

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6398 of 2014

=====

1. Ravi Shankar Singh Son Of Late Ajit Kumar Singh
2. Rajendra Prasad Verma Son Of Late Sitaram Verma
3. Prem Lata Verma W/O Late Raghunath Das Verma
4. Sachidanand Prasad Son Of Late Luxman Sao
5. Raj Kumar Gupta Son Of Kallu Prasad
6. Chandan Kumar Son Of Late Ramnandan Prasad
7. Ranjan Kumar Gupta Son Of Lallan Prasad
8. Rajiv Ranjan Son Of Late Krishna Murari Prasad
9. Arun Kumar Son Of Late Krishna Murari Prasad
10. Sanjiv Kumar Son Of Surendra Prasad
11. Saroj Agrawal Wife Of Paras Nath Agarwal All Resident Of Mohalla P.G. Line Road, Mithapur, Po-G.P.O., P.S. Jakanpur, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary, Department Of Road Construction, Govt. Of Bihar, Patna
2. The Secretary, Department Of Road Construction, Govt. Of Bihar, Patna
3. The Chief Engineer, Central Design Organization, Road Construction Department, Patna
4. The Collector, Patna
5. The Land Acquisition Officer, Patna
6. The Under Secretary, Revenue and Land Reforms Department, Land Acquisition Directorate, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Naresh Dikshit

For the Respondent/s : Mr. Anil Kumar

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 18-08-2018

Heard learned counsel for the petitioners and learned
counsel for the State.

The petitioners by filing this writ petition sought relief for
quashing the notification issued under Section 4 and 6 of the Land
Acquisition Act for acquiring the land of Survey Plot No.120, 121,
124, all part of 125, Thana No.19, Khata No.145 which are owned by



the petitioners for construction of Mithapur Railway Over bridge(Annexure-18 and 18A). Petitioners further seek for quashing the letter No.72 dated 28.01.2006(Annexure-11) by which the approaches of the proposed flyover at Mithapur has arbitrarily been changed and for quashing the letter No.538 dated 17.08.2006 by which the alignment of the over bridge was again partially modified in arbitrary manner.

During the course of hearing, learned counsel for the petitioners confined his argument for setting aside the notification under Land Acquisition Act for acquiring the aforesaid land only on the ground that for invoking of the urgency clause under Section 17(4) of the Land Acquisition Act was not justified.

The brief facts in this case is that on 3.12.1998 a plan for constructing Road Over Bridge (ROB) on the northern and southern side of railway level crossing no. 79A at Mithapur was mooted by the Road Construction Department, Government of Bihar. The said plan was approved and sanction accorded in the year 1999. The construction work was entrusted to Bihar Rajya Pul Nirman Nigam Limited. M/s. Freyssinet was appointed as consultant for the bridge. The said ROB was to have 5 limbs. The petitioners are concerned only with the Mithapur limb of the Fly Over and the notification under Section 4 dated 11.1.2013 and the declaration under Section 6 of the Act issued on 14.1.2013 in so far as they concern the



acquisition of plot nos. 151 and 152 which measure a total area of 1 acre 36 decimals. Earlier when the general alignment was approved in the year 2003, the Mithapur limb was proposed to be constructed on a Government land being Survey Plot No. 177, a public road recorded in the Survey Khatian in the name of the District Board. It is the stand of the petitioners that the said public road was encroached upon by as many as 33 encroachers and when steps were taken to remove them they have put serious resistance and exercised their influence over the respondent-authorities as a result of which in the year 2006 the respondents took a decision to shift the alignment of Mithapur limb from the Ram Market, Mithapur to Gaya crossing towards Narayan Market without assigning any reason for the change of the alignment except that earlier approved two lanes has been decided to be made four lanes. The stand of the petitioners which is not denied in the counter affidavit is that the then District Magistrate, Patna in the year 2010-11 gave his report stating that a large population may be affected by construction of the Flyover as per the changed alignment and requested to arrange the alignment in such a manner so that minimum people are affected. However, the said suggestion was not accepted by the respondents and after a lapse of further time the aforesaid notification/declaration dated 11.1.2013 and 14.1.2013 were published under the Land Acquisition Act, 1894 invoking the provisions of Section 17(4) of the Act and thus taking away the right



of the petitioners to file objections under Section 5A of the Act.

The learned counsel for the petitioners has raised various contentions stating that the action of the respondents is wholly without justification on the merits of the matter. It is submitted that since the matter for construction of road over bridge has been under consideration since 1998 and there is no urgency but even then provisions of Section 17(4) of the Land Acquisition Act has been resorted to for not giving an opportunity to the petitioners to object under Section 5A of the Act to the land acquisition proceeding for which the petitioners have got substantial and good ground. It is submitted that there was absolutely no occasion for invoking the urgency clause under Section 17(4) of the Act. Considering that the procedure was initiated in the year 1998 and even after its approval in the year 2003 many other changes in the general alignment design was suggested in the subsequent year but the notification has been issued only in the year 2013 and this fact itself shows the lack of ground for invoking the urgency clause taking the valuable right of the petitioners to object the land acquisition proceeding under Section 5A of the Act. Learned counsel for the petitioner submits that the same notification came under challenge in CWJC No.10782 of 2013 and a Single Bench of this Court vide judgment and order dated 10.09.2013 passed in CWJC No.10782 of 2013 set aside the impugned notification dated 11.01.2013 issued under Section 4 of the



Act and notification dated 14.01.2013 issued under Section 6 of the Act in so far as it concerned with the petitioners of the aforesaid case with liberty to the respondents-State to initiate a fresh acquisition proceeding and proceed in accordance with the provisions of the Land Acquisition Act after giving opportunity to the petitioners to present their objections under Section 5A of the Act. The learned counsel for the petitioners submits that the State did not file any L.P.A. against the order dated 10.09.2013 passed in CWJC No.10782 of 2013 and, therefore, this writ petition should also be disposed of on the same terms and conditions after quashing the notification impugned invoking urgency clause of 17(4) of the Act. It is further submitted that a Division Bench of this Court in L.P.A. 1831 of 2016 disposed of on 27.07.2017 reported in 2018(2) PLJR 737(State of Bihar v. M/S Satyadeo Tiwari Wholesale Dealer Kerosene Oil & Ors.) has clearly held that in accordance with Bihar State Litigation Policy clauses 4 and 6, if the respondent complied the order in one similar case the respondent is bound in accordance with the litigation policy to comply the order for other similar cases disposed of by the Court in which the State filed appeal.

On the contrary, Mr. Suryadeo Yadav, learned A.A.G. contended that question of urgency of an acquisition under Section 17(1) and 17(4) is the matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make



scrutiny of propriety of that satisfaction on an objective appraisal of facts. It is submitted that construction of Mithapur road over bridge is very much essential for decongestion of the traffic and on account of status quo order passed on 24.04.2014, the construction of Mithapur road over bridge has been stalled. Learned A.A.G. placed his reliance on para 5 of the judgment reported in 2002(2) PLJR 276(SC) (First Land Acquisition Collector & Ors. v. Nirodhi Prakash Gangoli & Anr.) which reads as follows:

5. The question of urgency of an acquisition under [Section 17\(1\)](#) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under [Section 17](#) (1) and (4) of the Act, and issues Notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the concerned authorities. If an order invoking power under [Section 17\(4\)](#) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind. Any post Notification delay subsequent to the decision of the State Government dispensing with an enquiry under [Section 5\(A\)](#) by invoking powers under [Section 17\(1\)](#) of the Act would not invalidate the decision itself specially when no mala fides on the part of the government or its officers are alleged. Opinion of the State Government can be



challenged in a Court of law if it could be shown that the State Government never applied its mind to the matter or that action of the State Government is mala fide. Though the satisfaction under [Section 17\(4\)](#) is a subjective one and is not open to challenge before a Court of law, except for the grounds already indicated, but the said satisfaction must be of the Appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency even though cannot be conclusive but is entitled to great weight, as has been held by this Court in [Jage Ram and others vs. The State of Haryana and Others](#) AIR 1971 Supreme Court 1033. Even a mere allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges it. Bearing in mind the aforesaid principles, if the circumstances of the case in hand are examined it would appear that the premises in question was required for the students of National Medical College, Calcutta and the Notification issued in December 1982 had been quashed by the Court and the subsequent Notification issued on 25.2.1994 also had been quashed by the Court. It is only thereafter the Notification was issued under [Section 4\(1\)](#) and [17\(4\)](#) of the Act on 29.11.1994 which came up for consideration before the High Court. Apart from the fact that there had already been considered delay in acquiring the premises in question on account of the intervention by Courts, the premises was badly needed for the occupation of the students of National Medical College, Calcutta. Thus, existence of urgency was writ large on the facts of the case and therefore, said exercise of power in the case in hand, cannot be interfered with by a Court of law on a conclusion that there did not exist any emergency. The conclusion of the Division Bench of Calcutta High Court, therefore, is unsustainable.

Having considered the facts and submissions of both sides, I



find that of course the Apex Court has held in the case of First Land Acquisition Collector and others(supra) that the question of urgency of an acquisition under Section 17(1) and 17(4) is a matter of subjective satisfaction of the Government and ordinarily it is not open to the court to make scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In a given situation, whether there existed urgency or not is left to the discretion and decision of the concerned authority if an order invoking the power under Section 17(4) is assailed the court may enquire whether appropriate authority at all considered the relevant materials before it or whether the order has been passed by non application of mind. On similar facts for acquisition of land for construction of road over bridge at Mithapur some of the land holders filed CWJC No.10782 of 2013 and a Single Bench of this Court has held that there was no facts existing for invoking urgency clause under Section 17(1) and 17(4) of the Act and consequently, set aside the concerned notification. When the query was made from the learned A.A.G., Mr. Suryadeo Yadav that whether State filed any L.P.A. against the order passed in CWJC No.10782 of 2013, learned A.A.G. candidly admitted that no L.P.A. was filed against the order dated 10.09.2013 passed in CWJC No.10782 of 2013. Therefore, I find that in a given situation, the question whether there existed urgency or not for invoking urgency clause 17(1) and 17(4) of the Act is examined by a Single Bench of this Court and the



learned Judge came to a finding that the urgency clause should not have been invoked on the given facts taking away the valuable right of the land holders to object the land acquisition proceeding under Section 5A of the Act but this finding has not been challenged by the State-respondents questioning the interference of the court about looking into the facts in a given situation invoking the urgency clause taking away the right of land holders to object the land acquisition under Section 5A of the Act. Therefore, I find that on similar facts for the land acquisition of different plots for the construction of Mithapur road over bridge a different view cannot and should not be taken.

Having considered the facts aforesaid and discussions made above, this writ petition is allowed. The impugned notification as contained in Annexure 18 series are quashed in so far as they relate to the petitioners. It would however be open to the respondents to initiate a fresh acquisition proceeding and proceed in accordance with the provisions of the Land Acquisition Act.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	28.08.2018
Transmission Date	

