

(1965) 08 CAL CK 0015

In the Calcutta High Court

Case No : Civil Revision Case No. 144 (w) of 1963

Abdul Kader Laskar and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-08-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 40, 40(1)(b), 42, 5(A)

Citation : 69 CWN 1073

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Bratendra Nath Banerjee and Sm. Manjushri Dutta, for the Appellant; S.K. Roy Chowdhury, B.S. Bagchi, S.C. Bose, Hari Narayan Mukherjee and Harasit Chakravarti, for the Respondent

Judgement

Banerjee, J.—The petitioners are three in number and claim to be interested in A9 acres of land comprised in plots Nos. 275 to 278 in Mouza Ukhila Paikpara, District 24 Parganas. On August 3, 1961, there was a notification u/s 4 of the Land Acquisition Act, published in the Calcutta Gazette, whereby an area of 1.68 acres of land, including the land claimed by the petitioners, was notified for acquisition as likely to be needed for the construction of Students Home of the Ramkrshna Mission at the expense of the Mission. The petitioners severally filed objections to the notification, inter alia, characterising the same as mala fide and unnecessary for any public purpose. The petitioners allege that no notice of any hearing u/s 5A of the Land Acquisition Act was served upon the petitioners and no hearing was given to them in respect of their objections. The petitioners further allege that there was no report submitted u/s 5A of the Land Acquisition Act dealing with the objections by the petitioners or if submitted, the same was "sham, collusive, fraudulent, void and/or illegal." Thereafter on October 23, 1962, an agreement between the respondents Ramkrishna Mission and the State Government u/s 42 of the Land Acquisition Act, was published in the Calcutta Gazette and on the very next day the declaration u/s 6 of the Act was published

in the Gazette.

2. According to the petitioners, there was no enquiry made u/s 40 of the Act and even if made was done at the back of the petitioners. They further allege that the respondent State Government could not lawfully consent to the proposed acquisition, in the circumstances of the case. They also allege that the acquisition of the land for a body like Ramkrishna Mission was not for public purpose, firstly because the Mission had more than ample land already in its possession and particularly because the agreement did not lay down the terms on which the public would be entitled to use the land sought to be acquired.

3. Failing to induce the respondents to abandon the acquisition the petitioners moved this Court, under Article 226 of the Constitution, praying for a Writ of Mandamus directing the respondents to cancel, set aside or revoke the notification, the agreement and the declaration and obtained this Rule, on the following three limited grounds:

(iv) For that there was no enquiry or proper enquiry at all to enable the appropriate authorities to be satisfied that the lands proposed to be acquired were needed or likely to be needed for the alleged public purpose to justify the issue of the said notice and/or declarations.

(xiii) For that there was no report or any valid report u/s 5A or enquiry or hearing as contemplated u/s 40 and 5A of the Land Acquisition Act and even if such enquiry was held the same must have been done behind the back of your petitioners and without affording due or any opportunity of putting their grievances and without hearing them and the same was and is sham and collusive;

(xx) For that your petitioners were not given any opportunity of being heard as required u/s 5A of the Land Acquisition Act with regard to their objection.

4. The respondents Nos. 1 to 4 filed an affidavit-in-opposition and thereafter also filed a supplementary affidavit-in-opposition, pursuant to liberty granted by this Court on June 1, 1965. They have also supplied to this Court a copy of the report made u/s 5A by the Additional Land Acquisition Officer as also a report under the same section by the Special Land Acquisition Officer. The learned Advocate for the petitioner was given facilities to peruse the reports by me. I direct that a copy of the report be kept on the record.

5. In paragraph 10 of the affidavit-in-opposition it is stated:

I say that consequent to the publication of the substance of the notification under sec. 4 in the locality and other conspicuous places, 7 objection petitions including those of the petitioners were received in the Land Acquisition Office within the statutory period. A local enquiry under sec. 5(A)(2) of the L.A. Act was

duly held by the then Land Acquisition Officer on 8th November, 1961, who heard the objectors and their lawyers after due notice to them. A true office copy of the notice issued by the L.A. office informing the interested persons including the petitioners to appear on the spot on 8.11.61 for local enquiry is annexed hereto and marked as annexure "X" to this affidavit. The relevant orders passed by the then Land Acquisition Officer in this context as appear from the order sheet are set out hereinbelow:

35/26.10.61. Statutory period expired. 7 (seven) objection petitions received. Fix. 8.11.61 at 11 A.M. for hearing the objection petition on the spot. Inform all concerned and Surveyor to accompany.

Sd./- S.N. Ganguli, L.A.O. Recd. Illegible. 1.11.61.

36/8.11.61. Heard the objectors. Put up on 14.11.61.

Sd./- S.N. Ganguli.

37/18.11.61. Report under (section 5(A) has been prepared. Place the same before the Special L.A.O. for favour of his orders.

Sd./- S.N. Ganguli.

6. In clarification of the statement in paragraph 10 of the affidavit-in-opposition it is further stated in the supplementary affidavit-in-opposition that the petitioners severally filed their objections and altogether seven objections, including those filed by the petitioners, were received. A date of hearing was thereafter fixed; notices of the date fixed for hearing of the objections were served by affixation upon the petitioners, because they were not found at their residential addresses; on the date fixed for hearing the petitioners were represented by S. N. Mukherjee Advocate, who was heard on the separate objections filed by the petitioners. The copy of the report shows that the objections by the petitioners were separately considered. I find no reason to disbelieve the statements in the affidavit-in-opposition and the supplementary affidavit-in-opposition. That being the position, I find no substance in grounds (iv) and (xx), on which this Rule was issued.

7. I now turn to ground (xiii). I have already held that there was no lacuna in the enquiry conducted u/s 5A of the Act. In an enquiry u/s 40 of the Act, persons whose plots of land are acquired are not necessarily to be heard. That enquiry is held for the satisfaction of the State Government before giving its consent under the Act. The State Government may arrive at that satisfaction even on consideration of the report u/s 5A, without a separate enquiry. If the State Government at all enquires further, it need not do so by hearing the persons whose lands are being sought to be acquired. I, therefore, find no substance in this ground also.

8. The plots of land are being sought to be acquired for construction of buildings for the Students' Home of the Ramkrishna Mission (vide clause 4 of the

agreement and the declaration u/s 6 of the Act). In paragraphs 4 and 7 of the affidavit-in-opposition by respondents Nos. 1 to 4, the construction of the Students' Home is said to serve a public purpose, being part of the expansion programme of the educational institutions run by the Ramkrishna Mission. This is, therefore, not the type of purpose which was condemned by the Supreme Court in (1) State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others, . Admittedly Ramkrishna Mission runs educational institutions for public education. Erection of residential hostels for students getting their education in such institutions must be in aid of a public purpose and it appears from the affidavit-in-opposition by respondents Nos. 1 to 4 that the State Government was satisfied about the public utility of such construction. This type of acquisition is in consonance with section 40(1)(b) of the Land Acquisition Act as was observed by the Supreme Court in its later decision in (2)2 R.K. Agarwalla and Others Vs. State of West Bengal and Others, .

9. For the reasons stated above, I find no substance in this application and discharge the Rule. There will be no order for costs: Interim orders, if any, stand vacated.