1). Considering that the two sections are plainly complementary, the patent difference in language in this context cannot but lead to the inference that Section 4(1) does not mandate this procedural requirement. Indeed herein the sub-section when read as a whole merely prescribes that once the conclusion of the Government or the Collector with regard to the requirement of land has been arrived at, a notification will be issued to that effect and the widest publicity given thereto and service effected on the interested parties. In this context, one cannot possibly read any inflexible mandate that the notification must necessarily issue either under the signature or in the name or under the hand or seal of either of the appropriate Government or the Collector alone. It is no impassable barrier in the Additional Collector notifying that the appropriate Government has come to the conclusion or the decision that it requires the land for a public purpose. Even in the reverse, if a decision has been arrived at by the Collector, the notification may well choose to take the form of being issued by the State Government or its executive head, the Governor. If it is otherwise in conformity with the provision, I am unable to draw any final line that the factum of a recorded satisfaction of an authority cannot be publicised by any one else other than the authority who has recorded the satisfaction or conclusion. Though the matter appears to be clear on principle and language of the statute, the strongest analogy can be drawn from the binding precedent in *Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others*, . Therein what fell for determination was the somewhat similar provision of Section 6(2) of the Land Acquisition Act. Their Lordships came even to the larger conclusion that it is not even necessary that the satisfaction of the Government must *ex facie* be stated in the declaration made under the section in the following words ; --

"The contention therefore that it is imperative that the satisfaction must be expressed in the declaration or that otherwise the notification would not be in

accord with Section 6 is not correct."

It was further observed as follows : --

"Apart from the clear language of Section 6 it would seem that it is immaterial whether such satisfaction is stated or not in the notification. For even if it is so stated a person interested in the land can always challenge as a matter of fact that the Government was not actually satisfied. In such a case the Government would have to satisfy the Court by leading evidence that it was satisfied as required by Section 6..... We are, therefore, of the view that the High Court was in error when it held that Section 6 notification was not in accord with that section and that proceedings taken thereafter were vitiated."

From the aforesaid enunciation, it seems somewhat patent that there is a sharp shift away from any technicality or hyper technicality in the context of the notifications under Sections 4 and 6. If it is immaterial whether even the satisfaction is expressed or not in the declaration of the notification, it would be more so whether its publication is by the author thereof himself or by some one else on his behalf.

9. Even assuming entirely as a counsel of perfection that it is desirable that the declaration should be by the authority who arrived at the satisfaction, I am inclined to the view that some nominal deviation therefrom cannot in any way lead to the vitiation of the whole acquisition proceeding. It is significant to highlight that neither Section 4 of the Act nor the Rules have prescribed any statutory form for the notification nor mandated as to who will issue the same. All that has been required is that "a notification to that effect shall be published". The absence of a statutory form had also fallen for consideration in *Ganga Bishun Swaika v. Calcutta Pinjrapole Society* (supra) wherein it was held-

"There being thus no statutory forms and Section 6 not requiring the declaration to be made in any particular form, the mere fact that the notification does not ex facie show the Government's satisfaction, assuming that the words "it appears" used in the notification do not mean satisfaction, would not render, the notification invalid or not in conformity with Section 6."

In the light of the aforesaid authoritative enunciation and in the absence of a statutory form, some defect in the shape of the issuance of the notification cannot even remotely be held as fatal. If at all it is a defect, it is a curable one and the factum of satisfaction of either the appropriate Government or the Collector is a matter which is capable of easy proof or determination either by way of pleading or by reference to the record. Such a point can only arise if there is a specific or categorical charge that neither of the two authorities has arrived at any conclusion with regard to immediate Assistant Settlement Officer (Consolidation) it appears that he has applied his mind to the documentary and oral evidence on the side of acquisition proceeding for admittedly public purposes on such a hypertechnicality or triviality is totally uncalled for. Perhaps, to recall the colourful words of the Privy Council, it would be only piling non-reason on

technicality.

10. It remains to advert to Bokaro and Ramgur Vs. Additional Collector and Another, and, in particular, to paragraph 18 thereof. From the brief observations therein, it would appear, that the matter was disposed of more as a dictum than as a considered logical adjudication. Neither principle nor precedent was cited. It had just been opined that it was not open for the Additional Collector to say so in the declaration that it appeared to the Deputy Commissioner that the land was required to be taken by the Government at public expense for a public purpose. This was assumed to be axiomatic. Obviously, the view would now tend to be contrary to the tenor of the binding precedent in the State of Mysore and Others Vs. Hutchappa and Another, . With deepest deference to the learned Judges, I find myself wholly unable to subscribe to so over-technical a view and. I am constrained to overrule the relevant observations in the said judgment.

11. To finally conclude, the answer to the question posed at the very outset is rendered in the negative and it is held that Section 4 of the Act, as amended in Bihar, does not mandate that the notification under Sub-section (1) thereof declaring that it appears to the appropriate Government or the Collector that the land is needed for public purposes should issue under the signature or hand and seal either of the Collector or of the appropriate Government alone.

12. On the above finding, the sole argument projected on behalf of the appellant herein must necessarily fail. There is thus no merit in the Letters Patent Appeal which was pressed by the learned counsel on this specific point alone. The appeal is consequently dismissed without any order as to costs.

Lalit Mohan Sharma, J.

13. I agree with Hon"ble the Chief Justice excepting the observations in para 10 of the judgment relating to Bokaro and Ramgur Vs. Additional Collector and Another, . I would also like to say a few words about the meaning of the expression "Collector" as applicable to Bihar.

14. Under the amended provisions of Section 3(c) quoted in para 6 above, the term "Collector" includes Deputy Commissioner, Additional Collector, Additional Deputy Commissioner and any officer specially appointed by the Government to perform the functions of a Collector under the Act except the function under Sections 4, 5A, 6, 35 and 38. As pointed out during the argument, in Section 3(c) of the Mysore Land Acquisition Act, which was under consideration by the Supreme Court in State of Mysore and Others Vs. Hutchappa and Another, , there was no provision corresponding to the last portion of Section 3(c) of the Bihar Act; but that does not appear to make any difference, because the said clause, that is, "except the functions under Sections 4, 5A, 6, 35 and 38" is applicable only to the specially appointed officers and not to the Deputy Commissioner, Additional Collector and Additional Deputy Commissioner. Several districts in South Bihar are under the administrative control of Deputy Commissioners and except for the difference in the names the posts of a Deputy Commissioner and a

Collector are entirely identical. There cannot be any reason to suppose that while the Collectors were vested with full powers under the Act the Deputy Commissioners were deprived of the authority to perform functions under Sections 4, 5A, 6, 35 and 38; and if the Deputy Commissioner is held to have the same authority as the Collector without any limitation the powers of the Additional Collector and the Additional Deputy Commissioner also will have to be treated as unrestricted. The inclusive part of Section 3(c) refers to two groups of officers; the first one of the Deputy Commissioner, the Additional Collector and the Additional Deputy Commissioner, and the second of the specially appointed officers. The clause depriving the officers of the power to perform the functions under Sections 4, 5A, 6, 35 and 38 covers only the second category, that is, the specially appointed officers. The officers of the first category, that is, the Deputy Commissioner, the Additional Collector and the Additional Deputy Commissioner have been equated with the Collector without any : reservation. I, therefore, agree with the conclusion arrived at by Hon"ble the Chief Justice in para 6 of his judgment.

15. So far Bokaro and Ramgur Vs. Additional Collector and Another, is concerned, as it appears from the facts stated in para 18 of the judgment in that case, all steps were taken by the Additional Collector on his own, in exercise of his authority and he did not state in the impugned notification that he was satisfied that the land under acquisition was required to be taken for public purpose. Instead he said that the Deputy Commissioner was so satisfied, although the Deputy Commissioner had nothing to do with it. The High Court, therefore, inferred that as a matter of fact the necessary satisfaction of any of the authorities concerned was lacking, and in that background the observations, which have been relied on by Mr. Choubey, were made. I do not think that the High Court had failed to correctly appreciate the legal position, as would appear from the following observation made in para 17 of the reported judgment: --

"Coming to the second ground of attack on the declaration contained in Annex. 4, I should think that it is advisable if the declaration states in an express language that the authority making it is satisfied that any particular land is needed for a public purpose. But even in absence of that, if the language used is with the expression "it appears" still it has been held by the Supreme Court in Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others, that it is not imperative that the satisfaction must be expressed in the declaration or that otherwise the notification would not be in accord with Section 6."

Birendra Prasad Sinha, J.

16. I agree with Hon"ble the Chief Justice.