

(1966) 01 CAL CK 0017
In the Calcutta High Court
Case No : A.F.O.O. No. 378 of 1965

Abdul Kader Laskar and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-01-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Contract Act, 1872 — Section 10
Land Acquisition Act, 1894 — Section 17(4), 40, 40(1), 41, 41(4A)
Transfer of Property Act, 1882 — Section 8

Citation : AIR 1967 Cal 99 : 70 CWN 623 : (1967) 2 ILR (Cal) 100

Hon'ble Judges : H.K. Bose, C.J.;B.C. Mitra, J

Bench : Division Bench

Advocate : Brotendra Narayan Banerjee and R.K. Bose, for the Appellant; Smriti Kumar, Roy Choudhury for Respondent Nos. 1 to 5, Somendra Chandra Bose and Hari Narayan Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Bose, C.J.—This is an appeal from an order of Banerjee, J. dated 9th August 1965 discharging a Rule issued under Article 226 of the Constitution.

2. The appellants are owners of lands measuring .49 acres comprised in Dag Nos. 275-78 in mouza Ukhila Paikpara. P. S. Sonarpur in the District of 24-Parganas.

3. On 3rd August 1961, a notification was published in the Calcutta Gazette (Extra-ordinary) u/s 4 of the Land Acquisition Act dated 3rd August 1961, intimating that 1.68 acres of land in the said village were likely to be needed for a public purpose, viz., construction of Students' Home at the expenses of Ram Krishna Mission.

4. On coming to know of the publication of the said notification objections were filed to the proposed acquisition on behalf of the appellants as well as other persons in the locality. In the said objections it is inter alia pointed out that the Ram Krishna Mission had more land by acquisition and/or private purchase at its

disposal in the said mouza Ukhila-Paikpara as well as in certain contiguous villages than what would be required for carrying out the project for which the land was required. But these objections were overruled and on 23rd of October 1962 a notification was published in the Calcutta Gazette (Extra-ordinary) containing a memorandum of agreement dated 22nd October 1962 which was entered into between the Ram Krishna Mission and the Governor of West Bengal purporting to be made u/s 42 of the Land Acquisition Act. In the same Gazette a declaration u/s 6 of the Land Acquisition Act was published. It appears that as the Ram Krishna Mission is a registered society and as such a "Company" within the meaning of the Land Acquisition Act, the said memorandum of agreement dated 22nd October 1962 was executed in compliance with the provisions of part 7 of the Land Acquisition Act before declaration u/s 6 of the Act could be published.

5. On 26th March 1963 the appellants moved this Court under Article 226 of the Constitution challenging the legality of the declaration u/s 6 of the Land Acquisition Act and a Rule Nisi was issued by Banerjee, J., limited to Grounds IV, XIII and XX of the petition.

6. Thereafter, an affidavit-in-opposition affirmed on the 26th August 1963 by the General Secretary of the Ram Krishna Mission, was filed on behalf of Ram Krishna Mission, the respondent No. 6 and on the 4th January 1964 a supplementary affidavit affirmed by the same Secretary was filed on behalf of the said respondent No. 6. A separate affidavit affirmed by one Shri Shyamapada Sen, the Additional Land Acquisition Collector, Alipore, on 7th January 1964 was filed on behalf of the respondents 1 to 4. On behalf of these respondents a supplementary affidavit affirmed on 11th June 1965 by one Shri Suirendranath Ganguly who was the Additional Land Acquisition Collector, Alipore, at the relevant time was also filed and the appellants filed an affidavit-in-reply affirmed on the 21st of June 1965. The Rule finally came up for hearing before Banerjee, J., who by his judgment and order dated 9th August 1965 discharged the Rule as already stated. It is against this judgment and order of Banerjee, J., that the appellants have preferred the present appeal.

7. The appellants have also filed another appeal being Appeal from Original Order No 371 of 1963 against the order of Banerjee, J., dated 26th March 1963 by which he issued a Rule limited only to Grounds IV, XIII and XX and refused to issue Rule on the other grounds set out in paragraph 20 of the petition. The grievance in this appeal is that the learned Judge should have issued a Rule on all the grounds set out in paragraph 20 of the petition.

8. At the hearing of the two appeals before us the learned Advocates appearing for the parties have agreed that this Court should allow the appellants to urge such grounds in the petition as they would like to urge before us and they should not be confined to grounds IV, XIII and XX of the petition on which the Rule Nisi was issued by Banerjee, J. The hearing of these appeals has therefore, proceeded before us on this footing.

9. The first point which has been urged by the learned Advocate for the appellants before us is that the provisions of Section 5-A of the Land Acquisition Act have not been complied with in this cast. The contention on behalf of the appellants is that the appellants were not given any opportunity of being heard as required u/s 5-A of the Land Acquisition Act with regard to their objections and there was no report or no valid report u/s 5-A of the Act inasmuch as the Additional Land Acquisition Collector who purported to hold the enquiry u/s 5-A had no authority to do so under the provision of Section 5-A(2) of the Land Acquisition Act, as only a Collector as contemplated in the Act can hear the objections and submit a report containing his recommendations on the objections to the appropriate Government for the decision of such Government. The further contention based on Section 5-A of the Land Acquisition Act is that in any event no opportunity of a hearing as contemplated in Section 5-A of the Act was given to the appellants.

10. It appears however, that no such point as to want of authority on the part of the Additional Land Acquisition Collector who held the enquiry u/s 5-A of the Land Acquisition Act was specifically raised in the petition under Article 226 of the Constitution. All that is alleged in paragraph 14 of the petition is that the respondent collector did not give any opportunity to the appellants of being heard in respect of the objection to the acquisition; nor does it appear that any such point was raised before the learned trial Judge. Moreover, no such point is taken in the memorandum of appeal which has been filed in this case. As the determination of this question involves investigation into facts and as the respondents had no opportunity of meeting this point by setting out facts in their affidavit-in-opposition, the appellants cannot be allowed to agitate this point at the hearing of this appeal before us. It may be pointed out however, that the expression "Collector" has been defined in Section 3(c) of the Land Acquisition Act as follows :

"The expression "collector" means the Collector of a District and includes a Deputy Commissioner and any Officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act. "

11. At the hearing before us the learned Advocates for the respondents have produced before the Court the Calcutta Gazette dated 11th June 1959 to show that by a notification No. 10747 I. A. dated 29th May 1959 Shri Sudhirendranath Ganguly was, in exercise of the powers conferred by Clause (c) of Section 3 of the Land Acquisition Act, appointed to be an Additional Land Acquisition Officer, 24-Parganas to perform the functions of a Collector under the Act in relation to the acquisition of lands for public purposes (except the purposes of the Union) and for Companies.

12. It is clear from the affidavit of Sudhirendranath Ganguly and the copy of the report u/s 5-A of the Land Acquisition Act which is part of the records of this case that this Sudhirendranath Ganguly was the person who heard the objections u/s 5-A(2) of the Act and made his report under that section. Therefore, there is no

substance in this contention of the learned Advocate appearing for the appellants.

13. The other contention based on Section 5-A of the Land Acquisition Act to the effect that in the facts and circumstances of this case there was no proper hearing of objections given under the provisions of Section 5-A of the Act appears to be equally of no substance. The argument advanced on behalf of the appellants on this point is that the report of the Additional Land Acquisition Collector made u/s 5-A of the Land Acquisition Act shows that the Additional Land Acquisition Collector Sudhirendranath Ganguly recommended that the proceeding for acquisition of the lands in question should be dropped as there was no necessity for acquiring these lands for the alleged purpose for which such lands were sought to be acquired. The finding of the Additional Land Acquisition Officer in his report dated 19th November 1961, is that, if the acquisition was proceeded with then some of the objectors would be rendered homeless and with regard to others the avocations of their lives would be disturbed. Moreover Ram Krishna Mission had other lands for construction of Students' Home at their disposal and therefore, it was not necessary to acquire the lands which are the subject-matter of the declaration, for such purpose. It is argued on behalf of the appellants that these findings were arrived at and the recommendation for dropping the proceeding was made after hearing the lawyer of the objectors one Shri S. Mukherjee, an Advocate. But it appears that after the report together with the records, was sent to the Government, one Sri S.N. Das Gupta who described himself as Special Land Acquisition Officer made some comments on the report and he had also made some enquiries and collected further materials behind the back of the objectors and on the basis of such further materials he came to the conclusion that the objections should be over ruled and as there was urgent necessity for acquiring the lands in question the acquisition should be proceeded with. The remarks and the recommendations of the Special Land Acquisition Officer Shri Section N. Das Gupta are dated the 22nd November 1961 and it further appears that this report was placed before the Additional District Magistrate for favour of orders and the Additional District Magistrate one Mr. B. N. Sen accepted the findings and recommendations of the Special Land Acquisition Officer by an order dated 22nd November 1961. The submission of the learned Advocate for the appellants is that this further enquiry held by the Special Land Acquisition Officer Mr. Das Gupta behind the back of the objectors and this collection of further materials or evidence behind the back of the objectors without giving them an opportunity of further hearing to contradict or controvert the materials which are prejudicial to the interests of the objectors were wholly unwarranted under the provisions of Sections 5-A of the Land Acquisition Act. It is only the Collector who had been authorised to perform the functions of the Collector, that is, Mr. Ganguly who could hear the objections and submit his report containing the recommendations to the Government for their decision on the objections and such decision of the Government would be final. But in the present case some other officer had intervened in the matter and had made certain comments and further enquiries and this had the effect of vitiating

the proceedings held u/s 5-A of the Land Acquisition Act.

14. In answer to this contention on behalf of the appellants the learned Advocate Mr. Somen Bose appearing on behalf of respondent No. 6 Ram Krishna Mission has invited our attention to a decision of the Assam High Court reported in Samiruddin Sheikh Vs. Sub-Divisional Officer and Others . In this case the Sub-Divisional Magistrate who was the Collector for land acquisition proceedings had invited objections and heard the parties on those objections and sent record of the proceeding along with the report to the Provincial Government through the regular official channels. These records together with the report had to pass through the hands of the Deputy Commissioner who was the immediate superior of the Sub-Divisional Magistrate. This Deputy Commissioner had made certain notes or comments on the report. The Deputy Commissioner had also made some local enquiries by himself and through some other officer and his recommendation was contrary to the recommendation of the Sub-divisional Magistrate which contained proposal for dropping the acquisition proceeding. It was argued in that case that as no hearing was given to the objectors in respect of the enquiries that had been made by the Deputy Commissioner, the provisions of Section 5-A of the Act had not been complied with as the objectors had not been given a further hearing by the Deputy Commissioner. It was held that the objectors were not entitled to any further hearing before the Deputy Commissioner and therefore, there was no violation of the provisions of Section 5-A of the Land Acquisition Act. The Sub-divisional Magistrate had given the objectors opportunity of being heard and this was sufficient compliance with the provisions of Section 5-A of the Act.

15. Reliance was also placed on behalf of the respondents on a decision of the Supreme Court reported in F.N. Roy Vs. Collector of Customs, Calcutta, , In this case it has been observed by the Supreme Court that there is no rule of natural justice that at every stage a person is entitled to a personal hearing This observation was made by the Supreme Court repelling a contention that the petitioner in that case had not been given a personal hearing of the appeal that he preferred to the Central Board of Revenue and the application in revision to the Government.

16. It appears however from the affidavits filed and the records of this case that the appellants were represented by their lawyer at the hearing of the objection by the Additional Land Acquisition Collector Mr. Ganguly and the Government had considered the objections and the report of the Land Acquisition Collector u/s 5-A of the Act as also the report of the Special Land Acquisition Officer dated the 22nd November 1961 and also the report of an enquiry u/s 40 (1) and (2) of the Land Acquisition Act and upon a consideration of these materials the Government finally decided that the acquisition should be proceeded with. Mr. Ganguly who heard the objections u/s 5-A of the Land Acquisition Act made his recommendation for dropping the acquisition proceeding on the footing that the Ram Krishna Mission had other lands at their disposal and so it was not

necessary to proceed with the acquisition of plots in question but the Special Land Acquisition Officer Mr. Das Gupta has pointed out that the Land Acquisition Collector Mr. Ganguly had overlooked an important fact that the proposed plots are pockets covered on three sides by the lands of Ram Krishna Mission and the fourth side by the main road and as there was urgent necessity for construction of the boys' hostel, the objections should be overruled. It also appears that although in the original notification u/s 4 it was stated that land measuring 1.68 acres was likely to be needed for the public purpose of the construction of the Students' Home, the declaration which was published u/s 6 of the Act stated that land measuring more or less .49 acres was needed for the said purpose of construction of Students' Home. So it is quite clear that some of the objections made u/s 5-A of the Act had been given effect to and that is why the extent of the acquisition was reduced to the extent mentioned in the declaration made u/s 6. It appears to us that merely because the Special Land Acquisition Officer Mr. Das Gupta had made certain comments and had collected certain further materials in the absence of the objectors, that does not violate the provisions of Section 5-A of the Act nor does it vitiate the declaration made u/s 6 of the Act.

17. The next point which has been urged on behalf of the appellants is that Section 5-A of the Land Acquisition Act and Section 40 of the Land Acquisition Act are mutually exclusive and consequently if any enquiry u/s 5-A is held for hearing the objections, there is no scope for an enquiry u/s 40 of the Act and inasmuch as in the present case: there was hearing of objections u/s 5-A and there was also an enquiry u/s 40 and on the basis of both these enquiries and reports u/s 5-A and Section 40 the declaration u/s 6 had been made, the said declaration must be held to be bad. It appears to us that there is no force in this contention. The provisions of Section 5-A apply to all acquisitions made under the Act except in cases of urgency when acquisition can be made without compliance with the provisions of Section 5-A of the Act as is made clear by Sub-section (4) of Section 17. Furthermore, it is only when objections are filed within the period prescribed in Section 5-A(1) of the Act that the necessity of a hearing by the Collector of such objections under Sub-section (2) of Section 5-A arises. In other words, if objections are filed as contemplated in Section 5-A of the Act, then an obligation is cast upon the Collector to give the objector an opportunity of being heard in respect of such objection either in person or through his pleader and he is bound to submit a report containing recommendations on the objection. But if no objection is at all filed, then no question can arise of hearing objections or making a report containing recommendations on objections. In the case of acquisition for a company, before consent can be given by the Government to the acquisition, the Government has to be satisfied in respect of the matters which are set out in the different clauses under Sub-section (1) of Section 40 of the Act. It is quite possible that the scope of the objections made in a particular case and the report containing the recommendations on such objections may not cover all the matters on which the Government is required to be satisfied before giving consent u/s 40 of the Act. So in such cases a further enquiry u/s 40 of the

Act may be necessary. So, in certain cases an enquiry u/s 40 may have to be held as supplementary to the enquiry made u/s 5-A of the Act. So we do not think that the intention of the Legislature was to make Section 5A and Section 40 of the Act mutually exclusive. The appropriate Government may in some cases be satisfied only on the report of the Collector u/s 5-A Sub-section (2) whether consent should be given or not, but in certain cases where the report u/s 5-A is found to be incomplete or as one which does not cover all the matters envisaged in Section 40 on which the Government has to be satisfied, it may be necessary to hold a further enquiry u/s 40 of the Act. So, this contention on behalf of the appellants must be rejected as being of no substance.

18. The next point which has been urged on behalf of the appellants is that the terms of Section 41, Clause (5) have not been complied with in this case inasmuch as the agreement which is required to be entered into u/s 41 of the Act and which was in fact entered into in the present case, does not contain the terms on which the public shall be entitled to use the work as is enjoined by Clause (5) of Section 41. It is submitted that the only clause which has inference to the question of user of the land by the public is Clause (8) of the agreement which is as follows:

"8. The public shall be entitled to use the land subject to the rules and regulations of the Ram Krishna Mission"

But such a covenant it is argued is not a sufficient compliance with the provisions of Clause (5) of Section 41, particularly as no rules and regulations relating to user of land by the public have been framed by the Ram Krishna Mission. It is argued that the Supreme Court has held in the case of *Ram Kumar Agarwalla v. State of West Bengal* reported in AIR 1955 SC 995 that such a covenant as Clause (8) is not a covenant ensuring a right to the public to use the work as of right and so the acquisition of land purported to be made in that case under the provisions of the Land Acquisition Act as it stood before it was amended by Act XXXI of 1962 could not be justified. But it is to be noted that the Supreme Court has pointed out in that case that Section 40(a)(b) and Section 41(5) of the Land Acquisition Act have to be read together. The Supreme Court also found in that case that the intended acquisition was not for the purpose mentioned in Section 40(1)(a) nor could it be said that the proposed construction of work on the land was likely to prove directly useful to the public within the meaning of Section 40(1)(b) and in view of this finding the Supreme Court necessarily came to the conclusion that the requirements of Section 41(5) of the Act had not been complied with by merely inserting a provision like Clause (8) of the agreement inasmuch as Section 40(1)(b) and Section 41(5) have to be read together. But in the case of *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, the Supreme Court has observed that hostel buildings and play grounds are obviously meant for the students of the institutions and such students as a body are a section of the public and therefore, the hostels and play grounds can be directly useful to

this section of the public. The Supreme Court has approved of the view of this Court that construction of hostel buildings and play-grounds comes within Clause (b) of Section 40(1) of the Act. In view of this decision of the Supreme Court there is very little room for argument that construction of Students' Home is not a work which is directly useful to the public within the meaning of Section 40(1) (b) of the Act and that being the position it cannot be said that Clause (8) of the agreement is not a sufficient compliance with the terms of Section 41(5) of the Act. It may be pointed out that apart from Clause (8) there are other clauses in the agreement being Clauses (4), (5) and (6) which also have a bearing on the question of user of the lands sought to be acquired and all these clauses taken together in our view are sufficient compliance with the requirements of Section 41(5) of the Act. It is a well-settled rule of construction applicable to all written instruments that the instrument must be construed as a whole in order to ascertain the true meaning of the several clauses and having regard to the various clauses to which I have made reference and in view of the fact that construction of Students Home itself is a work which is directly useful to the public, it must be held that the requirements of Section 41(5) have been satisfied by the agreement which has been entered into u/s 41 of the Act in the present case. The fact that no specific rules and regulations have been framed by the Ram Krishna Mission with regard to the user of the land in question by the public does not make the agreement invalid. This very point was considered by this Court in the case of Chirkut Tewari Vs. State of West Bengal and Others, my learned brother B. C. Mitra, J. who delivered the judgment in this case made the following observations:

"It was however argued on behalf of the appellant that no rules and regulations had been framed by the Parishad as provided in Clause (8) of the agreement and therefore, it should be held to be bad. In our opinion there is no merit in this contention. The statute does not require any such rules and regulations. If no rules and regulations have been framed by the Parishad, the public will have unrestricted and unlimited right to use the works in the buildings of the Parishad subject to the terms of the agreement. In our opinion therefore, the absence of the rules and regulations as provided in Clause (8) of the agreement does not make the agreement itself bad nor can it be held that this agreement is contrary to the terms of Section 41(5) of the Act."

So, there is no force in this contention put forward on behalf of the appellants

19. On behalf of the respondents a point has been raised that the proposed acquisition comes within Section 40(1)(a) of the Act and on that ground also the agreement entered into u/s 41 of the Act and the declaration made u/s 6 must be held to be valid. It is submitted that the agreement in this case is dated 22nd October 1962 and Clause (aa) in Sub-section (1) of Section 40 was introduced in the Act by the Land Acquisition (Amendment) Act, 1962 (Act XXXI of 1962) which came into force on 12th September 1962. The declaration u/s 6 was made on the 23rd October 1962. So, as both the agreement and the declaration were

made after coming into force of the amending Act XXXI of 1962, the provisions of Clause (aa) of Sub-section (1) of Section 40 can be invoked to justify the acquisition. In support of this argument reliance is placed by Mr. Somen Bose, the learned Advocate for the respondent No. 6, on a decision of the Supreme Court reported in R.L. Arora Vs. State of Uttar Pradesh and Others, . In this case the Supreme Court in interpreting Clause (aa) of Section 40(1) observed as follows:

"The words "building or work" used in Clause (aa) take their colour from the adjectival clause which governs the company for which the building or work is being constructed and acquisition under this clause can only be made where the company is engaged or is taking steps to engage itself in any industry or work which is for a public purpose and the building or work which the company is intending to construct is of the same nature, viz., that it is a building or work which is meant to subserve the public purpose of the industry or work for which it is being constructed.

20. The learned Advocate for the respondent No. 6 points out that there can be no question having regard to the Memorandum of Association of the Ram Krishna Mission that the Mission is engaged in work which is for a public purpose and the construction of a Students' Home being a work which Sub-serves such public purpose in which the Mission is engaged, there can be no doubt about the applicability of the provisions of Clause (aa) of Sub-section (1) of Section 40 to the proposed acquisition. The learned Advocate for the respondents has further submitted that the agreement in question satisfied the requirements of Clause (4-A) of Section 41 which is to be read with Clause (aa) of Sub-section (1) of Section 10. In these circumstances, it is argued that the proposed acquisition can also be justified as having been made under Clause (aa) of Section 40(1) of the Act. It is also submitted by the learned Advocate that the fact that there is no indication in the agreement that the Government is purporting to acquire the land in terms of the provisions of Clause (aa) of Section 40(1) of the Act is immaterial inasmuch as the Government does not generally as pointed out by the Supreme Court in AIR 1905 SC 046 (supra) state in so many words in the agreement whether the proceeding is under Clause (a) or Clause (aa) or Clause (b) of Section 40(1) of the Act. It appears to us that this contention of the learned Advocate for the respondent No. 6 has considerable force, but in view of our finding that the proposed acquisition is justifiable u/s 40(1)(b) of the Act, it is not necessary for us to express any final opinion on this point. This disposes of all the points which have been raised on behalf of the parties appearing before us in this appeal.

21. In the result, this appeal must fail and it is accordingly dismissed with costs to the respondents, hearing fee being assessed at five gold mohurs for each set of appearing respondents.

22. Let the operation of this order remain stayed for one week from this date.

B.C. Mitra, J.

23. I agree.