

(2019) 01 PAT CK 0006

In the Patna High Court

Case No : Letters Patent Appeal No. 405 of 2018, Civil Writ Jurisdiction Case No. 21755 of 2013

Urmila Devi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 5A
Constitution of India, 1950 — Article 251, 254

Citation : (2019) 01 PAT CK 0006

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Anjana Mishra, J

Bench : Division Bench

Advocate : Suraj Narayan Yadav, Nutan Sahay, Khurshid Alam

Final Decision : Dismissed

Judgement

Having heard learned Counsel for the parties, we are satisfied that the delay has been sufficiently explained. The delay condonation application is allowed. The appeal shall be treated to be within time.

Heard Shri Suraj Narayan Yadav, learned counsel for appellant, and Smt Nutan Sahay, A.C. to A.A.G.12, for the State of Bihar.

Land acquisition is the subject-matter of the dispute in the present appeal arising out of the judgement of the learned Single Judge dated 2nd August, 2017, where the contention of the appellant is that she has been deprived of the opportunity of raising objections to the acquisition proceedings in terms of Section 5A of the Land Acquisition Act, 1894. The details of acquisition are already mentioned in the impugned judgement and, therefore, need not be reproduced once again. The learned Single Judge found that the limitation prescribed for filing of objections stood circumscribed in terms of the provisions that were inserted in Section 5 A by Central Act 68 of 1984. The period of limitation of 30 days prescribed therein to file objections, therefore, stood introduced and any objections thereafter cannot be entertained as the power to extend the said

period also does not exist with the competent authority. The learned Single Judge, after having analyzed all the provisions, came to the conclusion that the period of limitation having expired, the objections filed by the appellant-petitioner beyond the period of 30 days could not be entertained by the authority and, therefore, upheld the action of the respondent-State.

Learned counsel for the appellant contends that the learned Single Judge could not have travelled beyond the observations made by a Division Bench of this Court in the case of Prem Lata Devi Vs. State of Bihar & Ors, reported in 1998 (3) PLJR 270, where it was observed that it is not correct to say that after the Central Amendment, Bihar Amendment must be held to be repealed.

The learned Single Judge repelled the said contention in para 18 of the impugned judgement holding that Act 68 of 1984 shall prevail over the Land Acquisition Bihar (Amendment) Act, 1960, insofar as it relates to the counting of the period of limitation of 30 days.

Learned counsel for the State of Bihar submits that provisions of 1984 Act will prevail over the Bihar Amendment and that the learned Single Judge has not committed any error in proceeding to conclude as such.

We have considered the legal submissions advanced and we find that the conclusion of the learned Single Judge is absolutely correct and in conformity with the Constitution where the subject-matter of acquisition and requisition is entailed at item 42 of List-III (Concurrent list of the 7th Schedule to the Constitution). Further, Article 251, more particularly Article 254 (2), categorically prescribes that where a law made by a Legislature of the State with respect to one of the matters enumerated in the concurrent list indicates any repugnancy, then the law made by the State reserved for assent of the President having received the assent shall prevail in the State, provided further that the Parliament is not further prevented from enacting at any time any law with respect to the same matter, including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

Keeping in view the said constitutional provisions, the period of limitation as introduced under the Central Act, being Act 68 of 1894, would prevail and, therefore, the conclusion drawn by the learned Single Judge does not suffer from any infirmity.

The objection of the appellant having been filed beyond the prescribed period of limitation, therefore, was not liable to be entertained as it had been, admittedly, filed beyond the period of 30 days.

Apart from this, the acquisition appears to have been made for public purpose, i.e. for providing a connecting/link road in village Godhiyari, Pargana Saraiya, Thana 121, District Samastipur. Apart from this, no prejudice can be said to have been caused to the appellant keeping in view the public purpose aforesaid and also the stand taken by the State that the appellant does not become landless on

account of such acquisition which was subject-matter of dispute. Consequently, for all the reasons aforesaid, we do not find any error in the impugned judgement of the learned Single Judge. The appeal lacks merit and is, accordingly, dismissed.

It shall be open to the appellant to seek her remedy of compensation or any other remedy that may be available under law relating to acquisition for the redressal of her grievances and for expeditious disposal thereof as well as disbursement of compensation.