

IN THE HIGH COURT OF ORISSA AT CUTTACK

WRIT PETITION (CIVIL) No. 4382 OF 2008

(An application under Articles 226 & 227 of the Constitution of India)

Kailash Chandra Mohanty and others Petitioners

Versus

State of Orissa and others Opposite Parties

Advocate(s) appeared in this case:-

For Petitioners : Mr. Rutwik Panda, Advocate

For Opposite Parties : Mr.M.S.Sahoo, AGA

**CORAM : THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY**

JUDGMENT

15.09.2021

B.P. Routray, J.

1. The Petitioners challenge the land acquisition proceeding initiated in the year 1978.

2. A total extent of land measuring Ac.0.89 dec. in Mouza-Basudevpur in the district of Bhadrak (eastwhile Balasore district) was acquired as a part of Basudevpur-Dhamara Road Project invoking the provisions of the Land Acquisition Act, 1894 (in short 'L.A.Act'). Section 4(1) Notification alongwith Section 17 Notification were issued on 28th November, 1978 followed by Gazettee declaration.

3. The Petitioners' contention is that they are the owners of Ac.0.59 dec. in Plot No.1937 out of total land acquired measuring Ac.0.89 dec. in Basudevpur mouza, and without following any procedure and even

keeping them in dark, their lands were forcible occupied by the Opposite Parties. Further, till date the same has not been used for the purpose and is lying as it is. As such, the Petitioners pray for a declaration that the initial Notification dated 28th November, 1978 is illegal and further that they should be conferred all the consequential benefits. It is submitted by them that, initially they being unaware of the procedure filed O.S.No.138 of 1981 in the Court of the Additional Munsif, Bhadrak. Against the dismissal of the said suit, they preferred a First Appeal in the Court of the learned Addl. District Judge, Bhadrak, which was also dismissed. The matter was carried to this Court in S.A.No.323 of 1996. This too was dismissed by this Court by judgment dated 13th November, 2007 with the observation that the legality and correctness of land acquisition proceeding can only be examined in a proceeding under Article 226 of the Constitution of India. Hence, the delay in filing the present petition.

4. The State-Opposite Parties have filed their counter stating therein that in all there are eight land owners concerning Ac.0.89 dec of land in Basudevpur mouza, including three present Petitioners. The land acquisition proceeding was initiated and completed following all procedures including invocation of the urgency clause under Section 17. A total sum of Rs.4,094/- towards compensation has been awarded under Section 11 of the L.A. Act and Section 12 (2) notice has been served on one of the co-awardees. Further, Rs.460/- out of the total awarded amount was disbursed to one of the awardees namely, Sanatan Barik. As others did not turn up to receive the amount. The remaining amount of Rs.3,634/- has been kept in civil deposit before the Requisitioning Officer i.e., the Executive Engineer (R & B), Balasore.

After getting possession of the land, the same has been delivered to the Requisition Officer on 12th May, 1979. Thus, all the contentions of the Petitioners to contrary have been denied as incorrect.

5. It is argued on behalf of the Petitioners that the Opposite Parties without following due procedure and without granting them any opportunity to submit their objections have forcibly acquired the land. It is contended that the entire proceeding is liable to be quashed, particularly for not granting them an opportunity of being heard on their objections. Since the land remains unutilized till date, notwithstanding the purpose it was acquired for, it has to be returned to the owners.

6. It needs to be mentioned here that, when the urgency clause under Section 17 is invoked, the right to objection and hearing thereof as stipulated under Section 5-A is dispensed with. The reasons that weighed with the government for invoking the emergency provision under section 17 of the L.A. Act is no doubt subject to judicial review. However, as explained in several decision, the scope of such review is limited. A three Judge Bench of the Supreme Court in *Narayan Govind Gavate v. State of Maharashtra AIR 1977 SC 183* has elaborately considered the ambit and scope of Section 17 of the Act. The Apex Court also considered the scope of judicial review of the opinion formed by the State Government under Section 17(4). It was observed as under:

“10. It is true that, in such cases, the formation of an opinion is a subjective-matter, as held by this Court repeatedly with regard to situations in which administrative authorities have to form certain opinions before taking actions they are empowered to take. They are expected to know better the difference between a right or wrong opinion than Courts could ordinarily on such matters. Nevertheless, that opinion has to be based upon some relevant

materials in order to pass the test which Courts do impose. That test basically is: Was the authority concerned acting within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the Court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material, however meagre, on which it could reasonably base its opinion, the Courts should not and will not interfere. There might, however, be cases in which the power is exercised in such an obviously arbitrary or perverse fashion, without regard to the actual and undeniable facts, or, in other words, so unreasonably as to leave no doubt whatsoever in the mind of a Court that there has been an excess of power. There may also be cases where the mind of the authority concerned has not been applied at all, due to misunderstanding of the law or some other reason, to what was legally imperative for it to consider.”

7. In ***State of Rajasthan v. D.R. Laxmi (1996) 6 SCC 445***, it was held that:

"Recently, another Bench of this Court in *Municipal Corporation of Greater Bombay Vs. Industrial Development & Investment Co. (P) Ltd.* [C.A. No. 286 of 1989] decided on September 6, 1996 re-examined the entire case law and held that once the land was vested in the State, the Court was not justified in interfering with the notification published under appropriate provisions of the Act. Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. xx xx”

In the above decision of the apex Court, the three-Judges Bench has clearly observed that the High Court has undoubtedly discretionary power under Article 226 of the Constitution of India to quash the notification under Section 4 and the declaration under Section 6 of the L.A. Act but it should be exercised taking all relevant factors into consideration.

8. In the instant case, the land in question has been acquired as part of Basudevpur-Dhamara Road Project and the entire process has already been completed 42 years back from now with vesting and delivery of possession. The purpose of such acquisition and the importance attached to it, itself speaks for the justification and subjective satisfaction of the authority in the matter.

9. The Petitioners are three affected persons out of total eight persons. The specific contention of the Opposite Parties that Section 12 (2) notice has been served on one of the co-awardees who in turn received the compensation amount of Rs.460/-, is not denied by the petitioners. As seen from Petitioners' own pleadings that they had the knowledge of the land acquisition proceeding since pendency of the Original Suit before the Addl. Munsif. In view of these admitted facts, the Petitioners' explanation is not found satisfactory for condoning the delay to approach this Court in the present form.

10. The Petitioners are under a misconception that the land still remains unutilized for the purpose it was acquired for. It is apparent from the counter affidavit that the entire land of Ac.0.89 decimals including the Petitioners' land was acquired as part of Basudevpur-Dhamara Road Project to fill up of the shortage of Gochar land in the village in lieu of

those Gochar lands utilized for construction of the road. Since the acquired land was meant for grazing of cattle of villagers, its status was converted as such immediately after the acquisition. Therefore, it is bound to lie as such so as to maintain the required prescription of Gochar land in the village. So no merit is found in the contention of the Petitioners in this regard.

11. As stated earlier, the very proceeding was initiated on 28th November, 1978 by issuance of requisite Notifications and in the meanwhile almost 43 years have passed. Its status is maintained as it is for last so many years. This reason alone is sufficient to persuade us to abstain from passing any order disturbing such long settled position.

12. The submission of the Petitioners that the state has resorted to a colourable exercise of power to invoke emergency provision is found without substance in absence of any material to suggest any fraud, malice or corrupt purpose. The purpose for larger public interest in the acquisition is apparent from the record.

13. Resultantly the writ petition is dismissed, and in the circumstances, without any order as to costs.

(B.P.Routray)
Judge

(Dr. S. Muralidhar)
Chief Justice

C.R.Biswal/ Secy.