

(1983) 01 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 2104, 2170, 3435, 3436, 3556, 3561 and 3879 of 1982

Umanath Rai and Others, etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 31-01-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : AIR 1983 Patna 181

Hon'ble Judges : S. Sarwar Ali, C.J.; Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : Thakur Prasad, Ravi Shanker Prasad and Veena Rani Prasad, for the Appellant; Bipin Bihari Sinha, K.P. Verma, General, Banwari Sharma, Standing Counsel, Mani Lal, Standing Counsel No. 4, K.K. Gupta, J.N. Thakur, Rameshwar Prasad, Govt. Pleader No. 6, Subhash Kumar Verma, Standing Counsel, Siya Saran Sinha, Standing Counsel, Randhir Kumar Sinha, Standing Counsel, J.P. Shukla, Govt. Pleader No. 2 and Ram Krishna Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma, J.—By there seven writ applications, the proceedings for acquisition of more than thousand acres of land under the provisions of the Land Acquisition Act (hereinafter referred to as "the Act") at the cost of the Bihar State Housing Board constituted under the Bihar State Housing Board Second Ordinance (Bihar Ordinance No. 68 of 1980) for construction of houses have been challenged.

2. A notification u/s 4 of the Act was published in Aug. 1974 with respect to 1034.94 acres of agricultural land in the close proximity of Patna town and in Feb. 1979, a declaration u/s 6 was made, as contained in Annexure 1 to the writ petitions. The petitioners have prayed for quashing of Annexure "1" on the ground of delay in completing steps for taking over of the lands. On the 30th Mar. 1981, a public notice was issued as contained in Annexure 4 stating that no document of transfer of the lands under acquisition would be registered. The

petitioners pray for quashing Annexures 1 and 4.

3. Mr. Thakur Prasad appearing for the petitioners, has contended that In view of the gross delay on the part of the respondents, it should be inferred that the impugned notification was not issued bona fide for public purpose and its object was to peg down the price of the lands so that in future if an occasion arose, the same could be acquired on payment of lower compensation. Reliance was placed on the decisions in State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , Ambalal Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others, , State of Punjab and Another Vs. Gurdial Singh and Others, , Radhey Sham Gupta and Others Vs. State of Haryana and Others, .

4. On behalf of the State, several affidavits have been filed in these different cases and the relevant facts leading to the delay have been set out. It appears that the lands under acquisition belong to about 1100 persons and after the publication of Section 4 notification in Aug. 1974, steps were taken for service of individual notices. The final service report of the notices was received by 28-5-1975 and thereafter about 527 objections were filed u/s 5A of the Act. The objections were disposed of by 12-2-76 and the draft declaration u/s 6 was prepared on 19-2-76 which was published on 1-3-1976. By 25-3-1976, the copy of the publication was received by the department and notices u/s 9 for filing claims were issued on 14-4-1976. More than 500 objections were there-after received by 19-5-1976.

5. A representation was made on 8-11-1976 by Shri Ramautar Shastri, a Member of Parliament, on behalf of the land owners against the acquisition. In the meantime, the claim objections were disposed of and steps for preparation of the rate report were taken up by the District Land Acquisition Officer. In Dec. 1976, the Collector approved the report and an estimate was prepared on the basis. In Jan. 1977, the estimate (of about Rupees Eight Crores Thirty Lacs) was sent to the Government for approval. In the meantime, preparation started for holding the general election of the Parliament. A further representation in April, 1977 by one of the owners of the land was filed with a prayer to release the lands. While this was under consideration, the election of the State Legislature took place and the earlier Government was displaced by Janta Party Government of which Mr. Thakur Prasad (who is now appearing as the counsel of the petitioners) was the Industry Minister. He made a representation before the new Chief Minister (Shri Karpoori Thakur) to release the lands. The Chief Minister passed an order staying further proceeding in the matter.

6. The State Government, however, did not pass any order releasing the lands from the acquisition and the order of stay was vacated in 1980. It has been stated in the supplementary counter affidavit in C. W. J. C. 2170 of the respondents that a writ application registered as C. W. J. C. 1859/81 was then filed in 1981 which was allowed to be withdrawn with the observation that a representation could be filed before the Government for consideration. In Jan. 1982, the Housing Board deposited the amount in the Treasury at the disposal of

the Collector for repayment to the owners as compensation. Representations were then filed for consideration by the Government in pursuance of the observations in C. W. J. C. 1859/81. In May, 1980, the present writ applications were filed. The High Court admitted the applications and passed stay order forbidding any disturbance to the possession of the lands.

7. It is argued by Mr. Thakur Prasad that the course of events indicated above lead to the conclusion that the notifications under Sections 4 and 6 were not issued bona fide for acquisition of the lands. I do not find myself in a position to agree with the learned counsel. The issuance and service of individual notices on about 1100 persons were bound to take time and the delay on this account till 28-5-1975 does not appear to be unreasonable. Soon thereafter, the statutory objections u/s 5-A of the Act were filed and consideration of the same was again time consuming. I do not find any undue and unexplained delay in publishing the Section 6 notification on 1-3-1976.

8. During the next 2 1/2 months or a little more, objections to notices u/s 9 were filed. These were again more than 500 in number. By the time they could be disposed of and on its basis the estimate could be prepared Shri Ramautar Shastri, M. P. took up the cause of the owners in a fresh bid to get the lands released from acquisition. It is difficult to believe that Shri Shastri did not take this step at the instance of the petitioners. I do not suggest that every one of them approached Shri Shastri for moving in the matter but I would presume that Shri Shastri became active on the request of many of them and in the interest of all of them. In any event, the respondents were justified in assuming that the steps were being taken on behalf of the owners of the lands. Shortly thereafter, there was a change in the State Government and the petitioners' present counsel who was the Industry Minister took up their cause with the new Chief Minister and in these circumstances, an order of stay was passed. I conclude that the petitioners or persons who were professedly acting in their interest without any protest from them were responsible for the delay. The further delay was the result of the filing of the representations after withdrawing C. W. J. C. 1859/81.

9. The decision in the State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, does not appear to support the petitioners' argument on the question of delay. In that case, it was held that a declaration u/s 6 specifying a particular land to be needed completes the process started by the notification u/s 4(1) and when once a declaration u/s 6 is issued particularising the area out of the area specified in the notification u/s 4(1), the remaining non-particularised area stands automatically released. That is not the position here. In Ambalal Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others, the Supreme Court did of course deprecate unnecessary delay on the part of the Government to allow the matter to drift and to take in hand the proceedings for assessment of compensation whenever they thought it proper to do. But dealing with the facts and circumstances it was held that there was no evidence before the Court that the Government issued the notification u/s 4 not for the bona fide purpose

of acquisition but with the object of pegging down the price. The section 4 notification in that case had been issued in 1941 and the award in regard to the compensation was made in 1960. The Land Acquisition Officer then attempted to take possession of the land, and the occupants at that stage moved the High Court under Art. 226 of the Constitution. The High Court dismissed the application and the decision was upheld by the Supreme Court. As in that case, there is no material in the present writ applications for holding that the impugned notification (Annexure 1) or the notification u/s 4 was issued with the object of pegging down the prices. The decision in *Gujarat State Transport Corporation Vs. Valji Mulji Soneji and Others*, also does not support the petitioners. In that case validity of Section 6 notification was struck down after a prolonged litigation and thereafter, a second notification u/s 6 was issued after giving fresh opportunity u/s 5-A. The High Court struck down the second notification on an assumption that there was a fetter on the power of the Government to issue the Section 6 notification within a reasonable time after the issue of Section 4 notification, although there was no express provision to that effect. The Supreme Court did not agree and set aside the High Court's decision and while so doing observed that since by the amendment in Section 6 of the Act, introduced in 1967, three years' period was prescribed in this regard, it was, not necessary for the Court to go into the question of delay as was done by the High Court. In the case before us, the notification was well within time and the Supreme Court decision instead of assisting the petitioners helps the respondents in meeting the grievance of delay between Section 4 notification and Section 6 notification.

10. The case in *State of Punjab and Another Vs. Gurdial Singh and Others*, is not in point at all. There, the acquisition proceeding was struck down on the ground that the power had been misused to satisfy the personal ends of the respondent No. 22. A site was chosen for a grain market which belonged to a cousin of the respondent No. 22, an influential politician. The spot was eventually abandoned and the lands of respondents 1 to 21 were notified. They resisted and successfully impeached the acquisition on the ground of mala fides before the High Court. After a long interval, the State initiated a fresh acquisition proceeding in respect of the same land for the second time invoking emergency power u/s 17 of the Act. The acquisition was, once more assailed and was struck down on the ground of mala fides. None of the three Supreme Court cases cited by Mr. Thakur Prasad supports him.

11. In *P. Appalamurthy v. State of Andhra Pradesh*, (AIR 1981 Andh Pra 278) the State was keeping the notification u/s 4(1) of the Land Acquisition Act alive and was delaying the matter for the result of the proceedings under ceiling laws, so as to ultimately opt for more advantageous alternative. From this and other relevant circumstances, the learned single Judge of the Andhra Pradesh High Court quashed the notification on the ground that it was a case of arbitrary and unreasonable exercise of power causing prejudice and loss to the citizens.

12. In *Radhey Sham Gupta v. State of Haryana* (AIR 1982 P and H 519) the proceedings for acquisition were initiated a decade earlier in 1972. One notification in 1972 u/s 6 was followed by another in 1975. Thereafter a long period followed without any follow-up action and after nine years from the original notification u/s 4, the notice u/s 9 was issued without "a hint of explanation worth the name for the same". The High Court in these circumstances held that the inference was that notices u/s 9 "were merely colourable exercise of power to take over the land of the petitioners at pegged down prices." In view of the finding arrived at by me in paragraph 8 above, both these cases are distinguishable. It cannot be held that as a result of mere delay in actually acquiring the land and paying the compensation, the notifications issued under Sections 4 and 6 are rendered vitiated and should be quashed. The main argument of the petitioners, therefore, fails.

13. Mr. Thakur Prasad also emphasised the fact that the respondents had not produced in this Court any plan prepared by the Housing Board showing how they are going to use the land and contended that it may be inferred that a plan as contemplated by Section 8 had not been finalised so far. It is not possible to make an assumption as suggested in the circumstances of the case, specially in absence of the Housing Board, which has not been impleaded as a party to the case. This Court never required any of the respondents to produce the plan. Further, the observations made in para. 3 of the judgment in the *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, relied on by Mr. Thakur Prasad were made in a different context and do not suggest that the acquisition proceeding is bad in absence of a completed plan.

14. It was also faintly suggested that since the compensation to be awarded to the petitioners and other owners of the lands are to be given out of the funds of the Housing Board, and is not being paid by the State, the notification u/s 6 is illegal. Reliance was placed on the second proviso to Section 6(1) of the Act. The Housing Board has been created u/s 3 (1) of the Bihar Ordinance No. 68 of 1980 and Sub-section (2) expressly declares the Board for the purposes of the Land, Acquisition Act and certain other laws, a local authority. In that view, there is no merit in this argument.

15. The lands are being acquired for building residential houses for the general public of which there is a great scarcity in Patna town and it has rightly, therefore, been not suggested that the proceeding is not for public purpose.

16. The next point pressed on behalf of the petitioners was based on the allegation regarding discrimination. It has been said that some lands belonging to certain individuals, namely, Badri Sahu and R. S. Pandey and his relations were released. The statements in regard to this plea are too vague and inadequate to be considered seriously. It has been mentioned earlier that a vast area belonging to a very large number of persons are under acquisition. The petitioners have not placed before us the location, area and other relevant details of the released lands and of the remaining lands to show that the circumstances

relating to acquisition and release are similar.

17. The last point urged by Mr. Prasad was based on the notification as mentioned in Annexure 7 dated 6-2-1979 to the supplementary affidavit filed by the petitioners in C. W. J. C. 3435 of 1982 whereby an area of 19.46 acres of land out of the area covered by earlier notification was acquired for implementation of an urgent Scheme of Patna Storm Drainage. It was said that the earlier notification must be deemed to have been superseded by Annexure 7. It is not possible to accept the contention as Annexure 7 covering 19.46 acres affects the earlier notification only to that extent, and no further.

18. No other point has been raised on behalf of the petitioners against the acquisition proceedings and the prayer in regard to the main relief is rejected. The learned Advocates for the petitioners have, however, challenged the order of restriction mentioned in Annexure 4 on the registration of any document of transfer of the lands in question. There does not appear to be any acceptable reason to prohibit transfers on the basis of the pendency of the acquisition proceedings. If the present owners of the lands execute any document in this regard the right of the transferees shall be subject to the acquisition proceedings and the impugned proceedings shall not be, in any way, affected thereby. The orders in Annexure 4 therefore appear to be vitiated and are accordingly quashed. The right of the petitioners to affect any transfer and execute any registered document in this regard however shall be subject to any restriction under any other law including the ceiling laws.

19. In the result, the orders contained in Annexure 4 are quashed, as indicated above; and subject to this, the writ applications are dismissed, but in the circumstances without costs.

S. Sarwar Ali, C.J.

20. I agree.