
(2015) 08 CAL CK 0034
In the Calcutta High Court
Case No : C.O. 2826 of 2015

Akriti Vyapaar Private Limited and Others APPELLANT
Vs
The Metro Railway RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 227, 300-A
Land Acquisition Act, 1894 — Section 4, 5A, 5-A, 5-A(1)
Metro Railways (Construction of Works) Act, 1978 — Section 10(1), 17, 6, 6 (b), 6(b)

Citation : (2015) 08 CAL CK 0034

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Anindya Kumar Mitra, Abhrajit Mitra, Jishnu Chowdhury, Soumya Roy Chowdhury, Satadeep Bhattacharya and Radhika Singh, for the Appellant; P.S. Bose and Aparna Banerjee, Advocates for the Respondent

Final Decision : Allowed

Judgement

Harish Tandon, J—The preliminary objection is raised by the Metro Railway authorities that after the declaration duly notified under Section 10(1) of the Metro Railways (Construction of Works) Act, 1978, the writ petition has become infructuous and no relief can be granted to the petitioners.

2. Section 6 of the said Act provides where it appears to the Metro Railway administration that for the construction of any metro railway or any other work connected therewith if any land, building, street, road or passage or any right of user or any right in the nature of easement therein, is required for such construction, it shall apply to the Central Government in such form as may be prescribed for acquiring such land, building, street, road or passage or such right of user or easement.

3. Pursuant to the said provision the land owned by the petitioners was decided to be acquired and a notification under Section 7 was published in the Official Gazette declaring such intention.

4. Section 9 of the Act gives right to any person interested in the land, building, street, road or passage to file objection within 21 days from the date of publication of the said notification before the competent authority. The competent authority is mandated by Sub-section 2 of Section 9 of the Act either to allow or disallow the objection after giving an opportunity of hearing either in person or by a legal practitioner. In course of the decision the competent authority may also make such further enquiry as it thinks necessary and any order passed by the competent authority shall be final and binding on the parties.

5. Admittedly the petitioners filed an objection under Section 9(1) of the Act not only challenging the decision of the Railway administration in acquiring the land, but also on the ground that it would affect the ecological balance because of the existence of the water bodies. It is further suggested that there is possibility of alternative route, which may require any further acquisition of property. It is nobody's case that such objection would be filed within the time prescribed under Section 9(1) of the Act. The objectors, being the petitioners herein, are the companies incorporated under the Companies Act and the objection appeared to have been filed through an authorized representative.

6. This Court was approached by the petitioners on earlier two occasions; first of which for an order seeking expeditious disposal of the objection. The second revisional application was filed for an order directing the Metro Railway authorities to supply the policies/circulars disclosed in the pleading filed by them before the competent authority having not supplied despite the prayer being made before the competent authority.

7. This Court disposed of the revisional application on the concession made by the learned advocate for the Metro Railway authorities that if there is any existence of policies/circulars, the same would be supplied to the petitioners prior to the decision to be taken on the objection.

8. It is not in dispute that the letter dated November 27, 2001 issued by the Director, Land and Amenities, Railway Board intended to be relied by the Railway authorities has been supplied to the petitioners.

9. In course of hearing of an objection, one Madan Gopal Marda claiming himself to be the Director and Principal Officer of the objector companies took out two petitions on June 22, 2015 and a further petition on July 17, 2015. It appears from the impugned order that one of such petitions filed on June 22, 2015, is a counter-objection to the rejoinder filed by the Metro authorities against the objection filed by the petitioners and by the other petition the factum relating to easementary rights, rights to access, ingress and egress from and over the land proposed to be acquired, the right to park vehicle and right to interconnect the two parts of the petitioners' land should be granted. The third petition filed on July 17, 2015 was in the nature of an objection against the acquisition of land as the authorities can only acquire the easementary right or right to use under Section 6 (b) of the Act and not the land as such.

10. The competent authority rejected the objection holding that the land of the petitioners is acquired for construction of Metro Railways from New Garia to Dumdum Airport, by which the common people will be highly benefited and, therefore, the acquisition of land by the Metro Authorities is in public interest. The other three applications have been rejected on the ground that the said Madan Gopal Marda claiming himself to be a Director and Principal Officer of the objector Companies, is not a party to the case and in absence of any document file on his status as such, the aforesaid three applications cannot be entertained at the instance of a non-party to the case.

11. Mr. Anindya Kumar Mitra, the learned Senior Advocate, appearing for the petitioners, submits that the impugned order is bereft of any reasons inasmuch as the objection filed by the petitioners-Companies has been turned down without recording any observations on each of the points taken in the objection. He further submits that Section 6(b) of the Act postulates the acquisition by the Metro Railway Authorities for construction of any Metro Railways or other works connected therewith of any right of user or any right in the nature of easement and, therefore, the acquisition of land is impermissible and beyond the purview of the said Act. He put much emphasis on his submission that the strip of land intended to be acquired would divide the total land of the petitioners into two parts; one of which would be totally landlocked having no access from any corner except through the acquired land. He further submits that the authorities ought to have considered the right of way over the acquired land to be exercised by the petitioners to access the landlocked portion in tune with the said letter dated November 27, 2001. He strenuously submits that though the statute provides an objection to be filed by any affected person, but the competent authority is obliterated to decide such objection by providing hearing to the objector, it should be an effective hearing and not a mere pretence.

12. To answer the preliminary objection raised by the Metro Railway Authorities, he submits that if the foundation is void, anything based thereupon would automatically fall and relies upon off quoted observations of Lord Denning in case of Benjamin Leonard MacFoy v. United Africa Company Limited reported in (1961) 3 All.E.R. 1169 . He emphatically submits that the observation made by Lord Denning is accepted and applied by the Supreme Court in case of Rangku Dutta @ Ranjan Kumar Dutta Vs. State of Assam, AIR 2011 SC 2321 : (2011) 2 Crimes 295 : (2011) 3 JCC 1650 : (2011) 6 JT 126 : (2011) 3 RCR(Criminal) 502 : (2011) 6 SCALE 362 : (2011) 6 SCC 358 : (2011) 2 SCC(Cri) 964 : (2011) 8 SCR 639 : (2011) 4 UJ 2191 : (2011) AIRSCW 3557 : (2011) AIRSCW 5795 : (2011) 4 Supreme 297 .

13. He further submits that Section 9 of the of the Act is couched in similar fashion with Section 5A of Land Acquisition Act, 1894, which is the only right available to a person whose land is intended to be acquired and such objection is not to be casually exercised, but should be decided in meaningful manner after effective hearing.

14. To buttress the aforesaid submission, he places reliance upon the judgment rendered in case of Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, AIR 2005 SC 3520 : (2005) 5 CTC 789 : (2005) 8 JT 470 : (2005) 7 SCALE 386 : (2005) 7 SCC 627 : (2005) 3 SCR 388 Supp and Gojer Brothers Pvt. Ltd. and Another Vs. The State of West Bengal and Others, (2014) 2 AD 409 : (2014) 1 JT 555 : (2014) 1 RCR(Civil) 615 : (2013) 14 SCALE 571 .

15. Lastly he strenuously submits that Madan Gopal Marda is competent to file applications as Director and Principal Officer of the petitioners-Companies and there was no objection from any corner over his status as such. He further submits that by an order No. 7 dated July 17, 2015, the competent authority put the aforesaid applications filed by Mr. Marda on record on the consent of the parties to be considered at the time of final hearing and, therefore, the competent authority should not have rejected the aforesaid applications on a technical ground that Mr. Marda cannot maintain those applications in such capacity.

16. Mr. P.S. Bose, the learned Advocate for the Metro Railway Authorities maintains the preliminary objection that after the declaration under Section 10(1) of the Act is published in the official gazette, the objection was rejected by the competent authority, therefore, the challenge to the decision of the competent authority cannot be maintained and the instant revisional application has virtually become infructuous. By placing reliance upon a judgment of the Supreme Court in case of V. Chandrasekaran and Another Vs. The Administrative Officer and Others, (2012) 9 JT 260 : (2012) 4 RCR(Civil) 588 : (2012) 9 SCALE 142 : (2012) 12 SCC 133 , he submits that the moment the declaration is made under Section 10(1) of the Act, the land becomes vested in the State free from all encumbrances, which cannot be divested subsequently. He further submits that the only right available to the petitioners is in relation to a compensation for the acquired land and, therefore, the decision of the competent authority on the objections has reached finality.

17. Striking at the root of the powers exercised by the High Court under Article 227 of the Constitution of India, Mr. Bose contends that it is to be exercised more sparingly only in appropriate cases and not for correcting mere errors and has placed reliance upon a judgment rendered by the Apex Court in the case of Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, (2011) 1 CTC 854 : (2010) 7 JT 529 : (2011) 1 RCR(Rent) 1 : (2010) 7 SCALE 428 : (2010) 8 SCC 329 : (2010) 8 SCR 836 : (2010) AIRSCW 6387 .

18. Taking the preliminary objection first, it is necessary to deal with the different provisions contained under the Metro Railway (Construction of Works) Act, 1978. Section 6 thereof empowers the Metro Railway administration to apply the Central Government in prescribed form for acquiring any land, building, street, road or passage or any right of user or any right in the nature of easement. Section 7 of the Act, which is akin to Section 4 of the Land Acquisition Act, requires a notification by the Central Government to be published in the

official gazette declaring such intention giving brief description of land, building, street, road or passage. The only right to a person interested in the land, building, street, road or passage to raise objection is conferred under Section 9(1) of the Act, but such objection should be filed within 21 days from the date of publication of the said notification. Sub-section (2) of Section 9, which, in my opinion, is relevant in the present context, recognizes the hearing to be afforded to the objector by the competent authority either in person or by a legal practitioner and further gives power to the competent authority to pass any order either allowing or disallowing the objection or to make further enquiry.

19. In case of Hindustan Petroleum Corporation Limited (*supra*), the Apex Court was considering the importance of hearing to the objection under Section 5A of the Land Acquisition Act and held that it is not an empty formality but a substantive right, which can only be taken away for good and valid reasons in these words:--

"9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right.

10. In *State of Punjab v. Gurdial Singh* it was held: (SCC p. 477, para 16)

"Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons."

11. This Court in *Om Prakash v. State of U.P.* held, thus: (SCC pp. 23-24, para 21)

"21. Our attention was also invited by Shri Shanti Bhushan, learned Senior Counsel for the appellants to a decision of a two-Judge Bench of this Court in the case of *State of Punjab v. Gurdial Singh* wherein Krishna Iyer, J. dealing with the question of exercise of emergency powers under Section 17 of the Act observed in para 16 of the Report that save in real urgency where public interest did not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Articles 14 and 19, curtail an inquiry under Section 17 of the Act. Thus, according to the aforesaid decision of this Court, inquiry under Section 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, at least observation regarding Article 14, *vis-à-vis*, Section 5-A of the Land Acquisition Act would remain apposite."

The said decision has been cited with approval in Union of India v. Krishan Lal Arneja."

20. In paragraph 14 of the said report, the Apex Court noticed the earlier judgment rendered in case of Cholan Roadways Limited Vs. G. Thirugnanasambandam, (2005) 1 ACC 143 : AIR 2005 SC 570 : (2005) 104 FLR 440 : (2005) 1 JT 116 : (2005) 1 LLJ 569 : (2005) 3 SCC 241 : (2005) SCC(L&S) 395 , wherein it is held that the quasi judicial authority must address the correct issue so as to arrive at the correct decision both on facts and law in these words :

"14. Even a judicial review on facts in certain situations may be available. In Cholan Roadways Ltd. v. G. Thirugnanasambandam this Court observed: (SCC p. 253, paras 34-35)

"34. ... It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of *res ipsa loquitur* which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, that the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

35. Errors of fact can also be a subject-matter of judicial review. (See *E. v. Secy. of State for the Home Deptt.*) Reference in this connection may also be made to an interesting article by Paul P. Craig, Q.C. titled "Judicial Review, Appeal and Factual Error" published in 2004 Public Law, p. 788."

21. In case of Gojer Brothers Private Limited (*supra*) the importance of non-consideration of the objection filed under Section 5A of the Land Acquisition Act has been reiterated in the following words:

"21. In our view, non-consideration of the objections filed under Section 5-A(1) has resulted in denial of effective opportunity of hearing to the appellant. The manner in which the Joint Secretary to the Government approved the recommendation made by the Land Acquisition Collector favouring acquisition of the property is reflective of total non-application of mind by the competent authority to the recommendation made by the Land Acquisition Collector and the report prepared by him."

22. From the above reports it emerges that it is imperative on the competent authority to deal effectively with the objections raised against the proposed acquisition, which is not an empty formality. The formation of the decision by the competent authority must be preceded by an application of mind on

consideration of relevant factors and rejection of irrelevant ones. What is important is a fair opportunity of hearing to the objector and consideration of the pleas against the proposed acquisition objectively. The Legislature has conferred a right on a person to file objection against the proposed acquisition and an opportunity of hearing, therefore, recognizes the principles of natural justice, which is a pervasive facet of secular law. It is imperative on the competent authority to deal all the objections touching the purposes for which the land is intended to be acquired and not in cursory and pervasive manner. The reasons must reflect the mind of the competent authority on all the objections taken by the person, unless appears to be irrelevant. Non-recording of the reasons infringes the natural justice rendering the order unsustainable and void.

23. Anything founded on a void order cannot stand and in this regard it would be apt to quote the observations of Lord Denning, J; in Benjamin Leonard MacFoy (supra):

"The defendant here sought to say therefore that the delivery of the statement of claim in the long vacation was a nullity and not a mere irregularity. This is the same as saying that it was void and not merely voidable. The distinction between the two has been repeatedly drawn. If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse. So will this judgment collapse if the statement of claim was a nullity. But if an act is only voidable, then it is not automatically void. It is only an irregularity which may be waived. It is not to be avoided unless something is done to avoid it. There must be an order of the court setting it aside: and the court has a discretion whether to set it aside or not. It will do so if justice demands it but not otherwise. Meanwhile it remains good and a support for all that has been done under it. So will this statement of claim be a support for the judgment, if it was only voidable and not void."

24. The aforesaid observations have been quoted with approval in a decision rendered by the Supreme Court in case of Ranku Dutta (supra) in the following manner :

"21. Whether the Deputy Superintendent of Police is a District Superintendent of Police or not is a different question which we need not decide in this case. But one thing is clear that the requirement of approval must be made at the initial stage of recording the information. If there is absence of approval at the stage of recording the information, the same cannot be cured by subsequent carrying on of the investigation by the DSP. Reference in this connection is made to the principles laid down by Lord Denning speaking for the Judicial Committee of Privy Council in Benjamin Leonard MacFoy v. United Africa Co. Ltd. Lord Denning, speaking for the unanimous Bench, pointed out the effect of an act which is void

so succinctly that I better quote him: (AC p. 160)

"... If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."

(emphasis in original)

We are in respectful agreement with the aforesaid view. Therefore, the evidence of PW 4 and PW 6 do not come to any aid of the State counsel in the facts of the present case."

25. Had it been a case that the objection subsequently filed by Madan Gopal Marda as Director and Principal Officer of the objector-companies has not been taken on record because of the embargo created under Section 9 (1) of the Act, the position would have been different. The competent authority vide order No. 7 dated July 17, 2015 allowed the aforesaid applications to be taken on record on the consent of the parties. It cannot take a diametrically opposite decision at the final hearing of the objection that those objections cannot be treated to have been validly taken out by a person not competent to do so.

26. If the status of a person as Director or the Principal Officer of the objector-companies was the hurdle, which the competent authority thought to stand in the way, it ought to have permitted the applicants to submit the documents in support thereof.

27. Mere declaration under Section 10(1), which is a consequential course of action after rejection of an objection, does not take away the right of the objectors to challenge the decision to be declared void and a nullity.

28. This Court, therefore, does not find any sustainability in the preliminary objection raised by the Metro Railway authorities. The competent authority has not considered the objection in the manner required to be done and the impugned order is devoid of any reasons and there was no effective hearing given to the objectors.

29. The order impugned is, therefore, set aside.

30. The matter is relegated back to the competent authority to decide the objection afresh after affording an opportunity of hearing to the objectors and dispose of the same within two weeks from the date of the communication of this order by providing reasons.

31. With these observations, the revisional application is allowed.

32. There will be no order as to costs.