

(2012) 07 JH CK 0080

Jharkhand High Court

Case No: Writ Petition (PIL) No. 2347 of 2012

Bar Association, Jharkhand High
Court, Ranchi

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: July 16, 2012

Acts Referred:

- Land Acquisition Act, 1894 - Section 11, 16, 36, 4, 48

Citation: (2012) 4 JCR 316 : (2013) 1 JLR 162

Hon'ble Judges: Prakash Tatia, C.J; Jaya Roy, J

Bench: Division Bench

Advocate: Sohail Anwar, for the Appellant; Anil Kumar Sinha, Advocate General, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. In spite of the fact of rejection of the application of the applicants by this Court vide order dated 16.05.2012 and dismissal of SLP by the Hon"ble Supreme Court, who are opposing the construction of building of three prestigious institutions, like National University of Study and Research in Law, Indian Institute of Management and Birsa Agriculture University, whereby they tried to question the acquisition of the land of the year 1956-58 in the year 2012 and the action of the State Government of establishing three above Institutions, this Court, to avoid confrontation on site, passed the order on 10.07.2012 as some of the persons tried to instigate the innocent persons against the proposed construction. Learned counsel for the State filed an affidavit on behalf of the State wherein it has been stated that after the order of this Court dated 10.07.2012, the State of Jharkhand constituted a Committee for negotiation and settlement of issues on 11.07.2012 and the said Committee issued a public notice inviting the persons concerned to attend the meeting on 14.07.2012. Even individual notices were also issued, but none of the

claimants came for discussing the matter. Now, the meeting has been adjourned on 16.07.2012 and is likely to be held at 12.30 p.m. today.

2. We perused the documents annexed with this affidavit on behalf of the respondent-State.

3. It appears that everything out of proportion has been projected by persons of vested-interest who claim that they are public representatives, some are not elected representative in a country where the laws are framed by the Members of State Legislative Assembly in the State or by the parliamentarian in the Parliament and these persons projecting themselves leaders questioning the land acquisition after more than half century, in the year 2012 at time when construction started on the land and they become wiser now, simply because it is known to every body that State of Jharkhand is comprising of more members of Schedule Cast and Schedule Tribes and most of the population is poor and illiterate, who can be misguided by slightest elusion pictured in the mind of those persons.

4. We are constrained to refer the provisions of Land Acquisition Act, 1894 which was enacted by the Parliament and the binding law in the entire country and enacted as back as in the year 1894 and since then, thousands and thousands of acres of cultivable land have been acquired under the provisions of this Act of 1894. It appears from the newspapers' report that it is imprinted in the mind of the small cultivators that this is last case to save total cultivable land in the State of Jharkhand and over 227 acres of land, if these institutions will construct building which was acquired in the year 1957-58, then entire State of Jharkhand will not have a single inch of cultivable land because remaining all cultivable land will be acquired by the Government.

5. It appears that picture has not been cleared by the State representatives.

6. The Government, may it be Central or State, is free to frame the policy of acquiring the land and may decide which land is required to be acquired and once this decision is taken, the Land Acquisition Act, 1894 comes into play, which clearly provides that the decision about the need of land for public purpose of the Government shall be a conclusive proof by Notification u/s 6 of the Act of 1894. Therefore, no body can question the public purpose for acquisition of the land after the decision of the Government which has not been set aside by any Court of Law and is a conclusive proof of public purpose. Not only this, once the land is acquired lawfully and vested in Government, by order of the Competent Authority in the State and possession is taken, it vests in the Government without any encumbrance, irrespective of fact that there may be any encroachment made by any body at any point of time Section 48 of the Act of 1894 specifically provides that even if the Government wants to withdraw the acquisition, it can do only for the land of which possession has not been taken. To make the things clear to the State Government, we would like to quote some of the provisions of the Act of 1894 which will be

beneficial to the persons working or not working in the Government.

7. Section 4 of the Act of 1894 clearly states that "whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purposes[or for a company] a notification to that effect shall be published in the Official Gazette-----". Therefore, in this case also the decision to acquire land was of the Government, run by the public representatives, at the time when this process was initiated, that this particular land is needed for public purpose. It was not the decision of these institutions.

8. Section 6 of the Act of 1894 provides for declaration by the Government that land is required for a public purpose. When declaration made u/s 6 of the Act of 1894, sub-Section (3) thereof says as under:

(3) The said declaration shall be 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 manner hereinafter appearing.

9. It is a statutory provision and part of the enactment enacted by the Parliament.

10. Section 16 of the Act of 1894 provides that " When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon[vest absolutely in the [Government]] free from all encumbrances." The consequences of vesting of the land in the Government is, therefore, clear from Section 16 and Government powers to withdraw from the acquisition is limited and is clear from statutory provision of Section 48(1) of the Act of 1894 which is as under:

(1) Except in the case provided for in Section 36 the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

11. Therefore, once the possession has been taken, Government has no right to withdraw the acquisition.

12. Here in this case, admittedly, not only possession has been taken by the Government but possession has been handed over to these prestigious institutions which are coming in the State of Jharkhand.

13. We make it clear that we are referring the provisions only, and not the Judgments of the Hon"ble Supreme Court, wherein it has been clearly held that in land acquisition proceedings, possession of the land is taken symbolically and we may observe here that it is not necessary for the Government to build the boundary-wall over the entire piece of land acquired and put lock and key or chowkidars when it is not needed. So is because of reason that such act of cultivation over such land, no right is created in favour of any body.

14. From the newspapers report, it appears that it has been projected that unless this piece of land which is about 227 acres, is protected, either there will be no

cultivable land in the State of Jharkhand or rest of the cultivable land will be acquired by the Government. Such impression has not been cleared by any body in the Government or by any of the person, who is concerned with the public interest and it has been fixed in the mind of the few persons in the State of Jharkhand that the land in dispute is only test for the cultivators and if these three projects of the State Government will succeed, no cultivable land in the entire State of Jharkhand will be spared and all cultivable land will be acquired by the Government.

15. It is not coming from anywhere that why this particular land has been chosen by these persons who are now showing support to the people by misguiding them and by imprinting a picture that thereafter the State of Jharkhand will have to starve out and starvation will be because of the nonavailability of cultivable land.

16. We will remind the Government that if the Government takes any decision, it will keep in mind the questions that:-

(1) Whether it is a Government policy that law will prevail or the issues will be decided on road in all matters, in future ?

(2) Whether the land in dispute is the only or last land, which is cultivable land, acquired after coming into force of the Act of 1894 in the State of Bihar and now in the State of Jharkhand till the year 2012 ?

(3) Whether non acceptance of the compensation by cultivators will nullify the land acquisition proceedings undertaken under the Act of 1894 ?

(4) Whether the State Government has taken a decision that all lands which have been acquired after the year 1894 or at least since 1957-58, and it was cultivable at that time, shall be declared deacquisitioned and will be returned back to the cultivators?

(5) Why this inequitable decision will be for those persons only, whose land have not been violently protested when possession of the land was taken over and whether the Government will be guided by law of violence and will not hear the law abiding persons, who obeyed the law?

(6) If the State Government takes a decision that no cultivable land should be acquired, then whether that decision will be prospective in nature or retrospective in operation ?

17. The above issues are relevant issues as well as the most important issue is that whether under the Land Acquisition Act, if law of the Land Acquisition Act is re-enacted, specifically providing that no cultivable land will be acquired, whether the Government will accept that when the payment is not accepted by the land looser, the land will not be acquired and that new enactment will not be given effect to.

18. We are questioning here again and again that why this land has been chosen by these persons? As an example? If acquiring the cultivable land is the main issue, then the intention of the persons, particularly in a State where thousand of acres of land have been acquired and instigating the cultivators descendants at this belated time, are seriously doubtful as in newly born State, three prestigious Institutions are sought to be brought in and such situation has been brought in spite of the order of this Court as well as by the order of Hon"ble Supreme Court in the Special Leave (C) Petition No. 18622 of 2012.

19. Learned Advocate General, at this juncture, drew our attention to the earlier noticed fact that some of the cultivators, obviously then descendants approached this Court by filing writ petition being W.P,(C) No. 2356 of 2009 wherein also they confined the relief to get the interest over the compensation amount which has been allowed by this Court vide order dated 26.04.2011. Then a number of persons tried to challenge the effort of the State Government in establishing three prestigious institutions by filing I.A. No. 1558 of 2012 in this P.I.L. and their challenge was dismissed by this Court vide order dated 16.05.2012. This Court passed the order dated 10.07.2012 after the dismissal of the Special Leave (C) Petition No. 18622 of 2012 of the cultivators by the Hon"ble Supreme Court simply to see that innocent and poor persons, who might have been misguided, may be informed timely about their rights and they may be brought out of the clutches of the wrong persons, who are riding on the back of those poor persons, who may have been started riding just now or may have been riding since last 56 years.

20. The State Government shall get this order translated in Hindi and it required in regional language also and shall keep it in the meeting which may be held for taking final decision with respect to the issues in question. This Court deliberately not passed any harsh order on 10.07.2012 or is not passing any harsh order today because of the involvement of the innocent persons of State of Jharkhand, some of whom may have been misguided by other persons.

21. Learned Advocate General sought some more time so that matter may be resolved.

22. Though the land involved is a small piece of land as we are dealing with the issue of acquisition of land for the public purpose by the State Government and for development of the State, where thousands of acres of land is acquired, even then, we deem it proper to give some time to the State Government up to 31.07.2012 so that we may know the progress in the matter.

23. List this matter on 06.08.2012. A copy of this order be given to learned counsel for the State as well as to the Amicus Curiae.