
(2020) 02 PAT CK 0263

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24341 Of 2019

Vijay Mehta @ Bijal Mehta And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 18-02-2020

Acts Referred:

Citation : (2020) 02 PAT CK 0263

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Raghib Ahsan, Bipin Kumar, Rishi Raj Sinha, Saurabh Kumar

Final Decision : Allowed

Judgement

1. Heard Mr. Raghib Ahsan, learned senior counsel along with Mr. Bipin Kumar, learned counsel for the petitioners and Mr. Rishi Raj Sinha, learned SC 19 along with Mr. Saurabh Kumar for the State.

2. The petitioners have moved the Court for the following reliefs:-

"a) To quash the order dated 04.09.2019 passed by the Respondent Collector whereby the objection raised under Section 15(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act) whereby the lands held by the petitioners have been acquired for the purpose of civil aviation situated contiguous to sough of Military Aerodrome, Purnea, has been rejected without even mentioning the nature of the object.

b) During pendency of this writ petition the respondents be restrained from dispossessing the petitioners from their lands."

3. On 06.12.2019, the Court has raised certain queries which were required to be answered by the authorities along with the issues and points raised in the petition.

4. Though a counter affidavit has been filed on behalf of the Respondent No. 2, the Court finds that the said counter affidavit has evaded the main issue.

5. Learned counsel for the petitioners submitted that the so called acquisition has been done under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act'). It was submitted that the initial notification under Section 11 (1) of the Act was published on 03.06.2019 under the joint signature of the Collector, Purnea as well as the District Land Acquisition Officer, Purnea. It was submitted that in terms of the notification, the petitioners have filed their objection before the Collector, Purnea within time. Learned counsel submitted that once the objection is filed, under Section 15 of the Act, a procedure is prescribed as to how the objections are to be dealt with. It was submitted that under Section 15(2) of the Act, the Collector is required to give the objector an opportunity of being heard in person or somebody authorized by him or an Advocate and after hearing such objections and after making such further inquiry, if any, he can either make a report in respect of the land which has been notified under Section 11(1) of the Act or make different reports with respect to different portions of land to the "appropriate Government" containing his recommendations on the objections along with records of the proceedings held by him as also separate report giving therein the approximate cost of land acquisition and other details. Learned counsel submitted that based on such report of the Collector, under Section 15(3), the decision of the "appropriate Government" on the objections shall be final. It was submitted that in the present case, the objection filed before the Collector, Purnea has been summarily rejected by the Collector, Purnea without preparing any report. It was further submitted that under Rule 6 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Compensation, Rehabilitation and Resettlement and Development Plan) Rules, 2015 (hereinafter referred to as the 'Rules'), the report of the Collector has to include various details as enumerated under Rule 6(2) of the Rules, which admittedly has not been done in the present case. Learned counsel submitted that the Collector has dismissed the objection of the petitioner despite not being authorized to do so as he was not the "appropriate Government" as no such notification has been issued notifying him as the "appropriate Government" under the proviso to Section 3(e)(v) of the Act.

6. Learned counsel for the State, from the counter affidavit, submitted that the notification under Section 11(1) of the Act itself starts with the words 'State Government/Collector', which implies that the State Government has delegated its authority under the Act to the Collector and, thus, he becomes the "appropriate Government" under Section 3(e) of the Act. It was submitted that the petitioners were given opportunity and after due consideration, the matter has been decided by the Collector of the District, who is the person empowered to do so. He drew the attention of the Court to the annexure in the counter affidavit, which is Letter No. 94 dated 31.05.2018, written by the Director-cum-Special Secretary of the Civil Aviation Directorate, Cabinet Secretariat

Department, Patna to the Collector, Purnea in which it has been directed to acquire the land in question. He further pointed out that on 03.01.2020 the post facto approval of such acquisition of 52.81 acres of land has been granted by the State Government in the Department of Revenue and Land Reforms.

7. Having considered the facts and circumstances of the case and the submission of learned counsel for the parties, the Court finds that the action of the authorities cannot be sustained in law.

8. The first and foremost requirement of law is that the procedure prescribed under the Act and Rules have to be strictly adhered to since it occasions severe consequences for the person(s) whose land is sought to be acquired. The initial notification under Section 11(1) of the Act being signed by the Collector of the District, he becomes the Collector under the Act. Thus, the contention of learned counsel for the State that the Collector is the "appropriate Government" under Section 3(e)(v) of the Act cannot be sustained for the reason that if such fact is accepted then the Collector of the District could not have been the signatory to the notification under Section 11(1) of the Act.

9. Even if it is accepted for the time being for the purposes of argument that the State Government had delegated its power and, thus, the Collector of the District of Purnea became the Collector for the present transaction under Section 3(e)(v) of the Act, then he could not have been the person to finally decide the objections. To that extent, the notification dated 03.06.2019 under Section 11(1) of the Act, thus, supports the contention of learned counsel for the State that the objection was directed to be filed before the District Land Acquisition Officer, Purnea. However, the petitioners appear to have filed their objection directly before the Collector, Purnea. The Court would pause here. If at all, it was a fact that the Collector of the district of Purnea was notified as the "appropriate Government" under Section 3(e)(v) of the Act then he was not required to consider the objections directly and the same could have been rejected summarily as not being maintainable before him. Thus, he proceeding to hear the objections and the Rules clearly stipulating that it was the "appropriate Government" which was required to take a final decision under Section 15(2) and (3) of the Act, his only role was to forward a report to the "appropriate Government".

10. At this stage, the Court would indicate that as per the Rules especially Rule (6)(2), it is incumbent upon the Collector to include in his report various details with regard to such objections. Nothing has been brought on record to indicate that any report was ever prepared in terms of Rule 6(2) of the Rules.

11. At this juncture, the Court would refer to Annexure-B Series which is copy of the letter of the Revenue and Land Reforms Department, Government of Bihar, issued by the Assistant Director, Land Acquisition, Bihar to the Collector, Purnea dated 03.01.2020, which is in reference to the letter of the Secretary to the Commissioner, Purnea Division bearing No. 3710 dated 09.12.2019, by which the

notification under Section 11(1) of the Act has been given post facto approval. This clinches the issue in favour of the petitioners. If the contention of learned counsel for the State that initially in letter No. 94 dated 31.05.2018 the Collector of the district of Purnea was notified as the "appropriate Government" under Section 3(e) of the Act, there was no occasion to give any post facto approval.

12. There is another reason for the authorities to have acted thus. The same is not hard to understand. On 06.12.2019, the Court passed the order in the present case formulating certain queries which was to be answered and, thus, the matter again seems to have been taken up at the level of the Government. This would be clear from the fact that the Secretary to the Commissioner, Purnea Division writes letter to the Department on 09.12.2019, i.e., after passing of the order dated 06.12.2019 and, thereafter, the Government gives post facto approval on 03.01.2020. There is no provision in the Act to justify or condone such post facto approval. Even if such post facto approval may be taken as bona fide, the authorities have failed to show to the Court that they have complied with the mandatory statutory requirement of considering the objection filed by the objectors. Nowhere, in the counter affidavit either it has been averred or any material brought on record to indicate that such procedure, especially as required under Rule 6(2) of the Rules has been complied with. Even with regard to the averments in the counter affidavit filed on behalf of the authorities, on which learned counsel for the State has relied, there is reference with regard to a social report impact, but no date of the same has been given.

13. If the submission of learned counsel for the State is true, it further fortifies the case of the petitioners as all documents being shown are of a much later date and after passing of the order by the Court on 06.12.2019. Thus, the Court finds that there has been no consideration of the objections filed by the petitioners as contemplated under Section 15 of the Act read with Rule 6 of the Rules.

14. No provision having been shown by learned counsel for the State to justify such action and further no submission made beyond what has been recorded earlier in this order and the averments made in the counter affidavit on behalf of the authorities, the action of the authorities is held to be bad in law.

15. Accordingly, the application stands allowed. The rejection of the objections filed by the petitioners before the Collector dated 04.09.2019, are set aside.

16. As a consequence, it is held that possession of the lands of the petitioners cannot be taken over by the authorities till the time the procedure in accordance with the provisions of the Act and the Rules is complied with, in letter and spirit, moreso in view of them not having taken any compensation amount.

17. However, before parting the Court would only observe that the authorities are at liberty to proceed from the stage of hearing the objections filed by the petitioners, by the Competent Authority. For the said purpose, fresh notices shall be issued to the petitioners fixing the date of hearing and after complying with

the procedure prescribed under the Act and Rules the matter shall be taken to its logical conclusion.

18. It is further clarified that the Court has not set aside or interfered with the initial notification under Section 11 (1) of the

Act and only the subsequent rejection of the objections in the manner, as discussed above, has been held to be unsustainable.