

(2014) 01 PAT CK 0077

In the Patna High Court

Case No : LPA No. 1082 of 2011 in CWJC No. 13516 of 2010

Yogendra Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17(4), 4, 5A, 6

Citation : (2014) 1 PLJR 666

Hon'ble Judges : Rekha M. Doshit, C.J.; Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Rakesh Kumar Singh, Advocate for the Appellant; M. Nasrul Huda Khan for the University, Lalit Kishore, Prashant Pratap and Gyan Shankar for State, Advocate for the Respondent

Judgement

Rekha Manharlal Doshit, C.J.—This Appeal under Clause 10 of the Letters Patent preferred by the writ petitioners (five in number) arises from the judgment and order dated 5th May, 2011 passed by the learned single Judge in C.W.J.C. No. 13516 of 2010. The appellants claim to be the owners of the parcels of lands situated at Bihta, District-Patna. The appellants approached this Court under Article 226 of the Constitution in C.W.J.C. No. 13516 of 2010 to challenge the acquisition proceedings of the lands situated at Bihta for the establishment of Maulana Mazharul Haque Arabi/Farsi University (hereinafter referred to as "the University") in so far as the State Government has invoked Section 17(4) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") and has done away with the right to hearing conferred upon the owners/interested persons u/s 5A of the Act.

2. The appellants claim to have filed writ petition in representative capacity. However, the appellants have not followed the procedure as envisaged by Order I Rule VIII C.P.C., the petition and the Appeal, therefore, are entertained as the one filed by five appellants in their individual capacity.

3. On 21st July, 2010 the Government of Bihar issued Notification u/s 4 of the Act declaring its intention to acquire certain parcels of land of Bihta for setting up the University. Under the said Notification the Government of Bihar invoked urgency clause u/s 17(4) of the Act and did away with the inviting objections and hearing u/s 5A of the Act. Pursuant to the said Notification a declaration u/s 6 of the Act came to be issued on 22nd July, 2010.

4. The challenge to the said Notifications has failed before the learned Single Judge, therefore this Appeal.

5. The facts undisputed are that the University was established as early as in 1992 in a rented premise. In 1998 proposal was made for acquisition of land for establishment of the University. The said proposal was repeated in 2005 and 2008. The land in question was identified as late as on 9th February, 2010 followed by section 4 and Section 6 Notifications issued in July 2010.

6. Learned advocate Mr. R.K. Singh has appeared for the appellants. He has submitted that the urgency clause has unnecessarily been invoked and the only right of objection and hearing conferred u/s 5A of the Act has been illegally compromised. In support of his submission he has relied upon judgments of the Hon'ble Supreme Court in the matters of Sri Radhy Shyam (Dead) through L.Rs. and Others Vs. State of U.P. and Others, , of Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, , of Laxman Lal (Dead) Through L.Rs. and Another Vs. State of Rajasthan and Others, and of Competent Authority Vs. Barangore Jute Factory and Others, .

7. Appeal is contested by the State Government and the University. Learned Principal Additional Advocate General Mr. Lalit Kishore has appeared for the State Government. He has vehemently submitted that although the petition and the Appeal have been filed in the representative capacity, in absence of the procedure under Order I Rule VIII C.P.C. the petition and the Appeal may be treated to have been filed by the appellants alone and relief be granted to five appellants alone, hi support of his submission Mr. Lalit Kishore has relied upon judgment of the Hon'ble Supreme Court in the matter of Ram Dhari Jindal Memorial Trust Vs. Union of India (UOI) and Others, .

8. Mr. M. Nasrul Huda Khan has appeared for the University. He has contested the Appeal.

9. We agree with Mr. R.K. Singh. The University which was established as early as in 1992, where the academic activities were commenced in 2008; the acquisition of land cannot be so urgent that the right to lodge objection and to hearing can be compromised.

10. We do agree with the submission of Mr. Lalit Kishore that in absence of procedure under Order I Rule VIII C.P.C. followed by the appellants, the Appeal and the writ petition have to be treated as one filed by the five appellants in their individual capacity and the five appellants alone are entitled to relief.

11. Appeal is allowed. The judgment and order dated 5th May, 2011 passed by the learned single Judge in C.W.J.C. No. 13516 of 2010 is set aside. C.W.J.C. No. 13516 of 2010 is allowed. The Notification dated 22nd July, 2010 issued u/s 6 of the Land Acquisition Act, 1894 in respect of the lands of the appellants is quashed and set aside. If required, the State Government may acquire the said lands but not without following the due process of law. The appellants will be allowed to lodge their objections and will be afforded opportunity of hearing as envisaged by Section 5A of the Land Acquisition Act, 1894.