

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21755 of 2013

=====

1. Urmila Devi W/O Dilip Singh Resident of Village Godhiyari, P.S. Samastipur,
District Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector Samastipur, District Samastipur
3. The Additional Collector Samastipur, District Samastipur
4. The District Land Acquisition Officer Samastipur, District Samastipur

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Suraj Narayan Yadav
Mr. Bijay Bhushan Prasad

For the Respondent/s : Mr. Sajid Salim Khan, SC 25
Ms. P. Sharma, AC to SC 25

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 02-08-2017

1. This writ petition under Article 226 of the Constitution of India has been filed for issuance of writ in nature of certiorari to quash the Notification No. 12 dated 26.12.2012 issued under section 4 of the Land Acquisition Act, 1894 (in short "Act") in respect of plot no. 650 and also to quash the declaration under section 5 of the aforesaid Act published in the District Gazette, Samastipur on 13.4.2013 vide Notification no. 237 dated 5.4.2013 and also for issuance of writ in the nature of mandamus commanding upon the respondents not to dispossess the petitioner from plot no. 650 on which her house is situated.

2. During the pendency of the above stated writ petition I.A. no. 1363/2016 was filed on behalf of the petitioner mentioning therein that award under section 12(2) of the aforesaid Act was



prepared on 8.9.2014 in the name of her husband for acquisition of seven decimals of land of plot no. 650 fixing the compensation amount of Rs. 2,69, 216/- and accordingly, the petitioner sought amendment in the main writ petition for quashing the award prepared under section 12(2) of the Act in Land Acquisition case no. 39/2013-14/3/2012-13.

3. The case of the petitioner is that plot no. 650 khata no. 28 is her ancestral land and she got constructed her house over the aforesaid plot and has been residing in the said house with her husband who happens to be deaf and mentally and physically retarded person as well as she does not have any other land or house in the village for residence but to construct road from the house of one Kamal Ram of village Chako Bhindi to the village road, several plots including plot no. 650 were notified for acquisition. Notice to the petitioner's husband along with Notification no. 12 dated 26.12.2012 under section 4 of the Act was issued to her husband but the aforesaid notice was without any number and date as well as signature of the Land acquisition officer, though the signature of an assistant was on the notice dated 12.1.2013. The aforesaid notice was served upon the petitioner on 30.1.2013 and the petitioner filed objection under section 5A of the Act on 26.2.2013 on behalf of her husband but without giving any notice of hearing on the aforesaid objection, declaration under section 6 of the Act was notified vide Notification no. 237 dated 5.4.2013, through which seven decimals of land of plot no. 650 was acquired and the said notification was published in the District Gazette, Samastipur on 13.4.2013. However, one notice under section



9 of the Act is said to be issued but the aforesaid notice was never served on the petitioner and when the counter affidavit was filed in the present case, she learnt that the award under section 12(2) of the Act was prepared on 8.9.2013. Hence, the petitioner filed the present writ petition.

4. Counter affidavit has been filed on behalf of respondent nos. 2 to 4 in which respondent nos. 2 to 4 denied the averments made in the writ petition, specifically, stating that the lands of the petitioner and others were acquired for public purposes that is for providing approach road and notification under section 4 of the Act was published in the District Gazette, Samastipur on 01.01.2013 and the same was also published in two newspapers on 7.1.2013 and furthermore, local publication was also made on 14.1.2013 inviting objection from affected persons within 30 days from the date of publication of the notification and when no objection was filed within the prescribed period of 30 days, declaration under section 6 of the Act was published in the District Gazette, Samastipur on 13.4.2013 and also in local newspapers as well as local publication was also made. It has further been averred in the counter affidavit that after approval of the competent authority, notice under section 9 of the Act was issued to the concerned raiyats on 14.7.2013 and thereafter amount of award was declared under section 11 of the Act and subsequently, notices under section 12(2) of the Act were issued to the concerned raiyats. Further, it has been averred that after making payment of amount of the award, possession of acquired lands was handed over to requisitioning authority on 08.10.2013. It has further



been averred that at the time of acquisition, there was no house over plot no. 650 and when the petitioner and her husband came to know about notification, they immediately put a hut on the notified land with intent to change the nature of the land and for getting higher compensation and subsequently, the petitioner filed objection after 30 days of the publication of the notification that is after 13.2.2013 and that was the reason her objection was not entertained. Respondent nos.2 to 4 also denied this fact that petitioner is a landless lady and it has specifically been pleaded that petitioner does have other lands and house in her village. It has also been averred in the counter affidavit that the acquired lands were vested in the government after acquisition and therefore, the claim of the petitioner is baseless.

5. Learned counsel appearing for the petitioner would submit that annexure 2, notice issued under section 4 of the Act, goes to show that the aforesaid notice was issued on 12.1.2013 and it is the specific case of the petitioner that the aforesaid notice was served upon her on 30.1.2013 and thereafter, she filed objection under section 5A of the Act on 26.2.2013 but admittedly, objection filed under section 5A of the Act by the petitioner was not entertained nor any opportunity of hearing was given to her. Learned counsel for the petitioner would submit that by Land Acquisition (Bihar Amendment) Act, 1960 (II of 1961), State made amendment in section 5A of the Act and according to the aforesaid amendment the word “ within thirty days after the publication of the notification referred to in the said sub-section at some conspicuous places in village in which the land is situated or of the service of the copy thereof on him, whichever



is later” was substituted in place of word “within thirty days after the issuance of notice”. He would further submit that the aforesaid State amendment makes it clear that the time for filing objection shall be reckoned either from the date of publication of the notification or of the service of copy thereof on interested persons but the learned land acquisition officer completely ignored the aforesaid provision and did not entertain the objection filed under section 5A of the Act on the ground that the aforesaid objection was filed after expiry of 30 days.

6. He would further submit that inviting objection under section 5A of the Act is not mere a formality rather it is mandatory in nature and if the officials fail to comply with the mandatory provision of section 5A of the Act, subsequent step of the concerned official in respect of acquisition of the land shall be vitiated. He would further submit that respondents were duty bound to entertain the objection filed under section 5A of the Act on behalf of the petitioner and to decide the said objection on merit after giving proper opportunity of hearing to the petitioner but the respondents failed to do so and therefore, even if a notification under section 6 of the Act has been made or award has been prepared, then also, the aforesaid notification under section 6 of the Act as well as prepared award are not in accordance with law and do not affect the right of the petitioner.

7. In support of the above stated contentions, learned counsel for the petitioner relied upon the decision of **Raghubir Singh Sehrawat vs. State of Haryana and others reported in (2012) 1 Supreme Court Cases 792** wherein their lordship held that if opportunity of hearing as per mandate of section 5-A (2) of the Act is



not given, then the, acquisition is vitiated due to violation of section 5-A (2) of the Act and rules of natural justice. He has also relied upon decision of **Radhey Shyam vs. State of U.P. and others reported in (2011) 1 Supreme Court Cases 553** wherein their lordship again reiterated same principle holding that non-compliance of section 5-A (2) of the Act is violation of natural justice. He has also relied upon decision of **M/s Kamal Trading Private limited vs. State of West Bengal and others reported in AIR 2012 Supreme Court 823** wherein their lordship held that if opportunity of hearing under section 5A of the Act is denied on vague ground, declaration under section 6 of the Act is liable to be set aside.

8. Learned counsel for the petitioner would further submit that the petitioner has not been dispossessed from plot no. 650 as yet and the respondents could not take possession of the aforesaid land and, therefore, preparation of final award without taking actual physical possession is improper. He would further submit that paper possession is not sufficient to prove of vesting of land in the State. He again relied upon decision of Radhey Shyam (supra) wherein it has been held that mere paper possession is not sufficient to show that the actual possession has been done.

9. On the other hand, learned counsel appearing for the respondents refuted the above stated submissions arguing that after Land Acquisition (Bihar Amendment) Act, 1960, Central Government brought amendment in section 5 A (i) by Act 68 of 1894 and the aforesaid Central amendment says that objection under section 5A of Act can be filed within 30 days from the date of publication of



notification and, therefore, the amendment of the Central Government shall have over-riding effect upon the State amendment and as soon as Central Government amendment came into force, the State amendment lost its force.

10. He would further submit that moreover, in the present case, notification was published in official District Gazette, Samastipur as well as in two daily newspapers circulating in that locality and a public notice was also pasted in the said locality. He would further submit that moreover, the petitioner obtained map of the proposed acquisition and, therefore, it would appear from the aforesaid facts that she got proper notice of preliminary notification published under section 4(1) of the Act but even then she failed to file objection under Section 5A of the Act within the stipulated period. He relied upon decision of **Atma Ram Yadav & ors vs. State of Bihar and others reported in 2000 (2) PLJR 738** in which Division bench of this court held that notice individually served upon the land holder is not relevant for determining the last of the dates of the publication and giving of public notice under section 4(1) of the Act and what is relevant is the date on which such public notice of the substance of notification was given at convenient place in the locality. The Hon'ble Division Bench further held in the above stated decision that in case of inconsistency between State Act and the Central Act, Central Act must prevail.

11. In reply to the aforesaid submissions, learned counsel appearing for the petitioner relied upon decision of **Prem Lata Devi vs. State of Bihar and others reported in AIR 1998 (3) page 270** as



well as decision of **T.S. Grih Nirman Samiti vs. State of Bihar (Full bench) reported in 1992 (I) PLJR page 264** and submitted that case of Atma Ram Yadav (supra) is not applicable in the present case because in the aforesaid case, cases of Prem Lata Devi (supra) and T.S. Grih Nirman Samiti (supra) were not considered and in the aforesaid two cases, it has been held that in the event of conflict of Central Act and the State Act, State Act shall prevail.

12. Having heard the contentions of both parties. I have gone through the record. It is an admitted position that Notification no. 12 dated 26.12.2012 issued under section 4 of the Act was published in District Gazette, Samastipur on 01.01.2013 and subsequently, the aforesaid notification was published in two hindi newspapers on 7.1.2013 and local publication was done on 14.1.2013.

13. It is also an admitted position that notice under section 4 of the Act was issued to the petitioner on 12.1.2013 and said notice was served upon her on 30.1.2013 and thereafter, she filed objection under section 5A of the Act on 26.2.2013 but her objection was not entertained treating the said objection as time barred and no opportunity of hearing was given to her before publication of notification under section 6 of the Act. Here, I would like to refer Section 5A of the Act which runs as follows:-

5A. Hearing of objections.—(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or [likely to be needed for a public purpose or for a company may, [within thirty days from the date of the publication of notification], object to the acquisition of the land or of any land in the locality, as



the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person by any person authorized by him in this behalf] or by pleader and shall, after hearing all such objections, and after making such further enquiry, if any, as he thinks necessary [either make a report in respect of the land which has been notified under section 4, sub-section (1) or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him for the decision of that Government]. The decision of the appropriate Government on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the lands were acquired under this Act.

14. It is an admitted position that the State of Bihar by passing Land Acquisition (Bihar Amendment) Act, 1960 inserted in Section 5A of the said Act as follows:-

i) in sub-section (1) , for the words “within thirty days after the issue of notice” the following words shall be substituted , namely-

“within thirty days after the publication of the notification referred to in the said sub-section at some conspicuous place in the village in which the land is situated or of the service of the copy thereof on him, whichever is later” and

ii) for sub-section (2) , the following sub-section shall be substituted namely-

“(2) (i) Every objection under sub-section (1) shall



be made in writing to the Collector who shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all sub objections and making such further enquiry, if any, as he thinks necessary decide the objection:

Provided that the appropriate Government may, either of its own motion or on the application of any person interested in the land call for the record of the proceedings held by the Collector and pass such order as it thinks it.

ii) The order of the appropriate Government and subject to such order, the decision of the Collector, under clause (i) shall be final”.

15. From perusal of Section 5A of the Act, 1894, it would appear that period of 30 days from the date of publication of notification was inserted in section 5A of the Act by the Act of 68 of 1984. Therefore, it is obvious that section 5A of the Act, 1894 prescribes limitation of 30 days for filing objection under section 5A(1) of the Act from the date of publication of notification after coming into force of the Act 68 of 1984 but prior to that the State of Bihar by passing Land Acquisition (Bihar Amendment) Act, 1960 gave two options to the objector to file objection either within 30 days from the date of publication of notification at some conspicuous places in village where the land is situated or of the service of the copy thereof upon interested person, whichever is later.

16. Now, the question arises as to whether after coming into force of the Act 68 of 1984, the State amendment has lost its force and as to whether Act 68 of 1984 shall prevail over State amendment or not? The answer of the aforesaid question was given by Division Bench of this court in case of Prem Lata Devi (supra) in which their



lordship held as follows: -

“ It is not correct to say that after the Central amendment, Bihar Amendment must be held to be repealed”

The aforesaid observation was made in respect of section 5A(2) of the Act, 1894 taking note of this fact that no drastic change was made by amendment Act, 68 of 1984 because Bihar Amendment Act, 1960 and Act, 68 of 1984 are consistent on the point that for passing final decision on the objection filed under section 5A of the Act was prerogative of the State Government. The aforesaid decision of Prem Lata Devi (supra) was based on decision of T.S. Grih Nirman Samiti (supra) but in the present case, a drastic change has been made by the Act, 68 of 1984 because Land Acquisition (Bihar Amendment) Act, 1960 says that period of limitation of filing objection under section 5A of the Act shall be counted either from the date of publication of notice at some conspicuous places in village or of the service of the copy thereof on the interested person, whichever is later whereas by Act, 68 of 1984, the period for filing objection under section 5A of the Act is only 30 days from the publication of notification and therefore, by Act 68 of 1984 limitation for filing objection under section 5A of the Act shall be counted from the date of publication of notice and the Act, 68 of 1984 can not be said to be supplement of the Bihar State Amendment Act, 1960 and therefore, in my view, the judgment of Prem Lata Devi (supra) is not applicable in this case.

17. In case of Atma Ram Yadav & ors (supra), it has been held by another Division Bench of this court that in case of inconsistency between State Act and Central Act, Central Act must



prevail. Therefore, it is obvious from the aforesaid decision that if there is inconsistency between State Act and Central Act, then, in that event, it is the Central Act which shall prevail over the State Act.

18. In the present matter, I have already stated that there is inconsistency between Act, 68 of 1984 and Land Acquisition (Bihar Amendment) Act, 1960 in respect of counting of period of limitation for filing objection under section 5A of Act, 1894 and, therefore, in my view, Act, 68 of 1984 shall prevail over Land Acquisition (Bihar Amendment) Act, 1960 so far as it relates to the counting of period of limitation for filing objection under section 5A(i) of Act, 1894. Admittedly, Act, 68 of 1984 says that objection under section 5A of the Act can be filed within 30 days from the date of publication of the notification and in the present case, the petitioner filed objection under section 5A (1) of the Act, 1894 after 30 days from the date of publication of the notification and, therefore, in my view, the concerned authority rightly refused to entertain her objection because the said objection was filed beyond the period of limitation as prescribed in section 5A (i) of Act. Moreover, there is no provision in the Act, 1894 to condone the delay in filing objection under section 5A (i) of Act. Therefore, it can not be said that the petitioner could have filed the petition under section 5A (i) of Act within 30 days from the date of service of notice because the aforesaid provision had already repealed after coming into force of Act 68 of 1984.

19. It is an admitted position that award has already been prepared and notice under section 9 of the Act has also been issued to the petitioner.



20. Although the petitioner has challenged that possession was not taken by the State but Annexure D to the counter affidavit goes to show that delivery of possession has already been effected. Therefore, in the aforesaid circumstances, I am of the opinion that the present writ petition is devoid of merit and liable to be dismissed on admission stage itself.

21. Accordingly, this writ petition stands dismissed on admission stage itself. However, this order shall not prejudice the right of the petitioner to receive compensation amount as fixed by the Sate authority.

shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	28.3.2017
Uploading Date	4.8.2017
Transmission Date	4.8.2017

