

Ajodhya Bhagat and Others

Vs

The State of Bihar and Others

Civil Appeal No. 1799 of 1968

(CJI A. N. Ray, K. K. Mathew JJ)

13.08.1974

JUDGMENT

RAY, C.J. -

1. This appeal is by certificate from the judgment dated May 8, 1968 of the High Court of Patna.
2. The appellants challenged the validity of land acquisition proceedings in Land Acquisition Case No. 63 of 1961-62 initiated by the Collector of Patna on July 17, 1961. The acquisition proceedings related to about 64.49 acres of land for what came to be known as Boring Road Scheme.
3. The Patna Improvement Trust prepared a scheme called 'Boring Road Development Scheme'. The Scheme was approved by the Government in the month of December, 1958. In the month of November, 1959 a notification was issued by the State Government under Section 4 of the Land Acquisition Act (hereinafter referred to as the Act).
4. Respondent No. 4 Budha Graha Nirman Sahyog Samiti Limited requested the Government to acquire land for the purpose of providing land to doctors, lawyers, government servants and journalists for building purposes. 25.08 acres were acquired under the normal procedure inviting objections under Section 5A of the Act. This acquisition was completed on July 11, 1962. Possession was taken and compensation was paid.
5. The Samiti wanted to acquire another block of 32.48 acres. This acquisition was under Section 4(1) read with Section 17(4) of the Act issued on November 2, 1959. This acquisition was struck down by the High Court at Patna on April 2, 1960. The High Court however said that the Government could initiate fresh proceedings under the Act for acquisition of 32.48 acres of land in accordance with law.
6. Thereafter the Scheme of the Trust was approved on December 17, 1960. The Government gave permission to the Trust to acquire 64.49 acres of land. It appeared that 32.48 acres of land which the Samiti wanted to acquire fell within the area of the Scheme of the Trust. The Government decided that the land of 64.49 acres be acquired by the Trust and developed by it and then an area of 32.48 acres be handed over to the Samiti. The Samiti agreed.
7. The Collector of Patna issued a notification under Section 4 of the Act read with Bihar Act No XI of 1961. The notification was signed by the Collector on July 17, 1961 and was issued on August 6, 1961.

8. The Bihar Act XI made certain amendments to the Land Acquisition Act. Under Section 4(1) of the Act the Government alone had the authority to issue a notification in the Gazette that land in any locality is needed for public purpose. As a result of the Bihar amendment to Section 4 the collector was given concurrent power to issue such a notification. The Collector's notification was not required to be published in the Gazette but could be validly published in the office of the Collector. Section 17 of the Act contains certain provisions. The Bihar Act effected certain amendments to Section 17. The provisions of Section 17 of the Act as applicable to Bihar, state that in case of urgency, whenever the Government so directs, the Collector though no such award has been made, may on the expiration of fifteen days from the publication of the declaration mentioned in Section 6, take possession of any waste or arable land needed for public purposes or for a Company. The important provision in Section 17 is that the Collector cannot take recourse to the provisions without an appropriate direction from the Government as stated in that section.

9. On August 6, 1961 a notice was published in the Gazette. The notice stated that in exercise of powers conferred by Section 17(4) of the Act the local Government decided that, in view of the urgency of the project, provisions of Section 5A shall not apply. The notification in short records that the acquisition was in the opinion of the Government one of urgency and the Government gave direction in that behalf and, therefore, the provisions of Section 5A were not applicable.

10. On October 5, 1961 the Government of Bihar issued a declaration under Section 6 of the Act in respect of the same area stating the public purpose.

11. On February 5, 1962 an area of 57.71 acres covered by the aforesaid notification and declaration was handed over by the Land Acquisition Officer to the Trust.

12. On January 23, 1962 some of the dispossessed owners filed a petition in the High Court challenging the validity of the acquisition proceedings. The writ petition was withdrawn by those petitioners in the month of July, 1964. The petitioners thereafter moved the State Government. The State Government stayed the acquisition proceedings by its order dated May 3, 1965. On November 27, 1965 the Government vacated the stay and directed the Collector to proceed with the acquisition proceedings.

13. On April 7, 1965 the Samiti deposited a sum of Rs. 10,39,360 through the Trust representing the cost of acquisition of 32.48 acres. On April 27, 1967 the Trust passed a resolution that 25.09 acres of land already in possession of the Samiti and a further area of 32.48 acres acquired by the Trust be made over to the Samiti after deducting such area as might be required for common facilities such as roads, parks etc. It was also resolved that a contiguous piece of land measuring 57.57 acres be handed over to the Samiti subject to the Samiti making full payment for the development.

14. The appellants filed the petition under Article 226 on December 19, 1967. The appellants challenged the acquisition proceedings in the High Court on three grounds. First, the Government did not decide to apply the emergency provisions under Section 17 of the Act and did not give any decision to the Collector to attract those provisions and take possession of the lands. The preliminary notice, under Section 4 of the Act which incorporates the decision of the Government under Section 17 is invalid. The omission to comply with the provisions of Section 5A therefore rendered the subsequent notification under Section 6 of the Act bad. Second, the Samiti is a company and therefore the procedure prescribed in Part VII of the Act should have been followed. Third, the collector was himself interested in securing a plot for himself and he acted mala fide.

15. The High Court rejected the allegation of mala fide. The High Court held that there is no validity in the notification under Section 4. The appellants could not establish that the Government did not give their approval to the application of emergency provisions contained in Section 17(1) read with Section 17(4) of the Act for the purpose of acquisition. The High Court held that it was not necessary to comply with the provisions of Section 5A of the Act.

16. Counsel for the appellants formulated the contentions on four heads. First, no order under Section 17(1) read with Section 17(4) of the Act for the application of emergency provisions was made. On July 15, 1961 a proposal for emergency provisions was made by the Land Acquisition Officer. The Collector signed the notice on July 17, 1961 and sent his letter on July 20, 1961 to the Government seeking direction for the application of the provisions contained in Section 17(4) of the Act. No such directions came. Therefore, Section 6 notification is bad because Section 5A is not attracted in the absence of directions under Section 17 of the Act. Second, Section 4 notification mentions satisfaction of the local Government. Section 4 of the Act as applicable to Bihar states that satisfaction is required either of the local Government or of the Collector. The Collector spoke about the satisfaction of the local Government. Therefore, it was not a valid notification. Third, Section 6 notification is not by the Collector but by the local Government, and, therefore, it is bad. Fourth, the notification is for Patna Improvement Trust but it appears that it is for the Samiti. The Samiti paid the money, but the provisions of Part VII of the Act have not been followed.

17. The Solicitor General rightly contended that no arguments had been advanced before the High Court with regard to notification not being by the Collector, and that there was no satisfaction of the Collector with regard to Section 4 notification. He rightly submitted that the Government would have given answers on facts, and, therefore, this Court is not only deprived of facts but also of the judgment of the High Court on these aspects. We are, therefore, unable to allow the appellants to canvas these grounds.

18. Counsel for the appellants submitted that the allegation in the petition was that the Collector on July 20, 1961 asked the Authority to publish notification under the emergent procedure dispensing with the provisions of Section 5A of the Act. The notification was published under the signature of the Collector on July 17, 1961. Therefore, there was no decision of the local Government under Section 17(1) read with Section 17(4) of the Act and the requirements of Section 5A could not be dispensed with.

19. The High Court said that the Government was unable to produce the file conveying the decision of the Government. The High Court said that the "non-traceability of the Government order in the Secretariat file must in the circumstances be attributed to the deliberate destruction of the relevant papers by the interested parties". The High Court further said that acquisition proceedings had been initiated in 1961 under the instructions of the Government. But for the "intervention of influential persons" it is highly improbable that the Government would have ordered stay of the entire land acquisition proceeding on May 3, 1965.

20. The facts found by the High Court are these. The Patna Improvement Trust requested that the emergency provisions of the Act should be applied. The Deputy Collector-in-Charge pointed out to the Collector that the draft notification must be sent to the Government in the Revenue Department which could apply the emergency provisions and dispense with the compliance of Section 5A of the Act. The Collector prepared a draft notification, signed it and sent it to the Government along with the letter dated July 20, 1961. The notification was actually published on August 6, 1961. On that very day the Deputy Collector directed a copy of the notification to be sent to the persons interested.

On September 4, 1961 the Deputy Collector again recorded that notification had issued under the emergent procedure. There are indications of the receipt of the letter of the Collector in the Secretariat on July 22, 1961. On July 26, 1961 the note in the Secretariat file referred to the receipt of the letter. The High Court on these facts held that the circumstances led to the inescapable conclusion that the Government must have passed the necessary orders.

21. The High Court referred to the certified copy of the order sheet of the Land Acquisition Case from July 14, 1961 to October 14, 1961 in support of the conclusion reached by the High Court. The order sheet dated July 15, 1961 shows that the Chairman, Improvement Trust wanted 64.49 acres to be acquired under the emergent procedure. The Deputy Collector after personal inspection was satisfied that the lands were waste and arable lands and there was no objection to their acquisition under the emergent procedure. The Deputy Collector suggested to the Collector that a draft notification for that purpose should be prepared and sent to the Deputy Secretary to the Government in the Revenue Department for permission. The draft was approved by the Collector and was signed by him on July 17, 1961. It was sent to the Government by the Collector with letter dated July 20, 1961. Then the notice dated August 6, 1961 was published. The notice mentions that the Government gave its decision under Section 17(4) of the Act. On September 4, 1961 the note in the order sheet states that a notification under Section 4(1) of the Act under the emergent procedure has been published on August 6, 1961. The further note in the order sheet dated September 4, 1961 states that the draft declaration under Section 6 of the Act along with declaration plan has been prepared and is submitted for approval.

22. On these facts the High Court held that the appellants did not establish that the Government did not give their approval to the application of emergency provisions of Section 17(1) read with Section 17(4) of the Act. The High Court was right in repelling the suggestion of the appellants that the Government did not give their approval to the application of emergency provisions for the purpose of acquisition.

23. The High Court held that the appellants were guilty of delay and laches. The High court relied on two important facts. First, that there was delivery of possession. The appellants alleged that it was a paper transaction. The High Court rightly rejected that contention. Secondly, the High Court said that the Trust invested several lakhs of rupees for the construction of roads and material for development purposes. The appellants were in full knowledge of the same. The appellants did not take any steps. The High Court rightly said that to allow this type of challenge to an acquisition of large block of land piecemeal by the owners of some of the plots in succession would not be proper. If this type of challenge is encouraged the various owners of small plots will come up with writ petitions and hold up the acquisition proceedings for more than a generation. The High Court rightly exercised discretion against the appellants. We do not see any reason to take a contrary view to the discretion exercised by the High Court.

24. For the foregoing reasons the appeal fails and is dismissed. The appellants will pay costs to the respondents.

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