

Prabhawati & Others

v.

State of Bihar & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE V. GOPALA GOWDA

Civil Appeal No. 8226 Of 2013 (Arising From Slp(C) No. 5822 Of 2012) With Civil Appeal No. 8227 Of 2013 (Arising From Slp(C) No. 6185 Of 2012) Civil Appeal No. 8228-8229 Of 2013 (Arising From Slp(C) No. 27403-27404 Of 2012) | 13-09-2013

1. Leave granted.

2. These appeals have been filed for setting aside judgment dated 24.11.2011 of the Division Bench of the Patna High Court whereby the Letters Patent Appeals filed by the appellants were dismissed and the order passed by the learned Single Judge negating challenge to the acquisition of their land was upheld.

3. The Superintendent of Police, Bagaha sent requisition dated 14.3.2000 to District Magistrate, West Champaran, Bettiah for making available suitable land for construction of police lines. For the next four years, different officers of the State Government exchanged correspondence for the acquisition of land of different measurements. On 24.2.2004, Superintendent of Police, Bagaha sent a requisition to District Magistrate, West Champaran for the acquisition of 45.05 acres of land of villages Pokharbinda and Domwalia on urgent basis. He also suggested that inquiry under Section 5A of the Land Acquisition Act, 1894 (for short, 'the Act') may be dispensed with by invoking Section 17. After about three years, the State Government issued notification dated 9.2.2007 under Section 4 read with Section 17(4) of the Act for the acquisition of land and also declared that Section 5A shall not be applicable. The declaration made under Section 6 was published on 13.2.2007. The Land Acquisition Officer passed award dated 1.4.2009.

4. On receipt of the notice issued under Section 12(2) of the Act, the appellants filed C.W.J.C. Nos. 8653 of 2009 and 4817 of 2010 before the Patna High Court and prayed for quashing the acquisition of their land. One of the several grounds taken by the appellants was that there was no urgency which could justify invoking of the provisions of Section 17 of the Act and, in any case, there was no valid ground to dispense with the application of Section 5A of the Act. The appellants also pleaded that the acquisition proceedings will be deemed to have lapsed because the award was not passed within two years of the making of declaration under Section 6 of the Act.

5. The learned Single Judge rejected the appellants' plea that there was no valid ground for invoking Section 17 of the Act by recording the following observations:

"The draft of the notification clearly provided that it was an appropriate case in which Government should dispense with the inquiry under section 5A with reference to the provisions contained in sub-section-(4) of Section-17 of the Act, which was approved by the State Government (Hon'ble Minister) on 2.2.2007 on the basis of which notification dated 9.2.2007 under Section-4 and declaration dated 13.2.2007 under Section-6 was issued. It is thus evident that the Government having considered the urgency to raise the police line while approving the proposal and draft notification/declaration under order dated 2.2.2007 specifically directed to dispense with the inquiry under Section-5A of the Act and the submission to the contrary that there is no Government order under sub-section-(4) of Section- 17 of the Act to dispense with the inquiry under Section-5A of the Act is misconceived and rejected. The Collector having considered the importance and urgency of the project for which the land acquisition was being made, and having published the notification/declaration in two newspapers and the district gazette as also having taken steps for local publication under letter dated 25.4.2007 requested the Commissioner, Tirhut Division to request the Director, Land Acquisition, Bihar to obtain government order for taking immediate possession of the lands in question. Such request was forwarded by the Commissioner to the Director, who placed the request before the Hon'ble Minister on 3.7.2007 and the State Government (Hon'ble Minister) under order dated 4.7.2007, which is at page-10 of the file approved the proposal to take immediate possession of the lands in question under Sub- Section-(1) of Section-17 of the Act. In compliance whereof order contained in letter No. 1605 dated 11.7.2007, kept at page-88C of the file was issued instructing the Collector, West Champaran to take immediate possession of the lands in question, where after award dated 31.3.2009 was published, as is evident from the order sheet maintained in connection with Land Acquisition Case No. 09 of 2007-08 and notice under Section 12(2) dated 16.6.2009, Annexure-5 series was issued calling upon the petitioners and others to receive the compensation amount and possession of the lands in question was taken on 29.7.2009. It is thus evident that possession of the lands in question has been taken over by the authorities in compliance of the order of the State Government dated 4.7.2007 which was communicated to the Collector under letter No. 1605 dated 11.7.2007 and thus the submission of the learned counsel for the petitioners that there is no government order to take possession under sub-section (1) of Section 17 of the Act is wholly misconceived and rejected."

6. The learned Single Judge relied upon the judgment of this Court in *Awadh Bihari Yadav v. State of Bihar*, (1995) 6 SCC 31 and held that the failure of the Competent Authority to pass award within two years of the issue of declaration under Section 6 did not have the effect of vitiating the acquisition proceedings.

7. The Division Bench dismissed the Letters Patent Appeal filed by the appellant and approved the view taken by the learned Single Judge. The reasons which prompted the Division Bench to reject the appellants' plea that there was no urgency which could justify invoking of Section 17 are contained in paragraphs 17 and 18 of the impugned judgment, which are extracted below:

"17. It would appear that the Superintendent of Police, Bagha, made a revised requisition dated 24.2.2004, requesting the Collector, West Champaran, to acquire 45 acres of land in village Pokharbhinda and Dimwalia, detailed in Appendix I of the requisition. A further request was made to dispense with enquiry under section 5-A of the Act vide Appendix II and to obtain approval of the State Government under section 17(1) of the Act for immediate taking of suitable possession of lands to establish a police line to check unruly situation prevailing in the area. The requisition was considered by the Land Acquisition Officer, West Champaran, on 3.9.2006, and by the Collector, West Champaran, on 27.9.2006, while approving the draft of the notification under section 4 and declaration under section 6. The Draft notification was forwarded to the Commissioner on 4.11.2006, who after considering the same forwarded it to the Director, Land Acquisition, under letter No. 4999, dated 13.11.2006, for obtaining the appropriate approval of the Government. The Minister before whom all the material facts were placed, approved the notification/declaration. Similarly, on the request of the Collector, West Champaran, contained in letter No. 48, dated 25.4.2007 (at page 51/C of file), as well as the Commissioner dated 20.6.2007, the government granted permission to take possession of the land. In the case of First Land Acquisition Collector (supra), the Hon'ble Apex Court observed that acquisition under section 17(1) and 17(4) is a matter of subjective satisfaction and the matter regarding urgency is to be left to the discretion of the government and it is only to be seen whether all materials were placed before the government. In case of Anand Singh (supra), the Hon'ble Apex Court was examining acquisition for Housing colony. In the instant case, it is respectfully stated that the acquisition was being made for establishing a police line for combating anarchy perpetrated by different gangs operating under the cover of forest as well as recluse to the bordering Nepal. The emergent provision was invoked for the security and safety of the people of the area and the State.

18. All such materials beginning from requisition made by the Superintendent of Police, Bagha to the recommendation of the Commissioner, Tirhut Division, and Director, Land Acquisition, were placed before the government which approved the same. In view of the emergent situation arising in Bagha, invoking of section 17(4) in the facts and circumstances of the case was not unjustified."

8. We have heard Shri Manan Kumar Mishra, learned senior counsel for the appellants and Shri Ranjit Kumar, learned senior counsel for the respondents and perused the record.

9. The question whether in a matter like the present one the State Government could invoke the urgency provisions contained in Section 17 of the Act is no longer res integra and must be treated as settled by the judgments of this Court in *Dev Sharan v. State of U.P.*, (2011) 4 SCC 769; *Radhy Shyam v. State of U.P.*, (2011) 5 SCC 553 and *Devender Kumar Tyagi and others v. State of U.P. and others*, (2011) 9 SCC 164. In *Radhy Shyam's* case (supra), the Court reviewed various judicial precedents and culled out the following principles:

"77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. *Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd.*, AIR (1954) SC 119; *Chiranjit Lal Chowdhuri v. Union of India*, AIR (1951) SC 41 and *Jilubhai Nanbhai Khachar v. State of Gujarat*, (1995) Supp. (1) SCC 596. \$\$

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana*, (2003) 5 SCC 622; *State of Maharashtra v. B.E. Billimoria*, (2003) 7 SCC 336 and *Dev Sharan v. State of U.P.*, (2011) 4 SCC 769.

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentality's without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These

provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. Therefore, before excluding the application of Section 5-A, the concerned authority must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the concerned authorities did not apply mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in subsection (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under subsection (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Section 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A (1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Section 17(1) and/or 17(4) with suspicion and carefully scrutinize the relevant record before adjudicating upon the legality of such acquisition."

10. In that case, the appellant's land had been acquired for planned industrial development of District Gautam Budh Nagar. After taking cognizance of the justification offered by the respondents for invoking the urgency provisions, this Court observed:

"79. In our view, the above noted factors do not furnish legally acceptable justification for the exercise of power by the State Government under Section 17(1) because the acquisition is primarily meant to cater private interest in the name of industrial development of the district. It is neither the pleaded case of the respondents nor has any evidence been produced before the Court to show that the State Government and/or agencies/instrumentality's of the State are intending to establish industrial units on the acquired land either by itself or through its agencies/instrumentality's. The respondents have justified the invoking of urgency provisions by making assertions, which are usually made in such cases by the executive authorities i.e. the inflow of funds in the State in the form of investment by private entrepreneurs and availability of larger employment opportunities to the people of the area. However, we do not find any plausible reason to accept this tailor-made justification for approving the impugned action which has resulted in depriving the appellants' of their constitutional right to property.

80. Even if planned industrial development of the district is treated as public purpose within the meaning of Section 4, there was no urgency which could justify the exercise of power by the State Government under Sections 17(1) and 17(4). The objective of industrial development of an area cannot be achieved by pressing some buttons on computer screen. It needs lots of deliberations and planning keeping in view various scientific and technical parameters and environmental concerns. The private entrepreneurs, who are desirous of making investment in the State, take their own time in setting up the industrial units. Usually, the State Government and its agencies/instrumentality's would give them two to three years to put up their factories, establishments, etc. Therefore, time required for ensuring compliance with the provisions contained in Section 5-A cannot, by any stretch of imagination, be portrayed as delay which will frustrate the purpose of acquisition.

81. In this context, it is apposite to note that the time-limit for filing objection under Section 5-A(1) is only 30 days from the date of publication of the notification under Section 4(1). Of course, in terms of sub-section (2), the Collector is required to give opportunity of hearing to the objector and submit report to the Government after making such further inquiry, as he thinks necessary. This procedure is likely to consume some time, but as has been well said:

"8. Principles of natural justice are to some minds burdensome but this price a small price indeed has to be paid if we desire a society governed by the rule of law."

82. In this case, the Development Authority sent the proposal sometime in 2006. The authorities up to the level of the Commissioner completed the exercise of survey and preparation of documents by the end of December 2006 but it took one year and almost three months for the State Government to issue notification under Section 4 read with Sections 17(1) and 17(4). If this much time was consumed between the receipt of proposal for the acquisition of land and issue of notification, it is not possible to accept the argument that four to five weeks within which the objections could be filed under sub-section (1) of Section 5-A

and the time spent by the Collector in making enquiry under sub-section (2) of Section 5-A would have defeated the object of the acquisition."

11. In *Raghubir Singh Sehrawat v. State of Haryana*, (2012) 1 SCC 792, this Court referred to the judgments in *Munshi Singh v. Union of India*, (1973) 2 SCC 337; *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471; *Shyam Nandan Prasad v. State of Bihar*, (1993) 4 SCC 255; *Union of India v. Mukesh Hans*, (2004) 8 SCC 14; *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai*, (2005) 7 SCC 627 and *Anand Singh v. State of U.P.*, (2010) 11 SCC 242 and observed:

"39. In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentality's to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme.

40. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons.

41. Before concluding, we deem it necessary to observe that in recent past, various State Governments and their functionaries have adopted very casual approach in dealing with matters relating to the acquisition of land in general and the rural areas in particular and in a large number of cases, the notifications issued under Sections 4(1) and 6(1) with or without the aid of Section 17 and the consequential actions have been nullified by the courts on the ground of violation of the mandatory procedure and the rules of natural justice. The disposal of cases filed by the landowners and others take some time and the resultant delay has great adverse impact on implementation of the projects of public importance. Of course, the delay in deciding such cases may not be of much significance when the State and its agencies want to confer benefit upon private parties by acquiring land in the name of public purpose."

12. If factual matrix of this case is considered in the light of the principles laid down in the aforesaid judgments, it becomes crystal clear that the State Government had no valid reason to invoke the urgency provision contained in the Act. The time gap of almost seven years between the first requisition sent by Superintendent of Police, Bagaha and the issue of notification under Section 4(1) of the Act leaves no room for doubt that there was no urgency at all to acquire the land for construction of police lines. If the functionaries of the police department and other authorities of the State thought that the construction of police lines should be undertaken on emergency basis, they would not have spent 7 years for reaching the stage of issuing preliminary notification under Section 4. Be that as it may, it is impossible to discern any rational reason for invoking the urgency provisions and dispensing with the application of Section 5A of the Act.

13. Shri Ranjit Kumar, learned senior counsel appearing for the respondents tried to persuade the Court not to nullify the notification issued under Section 4 by saying that larger public interest would adversely suffer. In the first blush, the argument of the learned senior counsel appears attractive but, on a deeper consideration of the matter in the light of the constitutional principles and the constitutional rights available to the appellants under Article 300A of the Constitution not to be deprived of their property except by authority of law, we are unable to accept the submission that quashing of the acquisition at this stage would amount to putting the clock back or would adversely affect the public interest. Though, the property right is no longer a fundamental right, it is well settled that no one can be deprived of his property without authority of law. Therefore, the plea of inconvenience cannot be accepted for approving the action of the State Government, which is *ex facie* illegal, arbitrary and unconstitutional.

14. That apart, in view of the law laid down by the Constitution Bench in *Padma Sundara Rao (Dead) and others v. State of Tamil Nadu and others*, (2002) 3 SCC 533, the notification issued under Section 4 of the Act cannot be sustained.

15. In the result, the appeals are allowed, the impugned judgment as also the order of the learned Single Judge are set aside and notifications dated 9.2.2007 and 13.2.2007 issued by the State Government under Section 4 read with Section 17 and Section 6 respectively are declared illegal and quashed.

16. However, it is made clear that this order shall not operate as an impediment against re-initiation of the proceedings for acquisition of the land by the State Government.