

State of Bihar Vs. Dhirendra Kumar and Others

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Court : Supreme Court of India

Decided On : Apr-27-1995

Reported in : AIR1995SC1955; 1995(3)ALT9(SC); 1995(0)MPLJ751; 1995(3)SCALE700; (1995)4SCC229; [1995]3SCR857; 1995(2)LC389(SC)

Judge : K. Ramaswamy and; B.L. Hansaria, JJ.

Acts : Code of Civil Procedure (CPC) - Order 39, Rule 1; [Land Acquisition Act, 1894](#) - Sections 4, 5A, 6, 9

Appeal No. : Civil Appeal No. 5753 of 1995

Appellant : State of Bihar

Respondent : Dhirendra Kumar and Others

Advocate for Def. : S.K. Sinha, Advs.

Advocate for Pet/Ap. : Promod Swarup, Advs

Prior history : From the Judgment and Order dated 7.2.86 of the Patna High Court in Misc.A. No. 16 of 1986

Judgement :

1. Leave granted.

2. This appeal by special leave arises from the judgment and order dated 7th February, 1986 passed by the Patna High Court at Patna in Miscellaneous Appeal No. 16 of 1986. A notification under Section 4(1) of the [Land Acquisition Act, 1894](#), 1/94 (for short, 'the Act') was published on February 13, 1957 acquiring the disputed land alongwith other lands for public purpose, namely construction of the houses by the Housing Board, known as the Peoples Cooperative House Construction Society Ltd., Patna. The declaration under Section 6, was published on March 27, 1957. The possession of the land was taken on March 22, 1957 and the same was given to the Housing Board on the same day. It would appear that several encroachments have been made in the land and unauthorised constructions appears to have been made. Steps were taken by the Housing Board to have the encroachers ejected from those lands. As sequel thereof, it would appear that the respondent laid Title Suit No. 329/85 in the Court of the Subordinate Judge-1 at Patna and filed an interlocutory application under Order 39 Rule 1 of CPC for ad-interim injunction. The Subordinate Judge in his order dated 18th October, 1985 found prima fade case with triable issue. Accordingly, injunction was issued, restraining the appellants from dispossessing the respondent till the disposal of the suit without causing any disturbance to the plaintiff's possession and enjoyment of the suit land or demolition of any structure standing thereon. On appeal, it was modified by the High Court, holding that the status quo as on October 18, 1985 shall be maintained. Thus, these appeals by special leave.

3. The question is whether a civil suit is maintainable and whether ad interim injunction could be issued where proceedings under the Land Acquisition Act was taken pursuant to the notice issued under Section 9 of the Act and delivered to the beneficiary. The provisions of the Act are designed to acquire the land by the State exercising the power of eminent domain to serve the public purpose. The State is enjoined to comply with statutory requirements contained in Section 4 and Section 6 of the Act by proper publication of notification and declaration within limitation and procedural steps of publication in papers and the local publication envisaged under the Act as amended by Act 68 of 1984. In publication of the notifications and declaration under Section 6, the public purpose gets crystalised and becomes conclusive. Thereafter, the State is entitled to authorise the Land Acquisition

Officer to proceed with the acquisition of the land and to make the award. Section 11A now prescribes limitation to make the award within 2 years from the last date of publication envisaged under Section 6 of the Act. In an appropriate case, where the Govt. needs possession of the land urgently, it would exercise the power under Section 17(4) of the Act and dispense with the enquiry under Section 5A. Thereon, the State is entitled to issue notice to the parties under Section 9 and on expiry of 15 days, the State is entitled to take immediate possession even before the award could be made. Otherwise, it would take possession after the award under Section 12. Thus, it could be seen that the Act is a complete code in itself and is meant to serve public purpose. We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case under Section 9 of CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under Section 4 and declaration under Section 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable. When such is the situation, the finding of the trial court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to Housing Board. So, the order of injunction was without jurisdiction.

4. The injunction granted by the trial court and confirmed by the High Court are thus illegal. The appeal is, accordingly, allowed and the orders of the courts below are set aside, but, under the circumstances, without costs.

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