Chandra Bansi Singh and Others

Vs

State of Bihar and Others

Jawahar Lal Mehta and Others

Vs

State of Bihar and Others

Kapil Muni Singh

Vs

State of Bihar

Sedasushan Kumar Singh and Others

Vs

State of Bihar and Others

Civil Appeal Nos. 9973 to 9977 of 1983

22.08.1984

JUDGMENT

FAZAL ALI, J. -

1. Sometimes while taking a pragmatic and progressive action under a statute in the general public interest, which is doubtless a step in the right direction, the Government succumbs to internal or external pressures by a citizen or group of citizens so as to show special favour to them which destroys the laudable object of the nature of the action. Such course is adopted to help a few chosen friends at the cost of the people in general and frustrates the very object of the meaningful State action. Furthermore, the State action brings it into direct collision with Article 14 of the Constitution of India.

2. The present case seems to us to be a concrete illustration of the State action taken under the Land Acquisition Act, 1984 (for short, to be referred to as the 'Act'). What happened here is that while the Government of Bihar acquired a vast tract of land for construction of houses and allotment to the people belonging to the low and middle income groups but chose to exempt certain persons from the statutory action on purely unreasonable and illusory grounds. Fortunately, the chosen class comprised a very small number of persons whose lands consisted of a small proportion of the total acquired land.

3. This now brings us to the consideration of the important facts of the case. A notification under Section 4 of the Act was issued by the Government of Bihar on August 19, 1974 seeking to acquire

1034.94 acres of land in village Digha for the purpose of construction of houses by the Bihar State Housing Board wherein it was mentioned that the price or compensation for the acquired land was to be paid by the Housing Board and not by the State from its own funds. By virtue of the said notification objections were called and on February 12, 1976 all the objections were disposed of. A declaration under Section 6 of the Act was issued which was published on February 20, 1976. On March 25, 1976 the publication was received by the Department and notice were issued under Section 7 of the Act for filing claims. On April 14, 1976 notification under Section 9 of the Act was issued. On May 19, 1976 as many as 500 objections were filed. So far so good. Unfortunately, thereafter on November 8, 1976 a representation was made by Mr Ram Avtar Shastri, Member of Parliament, for withdrawing the acquisition proceedings, which was disposed of and dismissed in December 1976.

4. After this, rate report was prepared which was accepted by the Collector who gave his final estimate and sent the same to the Government in January 1977. According to the estimate, a sum of Rs. 8.30 crores was to be disbursed to the various owners whose lands were sought to be acquired. While the matter was nearing completion preparations for the 1977 general elections were made as a result of which the entire matter was deferred and put into cold-storage. On May 24, 1980, which is a crucial date as it appears to be the subject matter of the present appeals and writ petitions, a portion of land comprising 4.03 acres belonging to some influential persons, viz., Badri Sahu, R. S. Pandey and his relations (hereinafter referred to as 'Pandey families') was released. It is not clear what were the considerations which led the Government to single out Pandey families for favourable treatment. Sometime in July 1977 the State Ministry of Revenue and Industry confirmed the acquisition. Ultimately, on December 12, 1977 in order to smoothen the way for the acquisition of the lands in question, the Central Government exempted purely agricultural lands from acquisition under the Urban Land Ceiling Act.

5. In the year 1978, a representation was made by Mr. Thakur Prasad who took over as the new Minister of Industries after the general elections, about the acquisition to the Chief Minister who stayed further proceedings in the matter. In the mean time, a writ petition was filed in the High Court which was ultimately withdrawn by the petitioners and the stay was vacated by the Government some-time in early 1980. In may 1981 another writ petition was filed in the High Court mainly challenging the release of lands on April 26, 1977 in favour of Pandey families on the ground that the said release was violative of Article 14 and therefore the entire notification was bad and without jurisdiction.

6. In January 1982, the amount of compensation was deposited by the State Housing Board with the Treasury which was followed by an Award given in respect of the acquired lands on February 1, 1983. The totality of the facts and the dates stated above clearly show that the delay in finalising the compensation by the Collector was due to unforeseen circumstances and the appellants, therefore, cannot be heard to complain of the same because, as already indicated, this was due to stay orders passed by the Government and the courts on several representations.

7. It is rather unfortunate that while the acquisition of land for a sound purpose was taken and necessary steps complied with, the acquisition fell into a rough weather raising serious controversies between the parties in dispute, putting forward various claims and objections, as a result of which the said housing scheme was delayed by more than 5-6 years. Indeed, if the Government would have been wiser and more alert by the time possession was taken, the object of building houses by the Housing Board of the State could have been accomplished long before.

8. The sheet-anchor of the arguments of the appellants in Civil Appeal 9973 of 1983, which is by special leave, was that the entire acquisition proceedings and the orders passed by the Collector acquiring the land became non est as they were violative of Article 14 of the Constitution. It was contended that there was no justification for the Government to have released a portion of the land, viz., 4.03 acres. However small fraction of the main land, it was merely to favour a particular set of individuals, viz., Pandey families, who are alleged to have exercised very great influence on the Government of the time and that was done only to help one single body of persons without any reasonable classification or nexus to the object of the Notification. The release of land belonging to Pandey families was supported by the Government on the ground that as they had put up large buildings with boundary walls in the entire area covered by 4.03 acres, it would have been rather difficult for the Government to demolish the said constructions thereon. In order to repel this argument, unimpeachable materials were produced before us to show that the plea of huge buildings or houses situated on the land of Pandey families was a complete hoax or a false pretext in order to enable the Collector to withdrawn the acquisition of this particular land. On examining the materials, which have not been denied by the Pandey families, we find that the contentions of the appellants are sound and must prevail. We have been shown photographs of the lands of pandey families, which appear at page 120 of the Paperbook, which shows that there are no huge buildings or houses but only small hutments, perhaps used for keeping a tubewell to water the fields. The plot in question in No. 3114 which belongs to Pandey families. On page 121 there is another photograph which shows small hut in the plot owned by the Pandey families. On the other hand, amongst the lands acquired and not withdrawn from acquisition is a plot owned by one Deo Narain Singh, on which stands a two-storeyed structure which also is meant for the purpose of keeping cattle or watchman to look after the filed. Even so, if the plea of Pandey families was to be accepted then there was a much superior claim of Deo Narain Singh for release of his land also.

9. Neither the photographs referred to above nor the fact that no structure except the one shown in the photographs which had been built by the Pandey families, has been disputed before us. It was, therefore, rightly argued by counsel for the appellants in Civil Appeal 9973 of 1983 that the release of land in favour of the Pandey families was a pure and simple act of favoritism without there being any legal or constitutional justification for the same. The State also was not in a position either to rebut or support the release of the lands in question. We might also mention that although notice had been issued and served on the Pandey families yet they did not appear in this Court to support their claim. Hence, there does not appear to be any serious dispute between the parties that the Order of release passed by the Government under Section 48 of the Act was non est as being violative of Article 14 of the Constitution.

10. The matter does not rest here but the counsel for the appellants further submitted before this Court to declare the entire acquisition of lands as unconstitutional even though a very small fraction of it was hit by the mischief of Article 14. It was submitted that the entire tract of lands was acquired by one notification and once it is found that even an infinitesimal part of it was unconstitutional, the entire notification would have to be struck down. In case at the time of acquisition the lands belonging to the Pandey families were left out on some special grounds in public interest, then doubtless the appellants' argument would be unanswerable. This, however, does not appear to have happened in this case, as indicated above. Whereas Section 4 notification was issue don August 19, 1974, the release came on May 24, 1980, that is to say about six years after. Hence, all that would happen is that the release is hereby declared to be bad and non est as a result of which the entire notification issued under Section 4 on August 19, 1974 would be deemed to be valid and the land released to the Pandey families would form part of the acquisition as it did on August 19, 1974.

11. Perhaps, the appellants wanted to persuade this Court to strike down the entire notification so that when a fresh notification is issued they may be able to get a higher compensation in view of sudden spurt and rise in the price of land and other commodities in between the period when the acquisition was made and when the actual possession was taken. For the reasons that we have given above we are unable to uphold this process of reasoning. The release being a separate and subsequent act of the Collector, could not invalidate the entire notification but would only invalidate the portion released, with the result that the original notification would be restored to its position as it stood on August 19, 1974.

12. Reliance was placed by the counsel for the State on a decision of this Court in the case of Lila Ram v. Union of India. ((1976) 1 SCR 341 : (1975) 2 SCC 547 : AIR 1975 SC 2112). This case is clearly distinguishable from the present one because the argument in that case proceeded on the footing that as huge areas of land had been freezed there was no public purpose in acquiring the land and hence the acquisition was bad. While rejecting the contention Khanna. J., speaking for the Court observed thus : (SCC p. 549, para 4)

It is significant that the land covered by the notification is not a small plot but a huge area covering thousands of acres. In such cases it is difficult to insist upon greater precision for specifying the public purpose because it is quite possible that various plots covered by the notification may have to be utilised for different purposes set out in the Interim General Plan. No objection was also taken by the appellant before the authorities concerned that the public purpose mentioned in the notification was not specific enough and as such he was not able to file effective objections against the proposed acquisition.

13. The case cited above has no application to the facts of the present case because it was never argued before the High Court that the acquisition was without any public purpose. It is, however contended by both the parties that if at the time when the Section 4 notification was issued an invidious distinction without any reasonable classification would have been made between the land acquired and the land of Pandey families so as to form an integral part of the entire acquisition, the entire notification would have been struck down. Here, we find that the release of land in favour of Pandey families came after three (sic six) years of the initial notification and therefore it cannot invalidate the Section 4 notification in its entirety. All that would happen is that the released portion would be deemed to be non est and in the eye of law the Section 4 notification would be deemed to be a notification for the entire lands acquired, including the lands of Pandey families.

14. In view of our decision on the aforesaid points, it is not necessary for us to dilate further on this question.

15. The other question raised by the counsel for the appellants was that there was sufficient delay between the date of the Section 4 notification and taking over possession of the lands during which period the price of land had appreciated substantially and, therefore, the compensation should be paid according to the value of the land prevailing on the date of actual taking over of possession. This argument also is without substance for the following reasons :

> (1) that it is not the fault of the Collector for causing the delay in taking over the possession because the matter was pursued both in the courts and before the Government and the proceedings had to be stayed, as a result of which Collector was prevented from taking possession or giving his award, although all other proceedings had taken place;

(2) the land-owners being in continuous possession of the land had enjoyed the usufruct of the same, particularly the lands happened to be mostly mango orchards and they must have derived large benefits by selling them in the market.

16. On an analysis of the various steps taken by the parties and others in the taking of possession, there is undoubtedly a delay of about 1 1/2 years and for the purpose of calculation and convenience when rounded off, the delay may be taken to be of two years. So far as this delay is concerned, the appellants have undoubtedly a case for payment of some additional compensation in equity though not under law and as this Court is not a court of law but a court of equity as well, it will be impossible for us to deny this relief to the appellants. After taking into consideration the various shades and aspects of the case we are clearly of the opinion that apart from compensation which may be awarded by the Collector or enhanced by the Judge or a higher Court, the appellants should get an equitable compensation in the form of interest calculated at the rate of 7 1/2 per cent. per annum for two years on the value of land owned by each each land-owner. This equitable compensation has been awarded in the special facts of this case and will not be the subject matter of appeal, if any, under the Act on the amount of compensation.

17. As the points involved in these appeals and writ petitions are the same we decided to dispose them of by one common judgment.

18. For the reasons given above, the appeals, the special leave and the writ petitions are disposed of accordingly but without any order as to costs.

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