

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgement Reserved on 20.11.2019****Judgment Delivered on 08/1/2020****WA No. 493 of 2017****(Arising out of order dated 20.9.2017 passed by learned Single Judge in WPC No.1945/2015)**

- Rohit Singhania, S/o Lalit Kumar Singhania, aged about 34 years, R/o "Manjusha" 15/480, Rajbhawan Road, Civil Lines, Raipur, District Raipur (CG)

---- Appellant**Versus**

1. State of Chhattisgarh, through Secretary, Revenue and Public Work Department, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
2. Collector, Bilaspur, District Bilaspur Chhattisgarh.
3. Officer In-charge, Land Acquisition Branch, Collectorate, Bilaspur, Chhattisgarh.
4. Sub-Divisional Officer, Revenue-cum-Land Acquisition Officer, Bilha, District Bilaspur, Chhattisgarh.
5. Executive Engineer, Department of Water Resources, Kota, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Ashish Surana, Advocate
For Respondents	:	Shri Vikram Sharma, Dy. Government Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****CAV Order****Per Parth Prateem Sahu, J**

1. Interference declined by the learned Single Judge in the land acquisition proceedings initiated by the respondents for the purpose of construction of 'Arpa-Bhainsajhar Barrage' project,

has made the appellant to approach this Court by way of this appeal.

2. Facts of the case, in nutshell, are that a preliminary Notification under Section 11 (1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (henceforth 'the Act of 2013') was issued by the appropriate government for acquisition of lands for the construction of 'Arpa-Bhainsajhar Barage' project. Different notifications were issued for acquisition of lands situated at different location/villages. Notification bearing No.12/A-82/2014-15 is related to the lands situated within the territory of village Hirri, Tahsil Bilha, District Bilaspur (CG). Land of appellant is also situated within territorial limits of village Hirri. Prior to publication of notification under Section 11 of the Act of 2013, the Sub-Divisional Officer (R)-cum-Land Acquisition Officer has drawn proceedings on 15.6.2015 and recorded an order sheet that total land ad-measuring 13.01 acre (5.265 hectare) situated at Patwari Halka No.24, in village Hirri, belonging to private agriculturists are proposed for acquisition. It is also mentioned that as per provisions of Section 10-A of the Act of 2013, the provisions contained in Chapter 2 & 3 are not applicable to the project in question. On 9.10.2015 petitioner/appellant herein filed objection (Annexure P-5) before the Land Acquisition Officer and apart from raising various technical objections submitted that he is owner of huge chunk of agricultural land and on account of construction of proposed canal, his entire

land will be divided into two parts and due to non-availability of approach road, he would not only be facing great difficulty in approaching the land situated at the other side of canal, but the value of his entire land will be reduced drastically. When no heed has been paid to the objections raised by appellant, he approached the High Court by filing writ petition and sought for the following reliefs:-

“10.1. That, this Hon'ble Court may kindly be pleased to issue appropriate writ (s) quashing the notification dated 27.06.2015 published in official gazette on 14.08.2015 (Annexure P/1) and in Haribhumi newspaper on 08.08.2015 (Annexure P/4) issued by respondent No.1 and the entire land acquisition proceedings bearing No.12-A/82/14-15 (Annexure-P/2) with respect to the petitioner's land in village Hirri, P.H. No.24, Tehsil Bilha, Distrit Bilaspur; as illegal, arbitrary, colourable exercise of power the respondent authorities.

10.2.Any other relief, including the cost of this petition, as it appears to be fit and appropriate to this Hon'ble Court be granted.”

3. Taking into consideration the grounds urged in writ petition, reply submitted by respondent State, arguments advanced by both the sides and various rulings rendered by Hon'ble Supreme Court on different issues, the learned Single Judge dismissed the writ petition by holding that the petitioner failed to make out extraordinary case warranting interference in the land acquisition proceedings under challenge. It was also held by learned Single Judge that since the acquisition of land belonging to the petitioner/appellant herein is for the public purpose i.e. for construction of canal & barrage, the provisions relating to 'social impact assessment' contained in the Act of 2013 as also the

proviso to Section 10A of Chapter-3 of the Act of 2013 shall not apply and that there is substantial compliance with respect to other provisions of the Act of 2013, particularly Section 11 of the Act of 2013.

4. Mr. Ashish Surana, learned counsel appearing on behalf of petitioner/appellant would argue that issuance of notification under Section 11 of the Act of 2013 is arbitrary and contrary to the provisions of the Act of 2013 itself. The safeguard as provided under Chapter 2 & 3 of the Act of 2013 has not been extended in the subject land acquisition proceedings. As the Ordinance of 2015 cannot be enforced and given effect to, the proceedings under Section 10A of the Act of 2013 are illegal as the appropriate government in the present case has not arrived to the satisfaction and further necessary compliance with respect to availability of land. Issuance of general notification in exercise of powers conferred under Section 10A of the Act of 2013 cannot be made applicable in general to all the projects. He further submits that there is non-compliance of the provisions of Section 11 of the Act of 2013 as the environment impact assessment of project is conducted with respect to construction of barrage and not of canal. He also submits that in the Notification dated 27.6.2015 issued for acquisition of land for construction of canal, there is no provision for calling objection from the affected persons. There is difference in the 'official notification' and 'paper publication' and therefore the entire proceeding of land acquisition is vitiated. He further

argued that the Act of 2013 envisages for the preparation of 'social impact assessment' study and its publication, but this provision has not been complied with and thereby the appellant has been deprived from his right to raise objection to land acquisition proceeding, as prescribed under the Act of 2013.

5. Per contra Mr. Vikram Sharma, learned Deputy Government Advocate appearing for the State submits that during the pendency of appeal, declaration under Section 19 of the Act of 2013 has been made by the appropriate government. He submits that Arpa-Bhainsajhar Barrage Project was approved as 'mega project' and on 27.2.2013 the Ministry of Environment & Forest, Government of India vide Annexure R-2 granted clearance for pre-construction activities on the proposed site mentioning therein that construction of barrage across the river is to provide irrigation facility, to meet out drinking water requirement and for industrial purpose as well. Final environment clearance was granted on 8.5.2015. He also submits that by virtue of provisions of Section 6 (2) of the Act of 2013, the provisions contained in Chapter-2 & 3 of the Act of 2013 are not made applicable to irrigation projects where process of environment impact assessment is required and in this case the environment impact assessment is necessitated and from the concerned department/authority the clearance has been accorded for construction of project in question. Under the notification of acquisition it has been mentioned that the land is required for construction of canal, which includes main canal

and distributory canal. Notification under Section 10A of the Act of 2013 was issued on 27.5.2015 i.e. prior to issuance of notification under Section 11 (1) of the Act of 2013. The project in question has been financed by the NABARD, which is to be completed within extended period i.e. upto 31.7.2020, and out of total work, 78% work has already been done.

6. We have heard learned counsel for the parties and perused the records.
7. So far as challenge to the applicability of provisions of Section 10A of the Act of 2013 and Notification issued by the State Government under Section 10A of the Act of 2013 is concerned, the appellant has neither challenged the Notification nor sought for any relief in this regard in the writ petition and therefore, at this stage, the appellant cannot be permitted to raise such a plea without challenging the notification issued under Section 10A of the Act of 2013 itself.
8. So far as the question of applicability of Chapter-3 of the Act of 2013 is concerned, proviso to Section 10 of the Act of 2013 provides that provisions of Section 10 will not apply in case of projects that are linear in nature, such as those relating to railways, highways, major district roads, irrigation canals, power lines etc.. The project which is subject matter of appeal is a project involving construction of canal and therefore the provisions of Chapter-3 would not be applicable to the case at hand. So far as the submission of learned counsel for the

appellant that provisions of Chapter-2 of the Act of 2013 have not been given effect to in the process of land acquisition is concerned, firstly the provision under sub-section (2) of Section 6 excludes the irrigation projects for which environment impact assessment is required from the applicability of Chapter 2, particularly the provision of preparation and publication of social impact assessment study including public hearing for the same.

9. Notification under Section 10A also excludes the projects mentioned therein in which along with several other projects of rural infrastructure including electrification project is also mentioned. Construction of canal for the purpose of irrigation of agricultural land is a project of rural infrastructure providing benefits to the agriculturists and to help them in increasing their yield of crops.

10. While dealing with the technical issues raised by the appellant, in particular issue with regard to notification under Section 11 of the Act of 2013 wherein specific words 'public purpose' has not been mentioned, has taken into consideration various decisions of Hon'ble Supreme Court including the law laid down in the matter of Babu Barkya Thakur v. State of Bombay (now Maharashtra) reported in AIR 1960 SC 1203 & Union of India v. K. Balaji reported in (2007) 15 SCC 791 and held that non-mentioning of the words 'public purpose' in the notification and exemption of application of provisions of Chapter 2 & 3 of the Act of 2013 in the Official Gazette will not make the notification itself invalid, particularly when it is specifically mentioned in the

publication made in two daily newspapers.

11. Apart from other verdicts of Hon'ble Supreme Court while deciding other issues, learned Single Judge has taken note of the law laid down by Hon'ble Supreme Court in the matter of Ramnik Lal v. State of Maharashtra reported in (1997) 1 SCC 134 wherein Hon'ble Supreme Court has held thus;

“10. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power or grant in stay/injunction. The power under [Article 226](#) is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under [Article 226](#) - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of

balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.”

12. Hon'ble Supreme Court has held that power under Article 226 of the Constitution of India is discretionary and while dealing with petitions under Article 226 of the Constitution of India the High Courts should keep larger public interest in mind and further that jurisdiction under Article 226 of the Constitution of India is to be exercised only in furtherance of the interest of justice and not merely on making out legal point. In the matter of land acquisition for public purpose, the interest of justice and public interest coalesce.

13. We are not inclined to accept the technical pleas, as raised by learned counsel for the appellant, and seeking for relief of quashment of the entire land acquisition proceeding and hence, the same are hereby repelled.

14. In view of above discussion, we do not find any infirmity in the reasoning and rationale given by the learned Single Judge while dismissing writ petition of appellant.

15. So far as the ground raised by learned counsel for appellant with respect to difficulty of appellant in approaching other part of his land due to construction of canal is concerned, looking to nature of the project, its completion to the extent of 78% and the purpose of said project i.e. for providing drinking water and to

irrigate agriculture field to the villagers of about 14 nearby villages, learned counsel for the State, on instructions, submitted that the respondent State authorities are ready to construct a bridge connecting land of the appellant on both sides of canal. This Court recorded the aforesaid submission in the order sheet dated 7.11.2019 which reads as under;-

“During the course of hearing, it is brought to the notice of this Court by Shri Siddharth Dubey, learned Deputy Government Advocate representing the State that in connection with the acquisition for the purpose of a canal, the process is almost over in respect of 78% of the properties and that, the irrigation canal is to serve farmers in as many as 14 villages. It is stated that since the nature of dispute raised in the appeal is with regard to the adverse consequences likely to be resulted, whereby the property of the Appellant will be divided into two, the learned counsel submits that, as per the instructions received, the Government/authorities are ready to provide a proper bridge to connect the properties on both the sides of the canal, of adequate width, so as to carry vehicles from one property to the other, subject to the condition that, it is provided for use of general public as well.

Learned counsel for the Appellant submits that he is agreeable for such a course; provided, the access sought to be provided to general public does not lead to trespass into the property of the Appellant and the public confine their right of way through the public property and the bridge, if any.

As per the information gathered by this Court, when a canal is constructed, the side walls have to be strengthened and sufficient space would to be provided on both the sides and by all probability, there would be a 'bund road' on both the sides, with regard to which, clarification is to be obtained. If there is a 'bund road' as above, it is always open for the general public to make use of said bund road and the bridge now intended to be provided to the Appellant, can be accessed by the general public as well, to reach the other side of the canal.

The learned counsel for the State seeks for a short time to get clarification in this regard, also as to be nature of 'crossing' bridge to be provided, including the width, length and such other details, including in

respect of bund road/embankment and to have it put in writing for resolving the issue in an amicable manner.....”

16. In pursuance of statement made before this Court, learned State Counsel filed an affidavit on 11.11.2019 and in Para-5 of the said affidavit relates to construction of bridge at range RD5100 to 5340, where the land of appellant is situated. Para-5 of the said affidavit is reproduced below;-

“5. It is further respectfully submitted that, one of the crossing bridge is now proposed for the purpose of general public as well as the appellant herein within the Range of RD 5100 to RD 5340, within which the land of petitioner falls. It is further respectfully submitted that, now after the proposed crossing bridge the total numbers of crossing Bridge is increased to 7. The copy of the new line diagram showing the proposal of the construction of the Crossing Bridge is annexed as **ANNEXURE D-2**. It is apposite to state here , that this Crossing Bridge is constructed within this range for the use of general public as well as petitioner herein.”

17. In the said affidavit it has also been mentioned that the construction of bridge, approach road and bank on both sides will be within the land acquired for the purpose. Looking to the decision taken by the State Government for providing crossing bridge on canal connecting land of the appellant from both sides of canal, we direct the respondent State authorities to construct approach road at both sides of canal so that the objection with regard to difficulty to be faced by the appellant due to bifurcation of land on account of construction of canal

can be suitably meet out. It is further directed that the respondent State authorities will construct approach road on both sides of canal within a period of six months from the date of construction of crossing bridge.

18. In view of the aforementioned discussions and observations, we affirmed the findings and reasoning recorded by the learned Single Judge while dismissing writ petition and repelled technical submissions made by learned counsel for the appellant but for allowing appeal in part so far as it relates to construction of crossing bridge at the place where the land of appellant falls with connecting approach road on both sides of canal as mentioned in preceding paragraph.

19. The appeal is allowed to the extent indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-