

Madan Mohan Sharma and ors. Vs. State of Bihar and ors.

Madan Mohan Sharma and ors. Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/124908

Court : Patna

Decided On : Jul-21-1998

Judge : R.A. Sharma and A.K. Prasad, JJ.

Appeal No. : C.W.J.C. No. 2212 of 1989 (R)

Appellant : Madan Mohan Sharma and ors.

Respondent : State of Bihar and ors.

Prior history : R.A. Sharma, J. 1. A learned Single Judge has referred the following questions to Division Bench for decision: (i) Whether Statutory Corporation, like DVC can erect High Tension Transmission Tower and lay overhead High Tension line on the land of the petitioners without payment of adequate compensation under the law and secondly; (ii) Whether by depriving the petitioners from using their lands at their own choice, the DVC is interfering with the fundamental right of the petitioners? 2. The pe

Judgement :

R.A. Sharma, J.

1. A learned Single Judge has referred the following questions to Division Bench for

decision:

(i) Whether Statutory Corporation, like DVC can erect High Tension Transmission Tower and lay overhead High Tension line on the land of the petitioners without payment of adequate compensation under the law and secondly;

(ii) Whether by depriving the petitioners from using their lands at their own choice, the DVC is interfering with the fundamental right of the petitioners?

2. The petitioners have filed this writ petition seeking appropriate writ directing the Damodar Valley Corporation (hereinafter referred to as the DVC), the State of Bihar and their officials to pay them adequate compensations and damages for 20 decimals of land over which they have installed High Tension Transmission Tower as well as rent and damages for 55 decimals of land over which high tension cable have been laid down with 18% interest.

3. The Governor of Bihar, vide Notification dated 16th, September, 1969, issued under Section 51 of the Indian Electricity Act, 1910, has conferred powers which the Telegraph Authorities possess under Sections 10 to 19 (both inclusive) of the Indian Telegraph Act, 1885, on DVC for the purpose of placing the electric supply lines, appliances and apparatus for the transmission of energy. Pursuant to the power so conferred, the DVC had constructed high tension transmission tower and had laid overhead high tension line over the land of the petitioners. The fact that DVC has the power to erect high tension transmission tower and to lay down overhead high tension line over the land of the petitioners is not disputed by the learned Counsel for the petitioners. The controversy is confined only to the question as to whether, it can be done without payment of adequate compensation. As regards land over which high tension transmission tower has been constructed, it has been stated on behalf of DVC that it was acquired under Land Acquisition Act and the compensation for it has already been paid to the petitioners. Regarding the land over which high tension line had been laid down, the case of the DVC is that no compensation is liable to be paid for it because the petitioners have not been deprived of their property inasmuch as it is still owned by them and they are also in its possession

4. The fact that the petitioners are still owners in possession of the land over which high tension lines have been laid is not disputed by them. Their grievance,

however, is that the utility of their land has been reduced substantially by overhead high tension cables of 33,000 volts because their right to use it in the manner they like and for the purpose of their choice have been completely restricted, substantially reducing its value.

5. Rule 77 of the Indian Electricity Rules has provided for clearance above ground of the conductors. Rule 80 provides for vertical clearance above the highest part of the building in case of high and extra-ordinary high voltage line. In view of the said Rules, it is not open to the owners of the land over which high tension lines have been laid to use it according to their choice because certain distance between the land/building and the high tension line has to be maintained. Such property may not even be put to maximum use for commercial and/or residential purposes on account of which its utility and value is substantially reduced. The question is whether the owners of such land/property are entitled to compensation.

6. The right to property is no more a fundamental right after repeal of Articles 19(1)(f) and 31 of Constitution by 44th. Constitution amendment. Now it is only a constitutional right contained in Article 300A of the Constitution which reads as

under:

No person shall be deprived of his property save by authority of law.

7. The Supreme Court in *State of West Bengal v. Subodh Gopal Bose and Ors.* : [1954]1SCR587 , has defined the word 'property' as follows:

(23) Now, the word 'property' in the context of Article 31 which is designed to protect private property in all its forms, must be understood both in a corporeal sense as having eference to all those specific things that are susceptible of private appropriation and enjoyment as well as in its juridical or legal sense of a bundle of rights which the owner can exercise under the municipal law with respect to the user and enjoyment of those things to the exclusion of all others. This wide connotation of the term makes it sometimes difficult to determine whether an impugned law is a deprivation of property within the meaning of Article 31(2), for any restriction imposed on the use and enjoyment of property can be regarded as

a 'deprivation' of one or more of the rights thereto fore exercised by the owner...

8. The Apex Court in *Jilubhai Nanbhai Khachar v. State of Gujarat and Anr.* : AIR 1995 SC142 , while dealing with the scope of Article 300A of the Constitution, has, after considering the relevant case law, defined the property as under-

42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it, and to exclude every one else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word 'property' connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law...

9. The word, 'property' include all those specific things which are capable of being possessed, appropriated, used and enjoyed. It also includes all those rights which owner of the property can exercise in respect to possession user and enjoyment of it.

10. The word, 'deprivation' used in Article 300A of the Constitution is not to be construed narrowly confining it only to acquisition and requisition of property. Its meaning has to be understood with reference to the definition of the word 'property'. When property includes not only corporeal things but also various rights which an owner can exercise in respect of it, the word deprivation has also to be construed in a wider sense so as to protect all those rights of the owner.

11. In *Subodh Gopal Bose's case* (supra), the relevant extract of which is reproduced below, the Apex Court, as regards 'deprivation', has held as under:.No cut and dried test can be formulated as to whether in a given case the owner is

'deprived' of his property within the meaning of Article 31; each case must be decided as it arises on its own facts. Broadly speaking, it may be said that an abridgement would be so substantial as to amount to a deprivation within the meaning of Article 31 if, in effect, it withheld the property from the possession and enjoyment of the owner, or seriously impaired its use and enjoyment by him, or materially reduced its value.

12. In *State of Bombay v. Bhanji Munji and Anr.* : [1955]1SCR777 , the Supreme Court, while dealing with Articles 31 and 19(1)(f) of the Constitution, has laid down as follows: These Articles deal with substantial and substantive rights and not with illusory phantoms of title. When every form of enjoyment which normally accompanies an interest in this kind of property is taken away leaving the mere husk of title, Article 19(1)(f) is not attracted.

As was said by one of the us in : [1954]1SCR674 :

By substantial deprivation is meant the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that one must seek...

13. In *Jilubhai Nanbhai Khachar (supra)*, the Apex Court has, in this connection, held as under:

48. The word 'property' used in Article 300A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and expropriated the property. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase deprivation of the property of a person, must equally be considered in the fact situation of a case. Deprivation connotes different concepts...

But 'Deprivation' of property is different from 'restriction' on the rights of the owner. The restriction on the right of the owner to use and enjoy the property may not necessarily result in deprivation of it unless he is deprived wholly or partly of substantial bulk of his rights constituting the property. It is a question which is to be

decided in each case on its own facts.

14. If in the fact situation of a case, by restriction imposed by law, a person has been deprived of substantial bulk of his right as owner of property, he will be entitled to compensation. The Apex Court in *Jilubhai Nanbhai Khachar* (supra), has held that Article 300A of the Constitution does not contemplate payment of compensation in the sense of 'just equivalent or indemnification to the owner of the property appropriated' and what it contemplates is that law under which a person is deprived of his property should fix an amount or lay down the principle in accordance with which such amount can be determined. It was further observed that such law cannot be challenged on the ground that the amount so determined is not adequate. In this connection, the relevant extract from said decision are reproduced below: The law may fix an amount or which may be determined in accordance with such principles as may be laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the grounds that the amount so fixed or amount determined is not adequate. The amount fixed must not be illusory. The principles laid to determine the amount must be relevant to the determination of the amount...

*

*

*

*

However when the State exercises its power of eminent domain and acquires the property of private person or deprives him of his property for public purpose, concomitantly fixation of the amount or its determination be must in accordance with such principles as laid therein and the amount given in such manner as may be specified in such a law...

15. In the present case, the high tension cables have been laid down over the land of the petitioners in exercise of the powers under Sections 10 to 19 of the Telegraph Act conferred on DVC by the Governor of Bihar under Section 51 of the Indian Electricity Act. Section 10(d) of the said Act requires the concerned

authority to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of such powers. Section 16(3) of the same Act has further laid down that the dispute as regards sufficiency of compensation to be paid under Section 10(d) shall be referred to the District Judge, Interpreting the above provisions, a Division Bench of this Court in Suku Mahto and Anr. v. State of Bihar and Ors. 1992 (2) PLJR 134, has laid down as under-

23. In that view of the matter, there cannot be any doubt that the petitioners are entitled to obtain full compensation and if any dispute arises concerning the sufficiency of the compensation, that matter, on application for that purpose, may be determined by the District Judge in terms of Sub-section (3) of Section 16 of the said Act.

See A.M. Nanjan v. Madras Electricity Board reported in : AIR1979 Mad89 .

16. That apart, Section 19 of the Indian Electricity Act has provided for 'compensation' for any damage, detriment or inconvenience caused by the licensee, while exercising any of the powers conferred by or under the said Act. The Indian Electricity Act provides for payment of adequate compensation not only for the damage to the property but also for detriment or inconvenience caused, while exercising any power conferred by or under the said Act.

17. Our answer to the questions referred is as under-

I. (a) Statutory Corporation like DVC cannot erect high tension transmission tower over the petitioners, land without payment of adequate compensation under and in accordance with the law under which it was acquired or taken possession of for erection of such tower.

(b) If, on account of overhead high tension line over their land, the petitioners had suffered any damage or detriment to their property, they are entitled to adequate compensation for such damage or detriment under and in accordance with the Indian Telegraph Act and Indian Electricity Act.

XI. (a) There is no fundamental right to property after repeal of Articles 19(1)(f) and 31 of the Constitution by 44th Constitution amendment. Now right to property is only a constitutional right as is contained in Article 300A of the Constitution. Such a right cannot be interfered with except in accordance with law.

(b) It is true that the DVC by laying overhead high tension line over their land has restricted/deprived the petitioners from using it at their choice. But such restriction/deprivation is in accordance with law, i.e., the Indian Telegraph Act and the Indian Electricity Act. There is, thus, neither any violation of their right to property as contained in Article 300A of the Constitution, nor is there any interference with any of their fundamental rights. If there is any detriment or damage to their property on account of the exercise of power by D.V.C. or its employees under the aforementioned Acts, the petitioners can claim compensation for such detriment or damage under and in accordance with law.

18. Let this case be listed before the learned Single Judge for deciding it in accordance with law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com