A

M/S. JETHMULL BHOJRAJ

v.

STATE OF BIHAR & ORS.

January 25, 1972

B [K. S. HEGDE, P. JAGANMOHAN REDDY AND D. G. PALEKAR, JJ.]

Land Acquisition Act (1 *of* 1874), *ss.* 9 *and* 17—*Scope of.*

In 1954 the lands in dispute were notified under the Indian Forests, Act, 1927. Later, in order to acquire and include them in the adjoining Government forest, Government notified them under s. 4 of the Land
C Acquisition Act, 1894. Government also took action under s. 17(4) of the Act, dispensed with the proceedings under s. 5A, and issued the notification under s. 6. Thereafter, proceedings were taken under ss. 9 and 11, but Government decided that it was not worthwhile to acquire the entire area and withdrew some of the lands from acquisition.

The appellant moved the High Court unsuccessfully, under Art. 226, for directions to award him compensation in respect of those lands also.

D

In appeal to this Court, it was contended that: (1) Since the Government had taken possession in 1954, Government became full owners of the lands when notifications were issued under s. 6 of the Land Acquisition Act; and (2) the lands had been actually taken possession of by the Collector under s. 17(1) and Government became full owners when public notice was given under s. 9(1).

E Dismissing the appeal,

HELD: (1) There was no satisfactory evidence to show that the Government had taken possession of the lands in 1954. Therefore, the High Court was justified in not pronouncing on the question in a petition under Art. 226.

(2) (a) Under s. 17(1) the Collector cannot take possession unless
F Government directs him to do so. There is no material on record to show that Government had given any such direction, nor is there any material to show that the Collector had taken possession under s. 17(1). [196 G-H]

Lt. Governor of Himachal Pradesh v. *Avinash Sharma*, [1971] 1 S.C.R. 413, explained and distinguished.

(b) The expression 'whenever the appropriate Government so directs'
G in s. 17(1) refers to the taking of possession and not to the declaration of urgency. But even in cases of urgency, Government may not think it necessary to take immediate profession. Hence, it could not be said that on the expiry of 15 days from the publication of the notice under s. 9(1), the lands had vested in the Government. [198 G-H; 199 A-C]

CIVIL APPELLATE JURISDICTION: C.A. No. 379 and 741 of 1967.

H

Appeal from the judgment and order dated October 14, 1966 of the Patna High Court in Civil Writ Jurisdiction Cases No. 434 and 435 of 1966.

R. K. Garg, S. C. Agarwal and *D. P. Singh*, for the appellant (in C.A. 741 of 1967) A

A. K. Sen, R. K. Garg, S. C. Agarwal and *D. P. Singh*, for the appellant (in C.A. No. 379 of 1967)

Niren De, Attorney General for India, *D. Goburdhun*, for the respondents (in both the appeals). B

The Judgment of the Court was delivered by

Hegde, J. In these appeals by certificate, the only question that arises for decision is whether on the facts and in the circumstances of these cases, the Government of Bihar was competent to withdraw from acquisition certain lands sought to be acquired under Acquisition Cases Nos. 3 and 4 of 1959-60 before the Additional Land Acquisition Officer, Hazaribagh. C

The lands concerned in these cases were notified for acquisition in 1959 under s. 4 of the Land Acquisition Act, 1894 (to be hereinafter referred to as the Act) under two different notifications. At about the same time, the Government also took action under s. 17(4) of the Act and dispensed with proceedings under s. 5A. Simultaneously notifications under s. 6 were also issued. Thereafter proceedings under ss. 9 and 11 were taken. When the acquisition proceedings were pending before the Land Acquisition Officer, the Government withdrew from acquisition some of the lands earlier notified under ss. 4 and 6. Consequently the Land Acquisition Officer excluded the compensation in respect of those lands from the computation made by him earlier. The appellant (common appellant in both the appeals) being aggrieved by that exclusion moved the High Court of Patna under Art. 226 of the Constitution seeking directions from that court to the Land Acquisition Officer to award him compensation in respect of those lands as well. The High Court rejected those writ petitions. Hence these appeals. D E F

The lands in question are situate in the villages of Telaiya and Debipur. On June 11, 1948, they were notified under ss. 14 and 21 of the Bihar Private Forest Act, 1947. Thereafter they were again notified under s. 29 of the Indian Forest Act in 1953 and 1954. Later on the Government felt that in order to include those lands in the adjoining Government forest, it would be necessary to acquire them. Consequently they were notified for acquisition. But after the lands in question were tentatively valued, the Government thought that it was not worthwhile to acquire entire area notified for acquisition. Hence it withdrew from acquisition a substantial portion of lands notified for acquisition. These in brief are the material facts. G H

A The allegation of the appellant is that after the lands in question were notified under s. 29 of the Indian Forest Act, the Forest Department unlawfully took possession of those lands and continued to be in possession of the same and therefore when notifications under s. 6 were issued, the Government became the owner of those lands and thereafter, it was not competent for the Gov-
B ernment to withdraw from acquisition any of the lands notified under s. 6. Alternatively it was contended that the Government became the full owner of those lands when the Collector caused a public notice to be given under s. 9(1) of the Act. Lastly it was contended that the lands in question had been actually taken possession of by the Collector under s. 17(1) of the Act and
C hence they vested in the Government.

The Government of Bihar has denied all the above allegations. It denied that the Government took possession of the lands in question in 1954. It further denied that those lands had been taken possession of under s. 17(1). The Government denied
D the allegation of the appellant that it became the owner of the lands in question either when notifications under s. 6 or notices under s. 9(1) were issued.

The High Court was not satisfied from the evidence adduced by the appellant that the Government had taken possession of
E the lands in question in 1954. It thought that this was a disputed question of fact and on the material before it, it was not possible to decide that question conclusively and hence it declined to pronounce on that question. The High Court repelled the contention of the appellant that possession had been taken under s. 17(1). It also did not accept the contention of the appellant that on the issue of notices under s. 9(1), Government had be-
F come the owner of the lands in question. In the result the High Court dismissed the writ petitions. The very contentions taken before the High Court were repeated in this Court.

Now coming to the question whether the Government took possession of the lands in question in 1954, it was conceded that
G the Government was not competent to take possession of those lands either under the notifications issued under ss. 14 and 21 of the Bihar Private Forest Act 1947 or under the notifications issued under s. 29 of the Indian Forest Act. The case of the appellant is that the Government unlawfully took possession of the properties. In support of that contention reliance was mainly placed on the
H letter written by the Divisional Forest Officer, Kodarma Division to the Range Officer, Kodarma on October 1, 1958 as well as on the requisition sent to the Land Acquisition Officer by the same officer on January 24, 1959 (Annexure II). The concerned

Divisional Forest Officer was one Brij Mohan Prasad. In the letter in question he stated :

> "The forest in the above villages are in possession of the Forest Department since sometime past..."

In the requisition again, he mentioned :

> "The land was previously notified under s. 29(3) of the I.F.A. and it was demarcated and possession taken. Later on it was found that the land in question was raiyati, it was necessary to acquire under the Land Acquisition Act."

In para 12 of that requisition, he further stated :

> "it is already under possession and this is to be formally handed over immediately."

This Officer has filed an affidavit before the High Court. Therein he explained that he made the statements in question under an erroneous impression that the Government came into possession of the lands in question in view of the notification issued under s. 29 of the Indian Forest Act. This statement of his receives support from his letter written to the Land Acquisition Officer on August 11, 1959 wherein he mentioned :

> "With reference to your above letters, I have to say that Debipur Forest was notified under the Indian Forest Act on the 8th December, 1953 and that of Telaiya on the 22nd November, 1954. Thus, date of possession is 8th December, 1953 and 22nd November 1954 respectively."

It is possible that this officer had an erroneous impression as to the effect of a notification under s. 29 of the Indian Forest Act. The other documents relied on by the appellant are wholly inconclusive. Hence there is no need to refer to them. We are in agreement with the High Court that there is no satisfactory evidence to show that the Government had taken possession of these lands in 1953 or 1954. As the parties had not enough opportunity to adduce evidence on this point, we will not be justified in finally deciding this question. It is sufficient if we say that on the material on record, the High Court was justified in not pronouncing on this question in a petition under Art. 226 of the Constitution. It is open to the appellant to seek such other remedy as may be available to him under law if the Government had unlawfully taken possession of those lands. The question whether the Government had unlawfully taken possession of those

A lands in 1954, as we shall presently see, is wholly irrelevant for the decision of these appeals.

The next point that arises for decision is whether delivery of the lands notified for acquisition was taken under s. 17(1) as contended by the appellant. The Government becomes the owner
B of the lands notified for acquisition only when the Collector takes possession of those lands either under s. 16 or under s. 17(1). Both those provisions provide that when the Collector takes possession under those provisions, the lands notified for acquisition shall vest absolutely in the Government free from all encumbrances. Until and unless possession is taken under either of those provisions, the lands notified for acquisition do not vest in
C the Government. Section 48(1) of the Act provides :

> "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."

D

Section 36 is not relevant for our present purpose. Possession referred to in s. 48 necessarily is the possession taken either under s. 16 or under s. 17(1). Section 17(1) says :

> "In cases of urgency, whenever the appropriate
E Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9 sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely
F in the Government free from all encumbrances."

Ordinarily possession of any land notified for acquisition is taken when the Collector had made an award under s. 11 and not before it. But an exception is provided under s. 17(1). In cases of urgency, if the Government so directs, the Collector may,
G though no award has been made under s. 11, on the expiration of the 15 days from the publication of the notice mentioned in s. 9(1) take possession of any waste or arable land and the land shall thereupon vest absolutely with the Government free from all encumbrances. From this provision, it is plain that the Collector cannot take possession of the land in question unless
H the Government directs him to do so. The Government can direct him to do so only in cases of urgency. Even when the Government directs the Collector to take possession, he cannot do so until expiration of 15 days from the publication of a notice

under s. 9(1). There is no material on record to show that the Government had given to the Collector any direction under s. 17(1); nor is there any material to show that the lands in question had been taken possession of by the Collector under s. 17(1). It is true that in the order-sheet maintained by the Land Acquisition Officer, a note was made on October 17, 1959 :

> "Shri B. J. Yadav Kgo, to deliver possession at the spot to the representative of the R.O. on 16-11-59 Draft addressed to R.O. is signed."

But there is nothing to show that this order was implemented. According to the respondent this order was not implemented.

Relying on the decision of this Court in *Lt. Governor of Himachal Pradesh* v. *Avinash Sharma*(1) it was contended by Mr. R. K. Garg, the learned Counsel for the appellant that once it is established that the possession of the land notified for acquisition was taken in 1953 or 1954, it was unnecessary for his client to establish that any possession was taken under s. 17(1). According to him on the expiration of 15 days after the issue of notices under s. 9(1), the lands in question vested in the Government. The decision in question does not lend any support for this contention. In that case not only the property had been taken possession of by the Government even before the acquisition proceedings had started but appropriate proceedings under s. 9(1) and s. 17(1) were also taken though there was no actual taking of possession under s. 17(1). Under those circumstances this Court observed :

> "In the present case a notification under s. 17(1) and (4) was issued by the State Government and possession which had previously been taken must, from the date of expiry of fifteen days from the publication of the notice under s. 9(1), be deemed to be the possession of the Government.

In the present case, as mentioned earlier, no material has been placed before the Court to show that action under s. 17(1) had been taken.

It was next contended by Mr. Garg and Mr. A. K. Sen, that the expression "whenever the appropriate government so directs" in s. 17(1) refers to urgency and not to the taking of possession of the lands notified for acquisition. Their further contention was that no sooner the Government issued the notification under s. 17(4), the factum of urgency was established and hence on the expiration of the fifteen days from the publication of notice under

(1) [1971] 1 S.C.R. 413.

A s. 9(1) the lands which were already in the possession of the Government vested in the Government. We are unable to accept this construction of s. 17(1). In our judgment s. 17(1) is plain and unambiguous. The expression "whenever the appropriate government so directs" in that section refers to the taking of possession and not to the declaration of urgency. Even in case B of urgency, the Government may not think it necessary to take immediate possession for good reasons. Neither the language of s. 17(1) nor public interest justifies the construction sought to be placed by the learned Counsel for the appellant.

For the reasons mentioned above, these appeals fail and they C are dismissed; but in the circumstances of the case, we direct the parties to bear their own costs in these appeals.

Before concluding the case, it is necessary to record the assurance given by the Attorney-General on behalf of the State Government of Bihar that the Government of Bihar will not realise from the appellant any interest on the loans advanced for D the development of the lands notified for acquisition in the two Land Acquisition cases from the dates they were notified under s. 29 of the Indian Forest Act. A Memo. to that effect has been filed.

V.P.S. *Appeals dismissed.*