

(1965) 10 PAT CK 0003
In the Patna High Court
Case No : Misc. Judl. Case No. 812 of 1962

Udit Ram Barai

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-10-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 4, 5A

Citation : AIR 1966 Patna 258

Hon'ble Judges : K. Sahai, J;A.B.N. Sinha, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh and Tarni Prasad, for the Appellant;
Standing Counsel and S. Ali Ahmad, for the Respondent

Final Decision : Allowed

Judgement

1. This is an application under Articles 226 and 227 of the Constitution with the main prayer that a writ of mandamus be issued on the respondents quashing and cancelling the notification (Annexure A), dated the 25th July, 1962, issued by respondent No 2. Deputy Commissioner of Dhanbad.

2. The notification, which has been issued by the Deputy Commissioner of Dhanbad, is a notification u/s 4 of the Land Acquisition Act, 1894. It says that some land which have been described in the notification are "required to be taken by the Government at the expense of the Coal Field Co-Operative House Construction Society. Ltd., Dhanbad. for public purpose, viz., for construction of houses in the village of Hirapur." Towards the end of the notification, there is a paragraph, which reads:

"In exercise of the powers conferred (sic) Section 17(4) of the said Act, the Local Government have decided that, in view of the urgency of the Project, provisions of Section 5A of the Act shall not apply."

3. Mr. Balbhadra Prasad Singh, who has appeared on behalf of the petitioner, has urged the following two points: (1) that the purpose mentioned in the notification

is not a public purpose, and hence the entire notification ought to be struck down, and (2) that if it is only within the power of the appropriate Government u/s 17(4) of the Act to dispense with the provisions of Section 5A, and that the notification speaks of Local Government, but, so far as the petitioner has been able to ascertain, even the State Government has not issued any direction to this effect u/s 17(4). On this basis, he has prayed that the offending portion of the notification, i.e., the last paragraph, which I have quoted above, be struck down.

4. I take up the second point first Section 17(4), after the amendment made by Bihar Act 11 of 1961 reads:

"(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 provisions of Section 5A shall not apply where the appropriate Government so directs or where possession of land has been taken with the consent of the person interested."

5. It is clear that the notification has been issued by the Deputy Commissioner and not by the State Government, which is the appropriate Government in this case. The petitioner has filed Annexure B, which appears to be a telegram sent by the Assistant Secretary to Government, Revenue Department, Land Acquisition Section, Bihar, Patna. It is addressed to the Collector of Dhanbad. and it is to the following effect:

"No. 8224--Reference this Department Memo Number 8006 dated 15th July, 1961 regarding acquisition of land for Central Ropeways (stop). Please start land acquisition proceedings under emergent section in case so required."

6. The petitioner has stated that he has not been able to discover any other direction issued by the State Government u/s 17(4) dispensing with the provisions of Section 5A, in so far as the present land acquisition in question is concerned. The Standing Counsel who has appeared on behalf of the State, has also referred to the same annexure, and has stated that this is the only relevant direction issued by the State Government. He has tried to interpret the words as meaning that the State Government gave general authority to the Deputy Commissioner, Dhanbad. to take proceeding under the emergent section to acquire any land which was needed for any purpose. We are unable to accept this interpretation. The words leave no room for doubt that the State Government referred in the telegram merely to acquisition of land for the Central Ropeways, and directed the Deputy Commissioner to take proceeding under the emergent section for acquisition of land for that purpose. It is manifest, therefore, that the last paragraph of the notification is completely unauthorised, and the Deputy Commissioner, who had no power to issue a direction u/s 17(4) to dispense with the provisions of Section 5A of the Act, has issued it erroneously and without jurisdiction. That being so, this part of the notification must be struck down. The result is that, unless the State Government issues a direction u/s 17(4) in accordance with law, dispensing with the provisions of Section 5A. those

provisions must prevail, and the petitioner or any interested person must be given an opportunity to object to the acquisition in question.

7. As the petitioner can take an objection u/s 5A of the Act, it is needless to decide at this stage whether the acquisition is sought to be made for a public purpose. This question can be decided when the objection u/s 5A is taken up.

8. In the result, the application is allowed in part, and, while leaving the other part of the notification intact, that part of the notification whereby the provisions of Section 5A have been dispensed with is quashed. Parties will bear their own costs.