

Manoj Kumar Singh and anr. Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-22-2008

Judge : Sheema Ali Khan, J.

Appellant : Manoj Kumar Singh and anr.

Respondent : State of Bihar and ors.

Disposition : Petition dismissed

Prior history : Sheema Ali Khan, J. 1. The Land Acquisition Officer has issued a declaration under Section 6 of the Bihar Land Acquisition Act on 14-11-2006 for acquisition of land appertaining to Khata No. 2, Plot No. 41, measuring 6.15 decimals. This declaration has been challenged by the petitioners. The said land is being acquired for the purpose of construction of a military base camp for the safety and surveillance of the Indo Nepal Border. 2. In this writ petition, the petitioners have made a prayer th

Judgement :

Sheema Ali Khan, J.

1. The Land Acquisition Officer has issued a declaration under Section 6 of the Bihar Land Acquisition Act on 14-11-2006 for acquisition of land appertaining to Khata No. 2, Plot No. 41, measuring 6.15 decimals. This declaration has been challenged by the petitioners. The said land is being acquired for the purpose of

construction of a military base camp for the safety and surveillance of the Indo Nepal Border.

2. In this writ petition, the petitioners have made a prayer that the land of the petitioners described above should be excluded from the emergency provisions of the Land Acquisition Act and that the petitioners should get an opportunity to file objection whereby the petitioners can save their brick kiln business as according to them there are alternative lands situated adjacent to the chunk of land sought to be acquired which measures 26.14 acres.

3. The facts are that the notification under Section 4 of the Act was issued and received by the petitioners on 5-2-2007 whereas the notice under Section 6 of the Act was served on the petitioners on 10-2-2007. The notification under Section 17(4) of the Act was issued on 10-11 -2006 which is at Annexure 1/A.

4. The only point that has been raised and argued on behalf of the petitioners is based on two documents filed on behalf of respondent No. 6. Annexure 'A' to the counter-affidavit is a decision which was taken by which the value of the land in question was fixed as Rs. 1,22,00,993/-. The said decision was taken on 7-2-2004. Thereafter, 80% of the value of the land was deposited by a cheque issued by the Ministry of Home Affairs on 30-12-2004.

5. It is contended on the basis of these two documents that since there was a decision to acquire the land in 2004 and the actual notification was issued in November, 2006 and received by the petitioners in January, 2007, it cannot be said that there was any urgency for acquisition and the invocation of Section 17(4) of the Act bars the petitioners' right to file an objection which would usually be available in a land acquisition proceeding. The question before this Court, therefore, is that what day should be counted as the date on which the acquisition proceeding has been initiated.

6. Section 4(1) of the Land Acquisition Act reads as follows:

4. Publication of preliminary notification and powers of officers thereupon.- (1) Whenever it appears to the appropriate Government that land in any locality is

needed or is likely to be needed for any public purpose [or for a company] a notification to that effect shall be published in the Official Gazette & [in two daily newspapers circulating in that locality of which at least one shall be in the regional language,] and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].

The meaning of the word 'notify' according to Webster International Dictionary would mean to declare, to publish, to make known and notification, is the act of giving or receiving official information. Notify would also mean to formally or officially tell. In Oxford English Dictionary the word 'Notify' means to make known, publish, proclaim, to announce. It, therefore, follows that the act of notifying has an element of a formal declaration of proclamation or publication of an order either in a general manner or as prescribed in the inherent concept of the notification.

7. The Act requires that the notification should be published in the official gazette. Under the General Clauses Act, notification has been defined as 'notification shall mean a notification published under proper authority in the official gazette.' The word 'notification' in Section 4 has been used in the sense of being formal declaration, proclamation and publication of an order in the manner prescribed. Therefore, it necessarily means that a proceeding would be deemed to begin after there is a notification of the intention of the Government or the prescribed authority under the Act to acquire the notified property.

8. The process of acquisition always begins with a notification under Section 4(1) of the Act and any discussion, decision or the act of deposit of the cost for the acquisition proceeding would not be counted as the initiation of the proceeding.

9. The declaration under Section 6 shall be a conclusive evidence that the land is needed for a public purpose or for a company as the case may be and after making such declaration the appropriate Government may acquire the land in the manner prescribed.

10. The petitioners' contention that the emergency provisions could not be evoked because of the delay in actual publication of the notification cannot be the basis of holding that the lands were not required under the emergency provisions. The purpose for which the lands are required in fact is not disputed, that is, for setting up a military base on the Indo Nepal border and as such the contention raised on behalf of the petitioners that they should get an opportunity to raise objection under Section 5A of the Land Acquisition Act has to be rejected.

11. For the reasons aforesaid I find no merit in this writ petition. It is dismissed.

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