

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17725 of 2014

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1. Md. Atiqur Rahman, Son of Late S.K. Ataur Rahman, Resident of village - Kharhaiya Basti, Post Office- Araria, P.S.- Araria, District - Araria

2. Bibi Noor Suraiya, Wife of Md. Hasibur Rahman, Resident of village - Kharhaiya Basti, Post Office- Araria, P.S.- Araria, District - Araria

3. Bibi Noor Nargis, Wife of Md. Hashim, Resident of village - Kharhaiya Basti, Post Office- Araria, P.S. -Araria, District - Araria

.... Petitioner/s

Versus

1. The State of Bihar

2. The District Collector, Araria, District - Araria

3. The District Land Acquisition Officer, Araria, District - Araria

4. The Circle Officer, Araria, District - Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amar Nath Singh
Mr. Kamal Kishor Singh

For the Respondent/s : Mr. Krishna Chandra, AC to AG

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 07-09-2015 Heard the parties.

2. The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the notification dated 12.12.2013 issued under the signature of the Under Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna, as contained in Annexure-1 to the writ petition, whereby a preliminary notification under Section 4 read with Section 17(4) of The Land Acquisition Act, 1894 (in short 'Act, 1894') has been issued for acquisition of 87.97 acres of lands situate at Mauza Hariya in the district of Araria for the purposes of establishment of Land Bank at District Headquarter, Araria.

3. The grievance of the petitioners is that, while issuing the aforesaid notification dated 12.12.2013, 51.55 acres of

lands belonging to them, fully detailed in para 1 as also para 5 of the writ petition, have also been included for the purposes of acquisition by invoking the emergency clause under Section 17(4) of the Act, 1894; and hearing of objections and the enquiry as mandated under Section 5A of the Act, 1894 has been dispensed with.

4. Learned counsel appearing on behalf of the petitioners, while assailing the impugned notification, as contained in Annexure-1, submitted that the actions of the respondent State of Bihar and its functionaries are arbitrary, illegal and not sustainable in law. According to him, in the given facts of the case, the provisions contained in Section 17(4) of the Act, 1894 could not have been invoked, and hearing of objections and the enquiry as required under Section 5A of the Act, 1894 could not have been dispensed with. He further submitted that the impugned notification was issued in great haste with ulterior motive only with a view to defeat the claims of the petitioners for receiving higher amount of compensation under the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'Act, 2013'). By referring to the judicial pronouncements of the Hon'ble Apex Court in the case of **Anand Singh Versus State of Uttar Pradesh & Ors. [(2010) 11 SCC 242]**, it was next submitted that the impugned notification, as a whole, is liable to be quashed and set aside. It was further pointed out that, in identical circumstances, a notification of the State government of the same date i.e. 12.12.2013, which was issued for establishment of police line by invoking clause 17(4) of the Act, 1894, has been quashed by a co-ordinate -bench of this Court by an order dated 01.04.2014 passed

in CWJC No.10321 of 2013, as contained in Annexure-2.

5. The matter has been contested by the learned AC to AG appearing on behalf of the respondents. Learned State counsel, by referring to the averments made in the counter affidavit as also supplementary counter affidavit filed on behalf of the respondent nos.2 and 3, submitted that the allegations of malafide against the respondents are absolutely false and fit to be rejected in the given facts of the case. It was contended that, in fact, the district of Araria was established in the year 1990 and the official residences of many important functionaries posted at the district level are yet to be constructed. Therefore, keeping in view the aforesaid object, Land Bank at the district level is required to be established, so that the lands are provided for establishment of the official residences of the different officials of the State as also for other purposes. According to him, requirement to acquire the lands in question for the Land Bank was emergent in nature. Hence, the impugned notification dated 12.12.2013 (Annexure-1) was issued. However, despite his best effort, he has not been able to show that after issuance of the impugned notification dated 12.12.2013 any further steps have been taken by the respondents. He has fairly conceded that neither declaration in terms of Section 6 of the Act, 1894 has been made nor 80% compensation as required under Section 17(3A) of the Act, 1894 has been tendered by the Collector under the Act, 1894 and consequently paid to the land holders including the petitioners. He pointed out that, in fact, in view of the enactment of Act, 2013, which came into force with effect from 01.01.2014, no further steps could be taken under the provisions of the Act, 1894. However, he submitted that in view of the provisions contained in Section 24 of the Act, 2013 and in

view of the fact that the Act, 1894 stood repealed, the petitioners shall be entitled to the compensation under the provisions of the Act, 2013.

6. Before adverting to the rival submissions made on behalf of the parties, it would be apposite to notice the principles enunciated by the Hon'ble Apex Court in the case of **Anand Singh Versus State of Uttar Pradesh (supra)**, as the facts involved in the present writ petition are covered by the principles enunciated by the Hon'ble Apex Court in that case. For better appreciation, the paragraph nos.41, 42, 43, 44, 46 and 48 are reproduced hereinbelow:

“41. The power of eminent domain, being inherent in the Government, is exercisable in the public interest, general welfare and for public purpose. Acquisition of private property by the State in the public interest or for public purpose is nothing but an enforcement of the right of eminent domain. In India, the Act provides directly for acquisition of particular property for public purpose. Though the right to property is no longer a fundamental right but Article 300-A of the Constitution mandates that no person shall be deprived of his property save by authority of law. That Section 5-A of the Act confers a valuable right to an individual is beyond any doubt. As a matter of fact, this Court has time and again reiterated that Section 5-A confers an important right in favour of a person whose land is sought to be acquired.

42. When the Government proceeds for compulsory acquisition of a particular property for public purpose, the only right that the owner or the person interested in the property has, is to submit his objections within the prescribed time under Section 5-A of the Act and persuade the State authorities to drop the acquisition of that particular land by setting forth the reasons such as the unsuitability of the land for the stated public purpose; the grave hardship that may be caused to him by such expropriation, availability of alternative land for achieving public

purpose, etc. Moreover, the right conferred on the owner or person interested to file objections to the proposed acquisition is not only an important and valuable right but also makes the provision for compulsory acquisition just and in conformity with the fundamental principles of natural justice.

43. The exceptional and extraordinary power of doing away with an enquiry under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5-A. Exceptional the power, the more circumspect the government must be in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5-A on the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A.

44. A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5-A shall not apply, though may initially raise a presumption in favour of the Government that prerequisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which the power has been exercised. Upon challenge being made to the use of power under Section 17, the Government must produce appropriate material before the Court that the opinion for dispensing with the enquiry under Section 5-A has been formed by the government after due application of mind on the material placed before it.”

“46. As to in what circumstances the power of emergency can be invoked are specified in Section 17(2) but circumstances necessitating invocation of



urgency under Section 17(1) are not stated in the provision itself. Generally speaking, the development of an area (for residential purposes) or a planned development of city, takes many years if not decades and, therefore, there is no reason why summary enquiry as contemplated under Section 5-A may not be held and objections of landowners/persons interested may not be considered. In many cases, on general assumption likely delay in completion of enquiry under Section 5-A is set up as a reason for invocation of extraordinary power in dispensing with the enquiry little realizing that an important and valuable right of the person interested in the land is being taken away and with some effort enquiry could always be completed expeditiously.”

“48. As regards the issue whether pre-notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this aspect due to different fact situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate Government before the Court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5-A.”

(Emphasis supplied)

7. Now, coming to the present case, this Court finds that the impugned notification was issued on 12.12.2013 and since then almost one year and nine months has already elapsed, but thereafter nothing has progressed. Neither the possession over the lands in question has been taken by the State of Bihar nor any notification under Section 6 of the Act, 1894 has been issued. Even 80% compensation mandated under Section 17(3A) of the Act, 1894 has not been tendered to the land holders till date. Though the hearing of objections and enquiry required under

Section 5A of the Act, 1894 has been dispensed with, but testing the facts of the present case on the touchstone of the principles enunciated by the Hon'ble Apex Court in the case of **Anand Singh Versus State of Uttar Pradesh (supra)** and also taking into consideration the judgment and order dated 01.04.2014 (Annexure-2) passed in CWJC No.10321 of 2013 by a co-ordinate bench of this Court, I am of the opinion that there is no escape, but to quash the impugned notification dated 12.12.2013 (Annexure-1).

8. Though, petitioners are claiming only 51.55 acres of land, but in order to avoid unnecessary further litigation, this Court is of the opinion that the entire notification dated 12.12.2013, as contained in Annexure-1, should be quashed. It is ordered accordingly. However, this shall not prevent the respondents or any other competent authority of the respondent State to initiate a fresh proceeding for acquisition of this area of lands, which are subject matter of the impugned notification, or any other area of land in the district of Araria under the provisions of the Act, 2013.

9. In the result, the writ petition is allowed, and the impugned notification dated 12.12.2013 (Annexure-1) as a whole is quashed and set aside, but with a liberty to the State of Bihar and/or its functionaries indicated above. However, the parties are left to bear their own costs.

Arvind/-

(Birendra Prasad Verma, J)

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