

**(2011) 05 PAT CK 0052**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 13516 of 2010

Yogendra Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 05-05-2011

**Acts Referred:**

**Citation :** (2011) 05 PAT CK 0052

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## **Judgement**

Sheema Ali Khan, J.—This writ application has been filed for quashing 2 of the notification No. 17/2010/DLA/PATNA 1227 dated 21.07.2010 issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") by which 20.99 acres of land appertaining to thana No. 104, village Neora, district Patna is sought to be acquired by the State Government for setting up Maulana Mazharul Haque Arabic and Persian University (hereinafter referred to as "the University"). The Petitioners also seek to quash the order u/s 6 of the Act issued on 22.07.2010.

2. This writ application has been filed in the representative capacity by the six Petitioners, who are resident of village Neora and whose lands are sought to be acquired by the State Government for the purposes of establishing the University. It is said that 120 persons are affected by the said acquisition. The Petitioners are also challenging the letter dated 28.01.2010 by which the acquisition has been invoked under the emergency provisions as contained in Section 17 of the Act.

3. Many issues have been raised in the writ application, but only two issues have been canvassed and argued before this Court. The main question that have been raised in this writ application is that adequate notice was not served on the Petitioners and that there is no occasion to invoke emergency provisions of Section 17(4) of the Act, thereby depriving the land holders from taking advantage of the provisions u/s 5A of the Act, which accords the land holder a right to file objections to the acquisition.

4. A Gazette Notification was published on 21.07.2010 u/s 4(1) of the Act and

subsequently, published in two daily newspapers, AAJ and FARUQI TANZEEM on 26.07.2010. The said notices were also served locally on 27.07.2010, which would be apparent from Annexure-A series. The declaration for acquisition u/s 6 of the Act was also published on 22.07.2010 and subsequently in two newspapers, AAJ (Hindi) and FARUQI TANZEEM (Urdu) on 22.07.2010. The notices were locally served on 27.07.2010. They were also published in the Extra Ordinary Gazette No. 57 dated 06.08.2010 (Annexure-B series). The Petitioners claim that the notices were not properly served and rely on the document showing service of notice at page 129 (Annexure-A series) of the writ application, wherein it has been signed by five persons, including Mukhiya Sunil Kumar and Ajit Kumar Singh, who is a land holder. Emphasis has been placed by the Petitioners on the report of the process server at page 130 of the writ application, which reads as follows:

5. It has been argued that five persons who have signed on the notice issued u/s 4(1) of the Act, are the persons to whom the notices were served and as such it is incorrect for the State to argue and plead that there was valid service of notice.

6. Counsel for the State, on the other hand, submits that the Petitioners are laying too much importance on the fact that there is no full stop (iw.kZfojke) in the noting of the Process Server. It is submitted that the statement that the notices were served on all persons present, cannot be restricted, to the five persons who have signed on the aforesaid notice. To put such an interpretation on the report of the Process Server would amount to a hyper technicality. On behalf of the State, it has been submitted that the land holders were contacted, however, they refused to sign on the notice. In this context, it has also been submitted on behalf of the Petitioners that the enquiry for the purposes of identifying the persons whose lands are to be acquired was made in a haphazard manner, the actual owners were in fact not noticed at all as it appears that only 35 persons have been shown to be the land holders. Counsel for the State submits that the enquiry was made on the basis of the entries in register II which indicated the entry in the name of 35 persons only. This fact has been highlighted in the counter affidavit filed on behalf of the State. The fact remains that apparently there are 120 persons, who claim that they are land holders and their lands would be affected by the said Land Acquisition Proceedings. Individual cases have not been highlighted in the writ application indicating the source of title of such interested persons. Apparently, this aspect of the matter would need to be considered by the Collector/the Land Acquisition Officer as the State Government is required to pay the award/compensation to the land holder in this matter.

7. On perusal of the counter affidavit of the State, it appears that as per the instructions of the Government, two camps were held on 07.08.2010 and 09.08.2010 in the village Neora inviting and intimating the land holders for filing affidavits for voluntarily giving up the lands in order to get the benefit of the circular of the State granting 60 per cent solarium, instead of 30 per cent

solatium, which is payable under the Act. It appears that at that stage, the land holders did not come forward to raise their objections or meet the authorities concerned. Nevertheless, this is one aspect of the matter which indicates that the villagers were aware of the fact that there was to be a acquisition of lands in their village. Apparently, as stated in paragraph 16 of the writ application, some of the villagers met the Chief Minister on 02.07.2010 and filed a representation before him, which is contained in Annexure-8 series, which also indicates that at least 60 out of 120 persons had notice of the fact that the lands were to be acquired in the village Neora. In my opinion, they could have only filed the representation if they were apprised of the fact, that acquisition was to take place because of the steps taken by the State Authorities such as conducting a survey, enquiry etc. with respect to the lands to be acquired. However, considering the entire pleadings made on behalf of the Petitioners as well as the State, this Court finds that although there were service of notice on 35 persons, it would be incumbent upon the State Government to examine the representations of all such persons who claim that their lands are going to be acquire.

8. Thus, those claiming that their lands come under acquisition, may file an application before the Land Acquisition Officer, who will make an enquiry restricted to the title and possession of such person for the purpose of payment of compensation, and if it is found that such persons have the right, title and possession over the lands in question, the Land Acquisition Officer should proceed in the matter accordingly.

9. The Petitioners who are appearing in the representative capacity should thus inform the villagers that they are required to file their applications/representations before the Land Acquisition Officer making their claims, giving the plot number of the lands which are under acquisition. The State, on the other hand, is also required by a general notice to be published in the "DAINIK JAGRAN" (Hindi) and "QUAMI TANZEEM" (Urdu) to notify that they are ready to hear the claims of all such landlords affected by the notification issued u/s 4(1) of the Act. This Court finds that the requirement of service of notice, as required under the Bihar Amendment of the Land Acquisition Act has been substantially complied with, inasmuch, as the recorded tenants in Register II (being 35 in numbers) have been served notices. It is apparent from the different sections of the land Acquisition Act that making and publication of notices and issuance of notices, that anyone claiming an interest in the land proposed to be acquired may appear before the authorities and claim compensation.

10. The next question raised on behalf of the Petitioners is whether the State was justified in invoking the emergency provisions u/s 17 of the Act and thereby depriving the Petitioners the privilege of filing objections u/s 5A of the Act?

11. The University was admittedly running in a rented building. The Vice Chancellor of the University had addressed several letters to the Collector, Patna on 22.06.2005, and again on 17.07.2008 making a request that the State

Government should acquire 20-50 acres of lands for the University either at Phulwarisharif or at Neora. The Deputy Secretary of the Human Resources Development Department had similarly made a request to the District Magistrate, Patna on 14.09.2007. The Vice Chancellor of the University also informed the District Magistrate that the University was required to fulfill certain conditions of having sufficient lands and infrastructure in accordance with the requirement of Section 12B of the enactments made by the University Grant Commission, for the purpose of recognition of the University by the University Grant Commission. In view of the consistent demands by the University and the recommendation of the Human Resources Development Department, the District Magistrate addressed a letter on 19.08.2008 to the Circle Officer to identify lands for the purposes of acquisition for the University in question. On 06.10.2009, the Collector requested the Principal Secretary, Human Resources Development Department to provide necessary funds for the purposes of starting the acquisition proceedings. There was exchange of letters between the Collector, Patna and the Principal Secretary, Human Resources Development Department for the purposes of allotment of money and finally after the allotment, the Commissioner on 19.06.2010 directed that a notification should be issued with respect to acquisition of lands in village Neora with respect to thana No. 104. The forms which were required to be filled for release and permission to notify the lands for acquisition was filled by the requisitioning authority on 21.01.2010.

12. On the basis of the facts aforesaid, the Petitioners claim that the process for requisition for acquisition was initiated as far back as in the year 2005 by the Vice Chancellor of the University, and as such, there was no occasion for the State to declare that the emergency provisions u/s 17 of the Act should be invoked to acquire the lands. It is further submitted that there is no occasion for the Government to debar the Petitioners from filing objections as provided u/s 5A of the Act, while imposing provisions u/s 17 of the Act.

13. In response to the aforesaid submissions, the State Counsel submits that the lands were required for establishing an educational institution, for which the Vice Chancellor of the University was taking steps since 2005. It cannot be said that Vice Chancellor was not vigilant. The formalities took sometime to fulfill, the urgency arose when the University Grant Commission refused to grant recognition to the University which does not fulfill the conditions as required for establishing the University. The State Authorities have been pursuing the matter in right earnest since 2008 and the final decision to acquire the lands can only be concluded after identifying the lands, making an enquiry, getting the funds for acquisition and finally, taking the consent of the State Government.

14. In order to determine whether the State Government had approved the action of the Collector to invoke the emergency provisions under the Act, this Court called for the original file. The original file indicates that the approval was given for invoking Section 17(1) of the Act by the Minister, which would indicate that the proposal had the approval of the Chief Secretary as well as the Minister

for Education in the State of Bihar. I may point out here that the permission was granted earlier by notings in the file, which was returned, as the State Government has come out with a format for filling the details regarding the acquisition u/s 17(1) of the Act.

15. The land is being acquired for the University, the University has been vigilant in taking steps by requisitioning the State Authorities to acquire lands. The delays, if any, were procedural delays by the State Government, as such, it cannot be said that the "urgency" did not exist or that the University was not pursuing the matter in right earnest.

16. The question before this Court in the present case is whether the invocation of the emergency provision was justified or in other words whether the acquisition was for a public Purpose?

17. The allegation in the writ application is not that it was a malafide acquisition, rather the allegation is that the acquisition was not for a public purpose. It has been argued that there was no urgency for acquiring the lands, since the proposal for acquisition started in the year 2005 and ended, according to the Petitioners, in the year 2010 with a declaration, that the lands were urgently required.

18. A public purpose is one wherein the general interest of the community as opposed to particular interest of individuals is directly and eventually concerned. The term "public purpose" when it relates to acquisition to be made for a school or University, must take its meaning in the "generic sense". It has been held by the Supreme Court in the Case of Shyam Behari and Others Vs. State of Madhya Pradesh and Others, that there can be no dispute that acquisition for the purposes of building a school or even for inception of a school is for general benefit and general interest of the community. Similarly, establishment of a University would undoubtedly come within the meaning of Public Purpose.

19. Specific reference can be made to the case of First land Acquisition Collector v. Nirodhi Prakash Gangoli 2002 (2) PLJR 276 (SC). The land in question has been requisitioned under the provisions of the for accommodating students of Calcutta (now Kolkata) by order dated 10.04.1948. An acquisition proceeding with respect to same property was instituted in the year 1982. Declaration was made in the year 1989. The lands included a common passage. The acquisition of the common passage was challenged and allowed by the High Court. The order of the Single Judge was challenged in appeal which stood dismissed on the ground of limitation. Notices under Sections 9, 10 and 11 of the Act were issued. The notices were challenged by the owner of the property. The High Court quashed the notices and also ordered for delivery of possession to the owner. Finally, the State Government issued notification u/s 4(1) and 17(4) of the Act. The notification was again assailed in a writ application, the Single Judge of the High Court held that notification under Sections 4 and 6 as well invocation of Section 17(1) and 17(4) is not assailable. The Division Bench held that since

there was an earlier order to deliver the possession to the owner, which was not implemented, the subsequent notification under Sections 17(1) and 17(4) of the Act is malafide. The order of the Division Bench had been challenged before the Supreme Court.

20. The Supreme Court rejected the plea of malafide and held that the Courts must examine the real purpose behind the acquisition. It cannot be held that acquisition is malafide, as the purpose was to provide accommodation to students of the National Medical College.

21. In this context, the Supreme Court has held that "the question of emergency is a subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of the satisfaction on an objective appraisal of facts." In the present case, there is a need to establish and provide proper infrastructure to run the University. Thus, it cannot by any stretch of imagination, be held that the issuance of notification u/s 17(1) and 17(4) of the Act was not for a public purpose.

22. On perusal of various decisions of the Apex Court, the principle that emerges is that the question of urgency of an acquisition under Sections 17(1) and 17(4) of the Land Acquisition Act is a matter of subjective satisfaction of the Government and ordinarily, it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of the facts. In such circumstances, if the Government has taken into account are the relevant facts and is satisfied that there exists an emergency for invoking the provisions of Sections 17(1) and 17(4) of the Land Acquisition Act, this Court should not readily interfere. In the present case, on perusal of the file, I finds that there has been an application of mind, while considering the need to invoke the provisions of Sections 17(1) and 17(4) of the Land Acquisition Act.

23. Much emphasis has been placed on the decision of Union of India (UOI) and Others Vs. Krishan Lal Arneja and Others, One of the question raised in this case was whether the judgment rendered in the case of Union of India (UOI) and Others Vs. Shakuntala Gupta (Dead) by Lrs., was the correct law laid down by the Supreme Court. The SLP filed against the order and judgment of the Delhi High Court in the case of Banwari Lal & Sons (P) Ltd. was dismissed vide order of the Supreme Court on 21.03.1991. In both these cases, by a single notification issued u/s 4 of the Land Acquisition Act, 14 properties were to be acquired. The purpose of acquisition for each of these properties was set out in a different column. The owner of Grand Hotel which was situated at No. 2, Underhill Road, Delhi challenged the acquisition on various grounds, one of them being that there was not a whisper of what was the urgency to take immediate possession thereby depriving to the owner to raise objections u/s 5-A of the Act. It was, therefore, argued that the notification u/s 4 and 17(1) was vitiated. It was also argued that the notification us 17(1) was also bad because of non-compliance of the requirement of Sub-Section 3-A of Section 17 of the Land Acquisition Act. This mandates that the Collector should tender payment of 80 % of the

compensation amount for the land as estimated by him before taking possession of the land. In both the aforesaid cases, the Court held that the Government had not been able to justify the issuance of a notification u/s 17(4) and in fact had not tendered payment to the land holder as required under the law. In the case of Union of India v. Krishan Lal Arneja (supra), the contentions advanced on behalf of the Appellants (Union of India) were

(i) that the case of Banwari Lal & Sons (P) Ltd. was wrongly decided and further it was on its own facts being property specified; moreover it was not a precedent as no reasoned order was made by the Apex Court;

(ii) non-mentioning of the nature and existence of urgency in the notification issued u/s 4 and 17 of the Land Acquisition Act does not vitiate the notification;

(iii) subjective satisfaction as regards urgency would not be determined solely on the basis of expression used in the notification and such urgency could be gathered looking into the surrounding circumstances and the records which show the urgency for the acquisition;

(iv) pre and post notification delay would not affect the notification on account of lethargy of the Officers and such delay would not render the exercise of power to invoke urgency clauses invalid where there was a great delay on account of shortage of Government houses;

(v) the High Court committed a serious error in determining the damages by appointing an Arbitrator in the absence of the arbitration clauses; and

(vi) the correctness of the order in the cases of Banwari Lal & Sons (P) Ltd. was not considered in the case of Shakuntala Gupta.

The facts of case arise out of the concerned Land Acquisition Proceedings which were also subject matter of the cases of Banwari Lal and Sons and Shakuntala Gupta. It may be noted that all the lands that was sought to be acquired by different requisition which were in the occupation of the various Government Officers which were being used for their residential purposes. In such circumstances, the Court while considering the case of all these 14 properties in the various decision came to the conclusion that the Government had not made out a case which would justify the imposition of Section 17(4) of the Act, especially in view of the fact that under the Requisitioning and Acquisition of Immovable Property Act, 1952, all the requisitioned houses which were with the administration for more than 10 years were to be released by their owners immediately and occupants of the requisitioned/leased houses were directed to give information, failing which they would be liable for eviction. It was noticed that the authorities had two years to make alternative arrangements which they did not do, and on the basis of the aforesaid facts, the Apex Court quashed the notification u/s 17(4) of the Land Acquisition Act. 23. 23. Counsel for the Petitioner places emphasis on a paragraph of the Supreme Court in the aforesaid case which reads as follows:

normally urgency to acquire a land for public purpose does not arise suddenly or arises unexpectedly, exceptional or extra ordinary depending on situations such as due to earthquake, flood or some specific time bound project where the delay is likely to render the purpose nugatory or infructuous.

This observation of the Apex Court has been made in the facts of the case referred to above, which showed the lethargy of the State authorities, who delayed the matter of taking steps for acquiring the properties although they were aware of the fact that lease of the houses were to expire within two years.

24. This Court has taken into account the fact that there is no lethargy on the part of the University authorities, who were pursuing their request for acquisition of the land in right earnest. The State Government has taken a stand that they had the opportunity to avail the funds being allotted for the purposes of building Universities and if they had not taken recourse to urgent steps, these funds would have lapsed. Education is essential part of the development of the State and the nation as a whole, It cannot be doubted that building of institutions, be it schools, colleges or establishment of Universities is within the purview of a public duty as compared to the private right of an individual. If the usual procedure is to be adopted in such cases, it would in fact render the very purpose for establishing the Universities as nugatory or infructuous because of the delay in the procedure of acquisition. Therefore, it became necessary to invoke the provisions of Section 17(1) of the Land Acquisition Act. It is well settled that the facts of each case have to be decided separately and it cannot be argued in general that the invocation of Section 17(1) of the Land Acquisition Act should be sparingly used without considering the purpose for which the acquisition is made.

25. Counsels have referred to the case of Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, to substantiate their arguments that there was no requirement for invoking the provisions of Section 17(1) of the Act. The facts disclose that notification was made u/s 4 on 11.10.1963 for the purposes of development and utilization of the said land for residential and industrial purpose. The notification also states that there was an urgency and need to invoke Section 17(4) of the said Act and specifically stated that the provision of Section 5A of the Act would not be applicable. The question before the Court was whether there was justification for disposing of the provisions of holding an enquiry u/s 5A of the Act. The Supreme Court was dissatisfied with the explanation and the pleadings of the State and held that the development of area for industrial and residential purposes in itself, did not call for any such action, barring exceptional circumstances as to make immediate possession without holding an enquiry u/s 5A of the Act. The Supreme Court further held that "therefore, the very statement of the public purpose for which the land was to be acquired indicated the absence of such urgency, on the apparent facts of the case, as to require the elimination of an enquiry u/s 5A of the Act". It may be stated here that the requirement for invoking the emergency provisions were vague. The pleadings did not disclose the extent and area required, as such the

Supreme Court was not satisfied with the claim of emergency pleaded on behalf of the State.

26. The case aforesaid cannot be compared to the facts of this case. Undoubtedly, the land required for establishment of the University in order to be given recognition and to further the educational aspirations of the students comes within the purview of public purpose.

27. The next case referred to is a decision in the case of State of Punjab and Another Vs. Gurdial Singh and Others, The facts of the case are not relevant in view of the fact that on two earlier occasions with respect to the same facts and subject matter of the acquisition, the Apex Court held that the initiation of the proceedings itself was malafide. The Supreme Court having considered this aspect found that the object of the acquisition is an illegitimate one. There is no such allegation in the present writ application alleging malafide. Therefore, the facts of this case is not helpful to the Petitioner, rather reference may be made to the decision of the Supreme Court in the case of Union of India (UOI) and Others Vs. S.H. Ganshyam Dass Kedia and Others, for the purpose of emphasizing that it is not essential to decide nature of urgency and the purpose behind the acquisition before issuing a notification u/s 17(1) of the Land Acquisition Act. It has also been held by the Supreme Court in the case of Chameli Singh and others etc. Vs. State of U.P. and another, that "the greater the delay the greater the urgency". The establishment of public institutions is the requirement of the day and it cannot be ignored, as such, a delay, if any, cannot throttle a proceeding u/s 17(1) of the Land Acquisition Act.

28. In conclusion, this Court finds that there was compliance of Sections 4 and 6 of the Land Acquisition Act. This Court, for the reasons stated aforesaid also finds that the acquisition of land is for a public purpose and there is sufficient application of mind and reason to invoke the provisions of Section 17(1) and 17(4) of the Land Acquisition Act.

29. In the result, this writ application is dismissed.