

(2015) 02 PAT CK 0075
In the Patna High Court
Case No : CWJC Nos. 6644-6648 of 1991

Tej Narayan Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 4, 4(1), 5-A
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(1), 24(2)

Citation : (2015) 2 PLJR 235

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Binod Bihari Singh, for the Appellant; S. Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Chakradhari Sharan Singh, J.—In a batch of these five writ applications, a common order dated 25.4.1988 passed by the District Magistrate, Bhojpur, Ara on objection raised by these petitioners under Section 5-A of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") is under challenge and, therefore, with the consent of the parties these applications have been heard together and are being disposed of by the present common judgment. The cases were filed on 24.9.1991. Notices were issued to the Respondents including Respondent No. 4 (Dandiswamy Sajanand Saraswati Aur Sant Vinova Mahavidyalaya, Simari through its Secretary). Despite service of notice, Respondent No. 4, has not entered appearance and the State of Bihar has not yet filed counter affidavit. In such circumstance, I am left with no other option but to proceed with the hearing of the cases on the basis of assertions made in the writ application and the documents brought on record, along with the writ applications. Petitioners claim that they were marginal farmers of Village-Simri in the district of Bhojpur (Now Buxar). The summary of the statement made in the writ application questioning the bona fide of the action of the State-Respondents, to initiate a proceeding for

acquisition of land under the Land Acquisition Act, 1894 is, that an influential person wanted to establish a college in the village and he applied all possible methods to acquire land for the purpose of establishing the college in the village including, getting invoked the provisions of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956. When he failed, he got a notification issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") for the purpose of acquisition of land belonging to these petitioners. It has been asserted, referring to the letter dated 30.4.1988 written by the Secretary, Human Resource Development Department, Government of Bihar and notification under Section 4 dated 21.6.1988, that it was not the public purpose for which the land belonging to these petitioners were sought to be acquired rather it was purely a private purpose, for establishing a private college by a private management in the village. The Notification published in the newspaper, has been brought on record as Annexure-2, to the writ application. Petitioners filed their objections before the Collector under Section 5-A of the Act. The objection filed by the petitioner of C.W.J.C. No. 6644 of 1991 was registered as Miscellaneous Revenue Case No. 12/88-89 whereas petitioner of C.W.J.C. No. 6645 of 1991 was registered as Miscellaneous Revenue Case No. 17/88-89. Similarly, objection of the petitioner of C.W.J.C. No. 6646 of 1991 was registered as Miscellaneous Revenue Case No. 16/88 and that of C.W.J.C. No. 6647 of 1991 was registered as Miscellaneous Revenue Case No. 14/88-89. The objection filed by the predecessor in interest of C.W.J.C. No. 6648 of 1991 was registered as Miscellaneous Revenue Case No. 15/88-89. The petitioners, in their objection took a plea before the Collector, that they were marginal farmers and the purpose of acquisition of their land could not be said to be public. The Collector rejected the plea of the petitioners that they were marginal farmers. Dealing with the objection that the land was not being acquired for public purpose and, therefore, the process for acquisition of land was illegal, the Collector observed that the State Government had already given administrative sanction for acquisition of land and the Bihar Intermediate Education Council, Patna, has also granted affiliation to the college and, primarily on these grounds, turned down the objections. The Collector found, there to be a public purpose behind acquisition of the land as according to him, the youth of the area would be benefited by the educational activities in the college.

2. Mr. R.S. Roy, learned Senior Counsel appearing on behalf of the petitioners, assailing the impugned order of the Collector, Bhojpur, Ara, has submitted that notification under Section 4 of the Act dated 21.6.1988 is unsustainable as it has not been published in accordance with the mandatory provisions of the said section of the Act. He has submitted that there is specific averment in the writ applications that the notice was not published in the Official Gazette as mandatorily required under Section 4, which fact has not been controverted by the Respondents, including the private Respondents. He further submits that the notice was published only in one newspaper whereas as per the provision under Section 4 of the Act, requires publication of notice at least in two newspapers. He

has thirdly submitted that there is apparent contradiction between the administrative sanction granted by the Department of Human Resources, Government of Bihar, and the notification issued under Section 4 of the Act inasmuch as, in the letter dated 30.4.1988 written by the Secretary, Government of Bihar to the Land Acquisition Officer, Bhojpur, it has been mentioned that the administrative sanction is subject to the condition that the Managing Committee of College would bear the cost of the land so acquired, whereas, in the notification under Section 4, it has been mentioned that the land is, to be acquired from public fund for the said college.

3. In support of his submission that publication of notice under Section 4 of the Act in Official Gazette and in two newspapers is mandatory, he has relied upon a Supreme Court decision reported in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, AIR 1985 SC 1622 : (1985) 1 SCALE 1044 : (1985) 3 SCC 1 : (1985) 3 SCR 995 Allahabad and Anr. vs. Raja Ram Jaiswal Etc.]. He has submitted that the entire acquisition proceeding stands vitiated because of non-publication of notice in the Official Gazette in view of the said Supreme Court judgment. In support of the said proposition, he has also placed reliance upon a Division Bench decision of this Court in case of A.S. Grih Nirman Samiti Ltd. vs. State of Bihar reported in 1991 (1) PLJR 380.

4. Learned counsel appearing on behalf of the Respondents-State of Bihar, on the other hand has submitted that in any event, the land acquisition proceeding has lapsed not only with the efflux of time but also because enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013). He submits that admittedly the notice under Section 4 was issued in the newspaper in the year 1988. Admittedly, till date the award has not been prepared. Therefore, by operation of Section 24 of the Act of 2013, the land acquisition process should be treated to have lapsed. I will deal with the submission made on behalf of the learned counsel for the State first. Section 24 of the said 2013 Act reads thus:--

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.--(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),--

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the

commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

5. Section 24 of the Act of 2013 Act contemplates that in any case of land acquisition proceeding initiated under the Land Acquisition Act, 1894, where no award under Section 11 of the said Land Acquisition Act could be made, then all provisions of the present Act relating to determination of compensation shall apply. Section 24(1) of Act of 2013 contemplates another situation where an awarded under Section 11 of the Land Acquisition Act was made. In such circumstance, the act lays down that the proceeding shall continue under the provisions of the earlier Act as if the Act has not been repealed. Sub-section 2 of Section 4 is non obstante provision, according to which, in case of land acquisition proceeding initiated under Land Acquisition Act, 1894, if award under Section 11 has been made 5 years or more prior to commencement of 2013 Act but physical possession of the land could not be taken or the compensation has not been paid, the said proceeding shall be deemed to have been lapsed. In my opinion, in the present case Section 24 will have no application so as to treat the proceeding initiated in 1986 to have lapsed with efflux of time. The present case cannot be governed by the Section 24(2) of the Act of 2013. I find substance in submission made by Mr. Roy, learned Senior Counsel appearing on behalf of the petitioners that the admitted absence of notification in the Official Gazette of the notice under Section 4 of the Land Acquisition Act, 1894, would vitiate the entire proceeding. This fact is not at all in controversy, at least not disputed by any of the parties that there was no publication of notice in the Official Gazette. The Supreme Court in its decision reported in the case of *The Collector (District Magistrate), Allahabad and Anr. vs. Raja Ram Jaiswal Etc.* (supra) specifically held that publication of notice as required by the second part of Section 4(1) was mandatory. Reference may be made in this regard to paragraph No. 16 of the said judgment in case of *The Collector (District Magistrate), Allahabad and Anr. vs. Raja Ram Jaiswal Etc.* (supra) which reads thus:--

"16. Assuming that a notification in the Official Gazette is a formal expression of the decision of the Government, the decision of the Government is hardly relevant, unless it takes the concrete shape and form by publication in the Official Gazette. Where a decision of the Government to be effective and valid has to be notified in the Government Gazette, the decision itself does not become effective unless a notification in the Official Gazette follows. In Mahendra

Lal Jaini vs. The State of U.P. and Ors. It was held that a notification under Section 4-A of the Indian Forest Act, 1927 is required to be published in the Gazette and unless it is so published, it is of no effect. Logically, the same view must be adopted for a notification under Section 4. Therefore assuming that a notification is a formal expression of a decision of the Government to acquire land, unless the decision is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. Section 4(1) further requires that "the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality". The expression "such notification" in the latter part of Section 4(1) and sequence of events therein enumerated would clearly spell out that first the Government should reach a decision to acquire land, then publish a notification under Section 4(1) and simultaneously or within a reasonable time from the date of the publication of the notification cause a notice to be published containing substance of such notification meaning thereby that notification which is published. Obviously, therefore, there cannot be a publication in the locality prior to the issuance of the notification. The submission of Mr. Kacker does not commend to us."

6. The Supreme Court in the said decision repealed the plea, that landholders or any society were not prejudiced by failure of the Government to publish a notice in the locality as they in fact had filed an objection against proposed acquisition. Paragraph No. 17 of the said judgment is relevant and is being quoted hereinbelow:--

"17. In this context, it was next contended that at any rate the petitioner has not suffered any prejudice by the failure of the Government to publish a notice in the locality because the petitioner has filed detailed objections against the proposed acquisition. If the only purpose behind publishing the notice in the locality was to give an opportunity to the persons interested in the land to file their objections, the submission would have merited consideration but the same has been expressly negatived and therefore, it is futile to examine the same. To be brutally frank if this was the only ground for invalidating the notification, in the backdrop of facts we would have our serious reservations in upholding the decision, though as the law stands, the High Court was perfectly justified in reaching this conclusion. Our reservations have nothing to do with the perfectly legal view taken by the High Court. They stem from the facts of this case and our understanding of the purpose behind publication of notice as set out by us earlier. In such a situation, we would have developed the concept of prejudice and the absence of it resulting in negating the contention. But there are other formidable challenges to the validity of the impugned notification, which of course have not found favour with the High Court but we are inclined to take a different view of the matter. Therefore we let the decision of the High Court on this point stand."

(emphasis added)

7. A Division Bench of this Court in case of A.S. Grih Nirman Samiti Ltd. vs. State of Bihar (supra) also dealt with requirement of publication of notice under Section 4 in Official Gazette has been held to be mandatory. Situated thus, and in view of the Supreme Court pronouncement as noted above, there remains no doubt over the legal position that publication of notice under Section 4 of the Act is mandatory, otherwise such notification cannot be sustained and all proceedings on the basis of notice without publication in Official Gazette is no notice at all. Accordingly, notice purportedly issued on 21.6.1988 cannot be sustained and is illegal on the face of it. The District Magistrate wrongly rejected the objection raised on behalf of the petitioners before him on that ground.

8. I accordingly set aside the impugned order of the Collector, Bhojpur (now Buxar) dated 24.5.1989. I also quash the notification dated 21.6.1988 as contained in Annexure-2 on the ground that it was not published in the Official Gazette.

9. I accordingly allow this application. There will be, however, no order as to costs.