

Orissa High Court
Orissa High Court
Sanjeev Kumar Sharma & Others vs Union Of India And Others on 24 April, 2013
THE HIGH COURT OF ORISSA : CUTTACK

W.P.(C) No.24023 of 2011

In the matter of an application under Articles 226 & 227 of the Constitution of India

Sanjeev Kumar Sharma & others Petitioner -Versus-

Union of India and others Opp. Parties For Petitioners : Mr J. Das, Sr. Advocate For Opp. Parties : Mr S.D. Das, Asst. Solicitor General (for O.P.No.1)

M/s.S.Mohanty, Sr. Advocate &

Amitav Das (for O.P.Nos.2 and 3)

P R E S E N T:

THE HON'BLE CHIEF JUSTICE MR. C. NAGAPPAN

&

THE HON'BLE MR. JUSTICE INDRAJIT MAHANTY.

Date of hearing: 12.04.2013 : Date of Judgment: 24.04.2013 C.Nagappan,C.J. The petitioners claiming to be the lawful owners of the properties have sought for a declaration that the course adopted by the opposite party no.3 in publishing the Ministry of Road Transport and Highways Notification dated 24.1.2011 (Annexure-7) issued under Section 3A(1) of the National Highways Act, 1956 in so far as the 2

stretch of land covering KM 54180 to KM 67480 (Malatipatapur- Sipasurubali Section) in the district of Puri is illegal and contrary to Section 3C of the Act and thereby prayed to quash the same with a further direction to proceed with the acquisition as per original plan approved by the opposite party no.1.

2. The facts as discerned from the pleadings of the parties are as follows:-

As per the requirement of the Central Government, Intercontinental Consultation (P) Ltd. prepared a Land Acquisition plan for Bhubaneswar-Puri Section National Highway No.203 Puri bi-pass after due survey of the area in question. Initial alignment plan was furnished on 24.5.2007 and the National Highways Authorities of India approved the same on 30.5.2007. On the basis of the plan, steps have been taken for building, widening/four laning etc. of National Highway No.203 on the stretch of land from Bhubaneswar to Puri with number of sections. One of such sections is Malatipatapur- Sipasurubali in the district of Puri from KM 54180 to KM67480. The Ministry of Road Transport and National Highways, Government of India issued a notification on 30.11.2009 (Annexure-1) under sub- section 3A(1) of the Act declaring their intention to acquire the land for building, widening/four laning etc. and for operation of National Highway No. 203 on the stretch of land from KM 54180 to KM67480. Substance of the said notification was published in the "The Samaya' 3

and "The Odisha Bhaskar" on 14.1.2010 under sub-Section (3) of Section 3A of Act and objections were called for from any person interested in the land within 21 days from the date of publication of the notification.

3. Dr. Susanta Kumar Tripathy of Braj Gopika Seva Mission, Tutumbarpalli and 64 other objectors filed objections on 3.2.2010 before the competent authority, namely, opposite party no.3. The first petitioner, namely, Sanjeev Kumar Sharma also filed objection on 17.2.2010 to change the alignment as the portion of his property was under land acquisition. A letter dated 1.12.2009 was addressed by Mr. Motilal Vora, M.P. to the former Minister of Road Transport and Highways Mr. Kamal Nath requesting him to consider the alternative proposal of Dr. Sushant Tripathy. All those who objected the use of land in reference to the notification, as their lands were not excluded from the notification, were heard and the contents of the technical objections raised by them were sent to the National Highway Authorities of India to consider their technical views and the alternative suggestions proposed by them. Some portion of the land notified on 30.11.2009 was no longer required for land acquisition and the same has been dropped completely from the orbit of land acquisition. After observing formalities, Ministry of Road Transport and Highways issued notification dated 12.10.2010 under sub-section 3-D(1) of the Act along with a public notice declaring the land 4

specified in the schedule to be acquired for the purpose. The modified alignment plan was submitted by Intercontinental Consultation (P) Ltd. and the Central Government on being satisfied took corrective measures and changed the alignment by issuing notification again on 24.1.2011 under Section 3A of the Act. Twenty eight objectors filed their objections to use the land for the purposes mentioned in the said notification. The said objections were scrutinized and disallowed. The Central Government by notification dated 28.12.2011 issued under Section 3D(1) of the Act declared that the land should be acquired for the purpose of N.H.No.203 from KM 63880 to KM 67255.

4. It would be relevant to take note of the gist of the contentions raised by the petitioners, which is as follows: (A) After Notification dated 30.11.2009, the alignment of the original plan was unilaterally changed considering the objection of Brajagopika Seva Mission and 64 others, which were filed beyond the stipulated period of 21 days (90 days from the Gazette Notification dated 30.11.2009) and as per Section 3C(1) of the Act those objections ought to have been straightaway rejected.

(B) Change of alignment was made only to favour certain specific institutions and/or individuals narrated hereinabove and, therefore, it is vitiated by mala fide.

5. In this respect, learned counsel for the petitioners placing reliance on the judgment of the Supreme Court in the case of Union 5

of India vs. Kushala Setty, (2011) 12 S.C.C. 69, contended that the objections raised beyond the time schedule specified in Section 3C(1) of the Act are not required to be considered and Court can nullify such act which runs contrary to the mandate of law and tainted by mala fide. He also placed reliance on another judgment of the Hon'ble Supreme Court in the case of Girias Investment Pvt. Ltd. & another vs. State of Karnataka & others, (2008) 7 S.C.C. 53, and contended that a case of mala fide can be made out in the two following ways: (i) that the action, which is impugned, has been taken with the specific object of demanding the interest of the party; and (ii) such action is aimed at helping some party, and resulting in damage to the party alleging mala fides.

6. Learned counsel appearing for the opposite parties-National Highways Authority of India, on the other hand, submitted that the land of petitioner No.1 finds place both in the first and the second notifications issued under Section 3A of the Act and such plots of the petitioner are vitally required for completion of N.H. No.203 from Bhubaneswar to Puri and without which the said project cannot be completed in time during Nabakalebara of the Lord Jagannath as it is expected that more than 50 lakhs peoples are likely to visit Puri

and for which reason the National Highways Authority (for short, "the NHAI") has planned for completion of N.H. No.203 by the end of 2014.

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It is contended by the learned counsel for NHAI that the actual extent of the land of petitioner No.1 in original under Section 3A Notification was Ac.6.470 decimals and in the second 3A Notification the area has been reduced to Ac.3.735 decimals. It is further contended that the nature (Kisam) of the land belonging to petitioner No.1 has been categorized as Adi, Sarada-3, Jalasaya-2, Bagayat-2 and Bagayat-3 respectively and none of his land proposed to be acquired is either homestead or Gharabari. It is further pleaded on behalf of the NHAI that the length of N.H. No.203 has been reduced by 0.225 KM and the actual area of acquisition of land has also been reduced by Ac.5.123 decimals.

It is submitted on behalf of the opposite parties-NHAI that the objection of Brajagopika Seva Mission filed on 03.02.2010 was beyond the statutory period of 21 days as contemplated under Section 3A(1) read with Section 3C(1) of the Act is wholly incorrect. It is further submitted that under Section 3A(3) of the Act, the competent authority is statutorily required to cause publication of the notification in two local newspapers including one in vernacular language and such newspaper publication was made on 14.01.2010 (even though the Gazette publication of Section 3A notification had already been made on 30.11.2009). It is further submitted that the period of 21 days would be computed from the date of publication of such notification in local newspapers i.e. 14.01.2010 including the 7

vernacular newspaper and, therefore, the objections filed on behalf of Brajagopika Seva Mission on 03.02.2010 was within the statutory period of 21 days as contemplated under Section 3C(1) of the Act and not beyond the statutory period as alleged. It is further submitted by the learned counsel appearing on behalf of the NHAI that the petitioners have neither impleaded Brajagopika Seva Mission nor the other parties as opp. parties against whom allegation of favouritism has been made. In this respect, he placed reliance on the judgment of the Supreme Court in the case of Girias Investment Pvt. Ltd.(supra), wherein the Apex Court held that "in the absence of specified individuals, who are to be made parties in a litigation alleging mala fides and an enquiry into such an allegation was impermissible".

7. Apart from the above, prayer has been made in the writ application for quashing of the Notification dated 24.01.2011 (Annexure-7) issued under Section 3A of the Act with a further direction to proceed with the acquisition as per the original plan approved by opposite party No.1.

In this respect, it is further submitted on behalf of opposite parties-NHAI that the writ application came to be filed on 06.09.2011. The first notification issued under Section 3A was notified on 30.11.2009 and the same was followed up by the Notification issued under Section 3D on 12.10.2010. Although the 8

lands of the petitioners are covered under the first Notification issued under Section 3A dated 30.11.2009, the lands of the villagers as well as the petitioners were omitted in the Notification issued under Section 3D dated 12.10.2010. Thereafter, upon realignment of the road, which was duly approved by the statutory authority, a second Notification was issued under Section 3A dated 24.01.2011 once again bringing the petitioners' lands and the villagers. Thereafter objections were called for, hearing was taken place and ultimately a fresh notification under Section 3D was duly published on 28.12.2011.

Further, it is contended by the learned counsel for the opp. parties-NHAI that since the petitioners have not challenged the 3D notifications published on 12.10.2010 and 28.12.2011, their prayer to quash 3A notification cannot be entertained and on this ground the writ petition is liable to be dismissed.

8. Further, reliance was placed by the opposite parties on the judgment of the Supreme Court in the case of Ramniklal N. Bhutta & another vs. State of Maharashtra & others, A.I.R. 1997 S.C. 1236, wherein the

Supreme Court has directed that the Courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 and even in a case where a High Court finds that any acquisition has been vitiated on account of non-compliance with some legal requirements, the persons 9

interested would also be compensated by way of damages and quashing the acquisition proceeding was not the only mode of redress and it was stated that it is ultimately a matter of balancing the competing interests. Further, reliance has also been placed by the opposite parties on the judgment of the Hon'ble Supreme Court in the case of Union of India vs. Dr. Kushala Shetty & others, A.I.R. 2011 S.C. 3210, wherein the Hon'ble Court came to be concluded that the Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest or not and, therefore, it was submitted that the scope of judicial review in such cases were extremely limited.

9. On perusal of the records of the case and the pleadings, the admitted facts are as follows:

â € There are two Notifications under Section 3A and consequent upon two 3D Notifications.

First- Notification U/s.3A dtd. 30.11.2009 Notification U/s.3D dtd. 12.10.2010

Second- Notification U/s.3A dtd. 24.01.2011 10

Notification U/s.3D dtd. 28.12.2011

1) No lands/plots of the first Notification under Section 3D dtd.12.10.2010 have been repeated in the second Notification under Section 3D dtd.28.12.2011.

2) The lands/plots and village i.e. Sankarpur, Samanga, Kasijagannathpur and Sipasarubali of first Notification under Section 3A were omitted in first Notification under Section 3D dtd.12.10.2010.

3) Upon realignment of the road from KM 63,880 to KM 67,255, once again new/second Notification under Section 3A dtd.24.01.2011 was published, objections were called for, hearing was taken place and consequently Notification under Section 3D dtd.28.12.2011 vide Annexure-G/2 was published.

4) That in reply to para-5 of the Rejoinder Affidavit, it is submitted that it has been alleged by the petitioner that the O.P.s No.2 & 3 being the public authorities have not disclosed the fact regarding some patch of land which has been deleted. In this regard, it is submitted that in pursuance to notification dtd.30.11.2009 under Section 3-A of N.H. Act, some patch of land have been deleted at the time of publication of 3-D notification on 12.10.2010 as those lands are not required for alignment. Since other lands are required 11

for alignment without which the road would not have been completed from Malatipatpur to Sipasarubuli Chainage (Km.54,180 to Km.67,255), was published again on 24.01.2011 u/s.3-A of N.H. Act. Therefore, the Notification U/ s.3-A of N.H. Act published on 24.01.2011 is completely a new one and it has no relation with the earlier 3-A Notification dtd.30.11.2009. However, taking consideration of the rejoinder affidavit of the petitioner, the following facts are indicated for proper adjudication of the matter:- (i) The Plot No.1362 pertaining to village Samang which had been notified vide SO No.3054(E), dtd.30.11.2009 U/s.3A of NH Act for an area of Ac.5.860 decimal had been notified U/s.3D of NH Act with an area of Ac.5.660 dec. vide SO No.2545(E), dtd.12.10.2010 deleting an area of Ac.0.200 dec. However, for requirement of additional area of Ac.0.440 land, the Notification dtd.24.01.2011 was published U/ s.3-A of N.H. Act taking into consideration of modification of alignment and omission of area from earlier notification. Moreover, the Plot No.275, 276, 277, 278, 278/436 pertaining to village Sipasarubuli were notified U/s.3A of NH Act on dtd.30.11.2009. These plots were completely deleted at the time of 3-D 12

notification published vide SO No.2545 dtd.12.10.2010. The same was notified again U/s.3A of NH Act published vide SO No.157(E) dtd.24.01.2011 due to modification alignment and omission of area from earlier notification. It is important to point out here that without publication of the notification on dtd.24.01.2011 pertaining to the above plots the NH- 203 would have not been completed in the village Samang & Sipasurubuli.

(ii) When the matter to modify the alignment was under the active consideration of Central Government, a map pertaining to such modification has been submitted by M/s. I.C.T. Pvt. Ltd., New Delhi and the same was forwarded to the CALA for its super- imposition on the Cadastral Maps. After super- imposition of the proposed modified alignment on the cadastral maps, a draft proposal in form of 3-A notification was processed to the Central Government. The Central Government being satisfied on the same, published the notification U/s.3-A of NH Act in the Gazette of India vide SO No.157(E) dtd.24.01.2011. (iii) The date on which M/s. Intercontinental Consultant & Technocrats Pvt. Ltd., New Delhi had 13

furnished the initial alignment plan in respect of NH- 203 from Bhubaneswar to Puri was 24.05.2007 and the date of approval of the same by the National Highways Authority of India was 30.05.2007.

(iv) The date of submission of modified alignment plan by M/s. Intercontinental Consultants & Technocrats Pvt. Ltd. was 09.02.2010 and the date of approval of this revised alignment by the National Highways Authority of India was 04.03.2010. The O.Ps. No.2 & 3 have no intention to

suppress any fact before this Hon'ble Court. The photocopy of notification of SO No.157(E), dtd.24.01.2011 and SO No.3054(E) dtd.30.11.2009 had already been submitted in preliminary affidavit as Annexure-A/2 & B/2. The map detailing of both the notifications from Samang to Sipasurubuli has been combined in one trace map and submitted at present as Annexure-I/2.

10. In the light of the pleadings made and submissions advanced by the learned counsel for the respective parties, we are of the considered view that the following issues arise for our consideration:

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I) Whether the objections of Brajagopika Seva Mission and 64 others, which were taken into consideration by the NHAI to the first Notification under Section 3A dated 30.11.2009 was filed beyond the stipulated period of 21 days as stipulated under Section 3D(1) of the N.H. Act? II) Whether the change of alignment by the NHAI was stated mala fide or not?

III) Whether non-impletion of Brajagopika Seva Mission and others against whom the allegation of favouritism has been made were necessary parties and proper parties for adjudication of the issues raised in the present proceeding? IV) Whether this Court is in exercise of jurisdiction under Article 226 can go into the merits or the reasons for which NHAI decided to the original road alignment?

11. Insofar as issues are concerned under Section 3A and Section 3C are quoted herein under:

"3A. Power to acquire land, etc.-(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

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(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language." "3C. Hearing of objections.-(1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of Section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

(3) Any other made by the competent authority under sub-section (2) shall be final."

12. On a plain reading of Section 3A and 3C quoted hereinabove, it would be clear that under Section 3A, every Notification under Section 3A(1) is mandatorily required to be 16

published in two local newspapers, one of which will be in a vernacular language.

In this respect, the records of the NHAI were called for by the Court. At the conclusion of hearing and from the records it appears that first Notification under Section 3A was duly published by the Gazette of India on 30.11.2009 but the substance of such Notification was only published in the local newspapers in vernacular language i.e. 'Samaya' and 'Odisha Bhaskar' on 14.01.2010. Therefore, in view of the aforesaid facts and filing objection under Section 3C, the period of computing 21 days for the parties would commence only from the date in which the newspaper notification in the local vernacular was issued and as averred by the writ petitioner, Brajagopika Seva Mission and 64 others have filed their objection on 03.02.2010. We are of the considered view that the same was within the statutory period as under Section 3A read with Section 3C and not beyond 21 days as alleged by the petitioner. Therefore, we are of the considered view that since the objections of Brajagopika Seva Mission and 64 others are within the time, the allegation to the contrary is completely baseless and, therefore, the first issue is answered in favour of the opposite parties and against the petitioners.

13. Issue Nos.(II) & (III) are taken up together. What has been alleged by the petitioners is that in order to benefit few persons and 17

due to certain politician by purview of the land loser, the NHAI has changed the alignment. It is also admitted fact that the petitioners have not impleaded the individuals, who they claim were the beneficiaries of the realignment in the writ application. Squaredly, the decision of the Hon'ble Supreme Court in the case of Girias Investment Pvt. Ltd. & another vs. State of Karnataka & others, (2008) 7 S.C.C. 53 and in particular paragraph-21 comes into operation, which is quoted hereinbelow:

"21. The learned counsel for the respondents has also taken pains to point out that in the absence of specified individuals, who are to be made parties in a litigation alleging mala fides, an enquiry into such an allegation was impermissible. The learned counsel has placed reliance on State of Bihar v. P.P. Sharma and All India State Bank Officers' Federation v. Union of India. In P.P. Sharma case it was observed that " (SCC pp.261-62, para 55)

"55. It is a settled law that the person against whom mala fides or bias was imputed (six imputed) should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an

opportunity."

In view of the above, issue Nos.(II) & (III) are also answered in favour of the opposite parties and against the petitioners.

14. Insofar issue No.(IV) is concerned, apart from the above, we are also of the considered view that the judgment of the Hon'ble Supreme Court in the case of Union of India vs. Dr. Kushala 18

Shetty & others, A.I.R. 2011 S.C. 3210 and in particular paragraph-28 being extremely relevant, which is quoted hereunder. "28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained."

In view of the above, issue No.(IV) is also answered in favour of the opposite parties and against the petitioners.

15. In view of the findings arrived at as noted herein, we are of the considered view that the importance of the project i.e. completion of N.H.-203 from Bhubaneswar to Puri is of great public interest, especially, keeping in view the fact that the Nabakalebara 19

of Lord Jagannath is due in the early part of 2015 for which reason the NHAI have taken all necessary steps to complete the National Highway to accommodate more than 50 lakhs peoples to visit Puri during the said period.

In view of the above, the writ application stands dismissed and all the interim orders stand vacated. No costs.
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C. Nagappan

(Chief Justice)

I. Mahanty, J. - I agree.

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I. Mahanty, J.

Orissa High Court : Cuttack

Dated 24th April, 2013/DM/RPM