

(2009) 02 CAL CK 0105
In the Calcutta High Court
Case No : Writ Petition No. 1796 of 1998

Al Haj Amir Hasan Properties Pvt. Ltd. and Another	APPELLANT
Vs	
The Land Acquisition Collector Calcutta and Others	RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 3(e), 4, 4(1), 5A, 6

Citation : (2010) 8 RCR(Civil) 813

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : A.K. Mitra and R.L. Dutta, for the Appellant; L.C. Bihani, N.C. Bihani and Shyamal Ganguly, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.

The Judgment of the Court was as follows:

The Court:-

1. The petitioners in this writ petition dated August 27, 1998 are questioning the acquisition proceedings initiated by publishing a notification u/s 4 of the Land Acquisition Act, 1894 in the Calcutta Gazette on June 16, 1998. It has been stated in the notification that the land, particulars whereof have been given therein, is likely to be needed for a public purpose, viz. for the purpose of a permanent accommodation for Rajasthan Emporium of Rajasthan Small Industries Corporation Ltd.; and that the land will be acquired at the public expense, i.e. at the expense of Rajasthan Small Industries Corporation Ltd.
2. The writ petition was admitted by order dated August 31, 1998 whereby liberty was granted to the petitioners to file objection u/s 5A and direction was given that if the objection was filed, then it should be dealt with in accordance with law, but no effect should be given to the final decision without the court's

leave. The petitioners submitted their Section 5A objection on September 8, 1998 and after hearing them, the Collector disposed of the objection by a decision dated November 12, 1998, a copy whereof was annexed to the opposition dated December 3, 1998 filed by him. Thereafter the petitioners took out an application for amendment, and the prayer was ultimately allowed by the division bench on December 3, 2008. By amendment the Section 5A decision was challenged.

3. Mr. Dutta, counsel for the petitioners, has made the following submissions: -

(i) for vagueness and uncertainty in the descriptions of the public purpose and the property sought to be acquired, the Section 4 notification is liable to be quashed;

(ii) although by the order dated August 31, 1998 the respondents were given liberty to enforce the Section 5A decision after obtaining the court's leave, they have not taken leave to make and publish the Section 6 declaration within the statutory period, and hence the proceedings initiated by the Section 4 notification lapsed by operation of law;

(iii) delay in concluding the proceedings is indicative of a colourable exercise of power, and hence they are liable to be quashed;

(iv) the decision given in the Section 5A objection is bad in law, since the Collector has considered irrelevant factors ignoring the relevant ones, and thus failed to apply his mind; and

(v) though it is apparent from the notification that the acquisition was for a company, steps were not taken to follow the statutory provisions of Part VII, especially meant for acquisition of land for companies, and hence the proceedings are liable to be quashed. In support of his contentions he has relied upon *Munshi Singh and Others Vs. Union of India (UOI)*, , *The State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others*, , *Radhey Sham Gupta and Others Vs. State of Haryana and Others*, , *Eugenio Misquita and Others Vs. State of Goa and Others*, , *Municipal Board, Saharanpur Vs. Imperial Tobacco of India Ltd. and Another Etc.*, *S.H. Rangappa Vs. State of Karnataka and Another*, and *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, .

4. Submissions made by Mr. Bihani, counsel for the respondents, are these. There is no reason to say that the Section 4 notification is vitiated by vagueness or uncertainty. It is incorrect to say that the proceedings initiated by the notification have lapsed. In view of the order dated August 31, 1998 the respondents could not make and publish the Section 6 declaration. As was held in *Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others*, *Venkataswamappa Vs. Special Deputy Commissioner (Revenue)*, and *State of Kerala and Others Vs. Antony Fernandez and Another*, - during pendency of proceedings in which order made by court remains in force, the statutory period for making a Section 6 declaration does not expire resulting in lapse of the

acquisition proceedings. It is not conceivable how the question of delay in concluding the proceedings can be taken by the petitioners who moved the writ petition and obtained an interim order. The Section 5A decision was given after due application of mind. The case that the acquisition is not for a public purpose, but for a company, and hence the proceedings, not initiated in terms of the provisions of Part VII, are liable to be quashed, is a case made out only at the bar, because no such case was stated by the petitioners in the writ petition. The company for which the land is sought to be acquired is a government company, and hence, in view of the provisions of Section 3(e) of the Land Acquisition Act, 1894, there is no need to follow the provisions of Part VII.

5. In *Munshi Singh and Others Vs. Union of India (UOI)*, , *Munshi Singh & Ors* filed a writ petition questioning the Section 4 notification contending that it was too vague and hence afforded no adequate basis for lodging an objection u/s 5A. The Supreme Court said that in the Section 4 notification, in which all that was stated was that the land was required for "planned development of the area", no indication whatsoever was given what kind of planned development was under contemplation, i.e. whether the land would be acquired and the development would be made by the government, or whether the owners of the properties would be required to develop a particular area in a specified way; and that if the master plan was made available for inspection by the persons interested in filing objections or even if the knowledge of its existence on the part of *Munshi Singh & Ors* was satisfactorily proved, the position might have been different, and in such a situation *Munshi Singh & Ors* could not claim that they were unable to file objections owing to the lack of any indication in the notification about the nature of development for which the area was sought to be acquired. On these facts, their Lordships said (in para.7 of the report):-

"7. Section 5A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. We may refer to the observation of this court in *Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*, that the right to file objections u/s 5A is a substantial right when a person's property is being threatened with acquisition and that right cannot be taken away as if by a side wind. Sub-section (2) of Section 5A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final."

6. In *The State of Gujarat and Another Vs. Patel Chaturbhai Narsibhai and Others*, , *Patel Chaturbhai Narsinbhai & Ors*, as owners of the land sought to be acquired, questioned the Section 4 notification and the Section 6 declaration contending that the Section 6 declaration was illegal, since the enquiry

contemplated under r.4 of the Land Acquisition (Companies) Rules, 1963, was not made lawfully. There the question of vagueness and uncertainty in the descriptions of the public purpose and the property sought to be acquired in a Section 4 notification did not arise and was not considered.

7. The Section 4 notification has been questioned on the ground that the stated public purpose and the property sought to be acquired have not been described with necessary certainty and clarity. In view of what was held by the Supreme Court in *Munshi Singh*, there can be no doubt that vagueness in a Section 4 notification deprives the persons interested of a reasonable opportunity of filing an effective Section 5A objection. In the present case, the Section 5A objection was filed by the petitioners on September 8, 1998. It was not their case that they were unable to file an effective Section 5A objection because of the vagueness and uncertainty in the descriptions of the public purpose and the property sought to be acquired. Hence I do not see how today they can contend that the Section 4 notification should be set aside on the ground that the public purpose and the property sought to be acquired were not described and specified with requisite clarity and particulars. It was clearly stated in the notification for what public purpose the property was sought to be acquired. The necessary particulars of the property were clearly stated in the notification. One can very easily ascertain both the things from the notification itself. I therefore do not find any reason to accept the contention that the notification is vitiated by vagueness and uncertainty.

8. As to the question whether the Section 4 notification has lapsed on the ground that the Section 6 declaration was not made and published within one year from the date it was published, the principles stated in the decisions cited by counsel for the parties are as follows.

9. In *Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others*, , the Section 4(1) notification was published on May 17, 1984, the Section 6(1) declaration was published on January 31, 1985, writ petition filed thereafter was allowed on the ground that Section 5A notice had not been received, Section 6(1) declaration was set aside, then objection was considered, fresh Section 6(1) declaration was published on June 15, 1989, questioning it the second writ petition was filed, stay of dispossession was granted, but finally the writ petition was dismissed. On these facts, it was contended that the Section 6 declaration was not published within time. Turning down the contention the Supreme Court held (in para.2 of the report):

"Admittedly, pending writ petition on both the occasions the High Court granted "stay of dispossession". Admittedly, the validity or tenability of the notification issued and published u/s 4(1) is subject of adjudication before the High Court. Till the writ petitions are disposed of or the appeals following its heels, the stay of dispossession was in operation. Though there is no specific direction prohibiting the publication of the declaration u/s 6, no useful purpose would be served by publishing Section 6(1) declaration pending adjudication of the legality

of Section 4(1) notification. If any action is taken to pre-empt the proceedings, it would be stigmatised either as "undue haste" or action to "overreach the court"s judicial process."

10. In *Eugenio Misquita and Others Vs. State of Goa and Others*, , the question was whether for calculating the limitation under cl.(ii) of the first proviso to Section 6(1) of the Land Acquisition Act, 1894 the relevant date is the first date or the last date of publication of the declaration; and it was held that the relevant date is the first date of the publication in the series.

11. In *Venkataswamappa Vs. Special Deputy Commissioner (Revenue)*, , the Section 4(1) notification was published on February 23, 1989 and in the writ petition filed in March, 1989 order was made restraining the respondents from dispossessing. It was contended that since the Section 6 declaration was not made when the interim order was only regarding possession, the Section 4(1) notification lapsed. Rejecting the contention, the Supreme Court held that since the proceedings were pending before high court and the Supreme Court, the entire time taken from the date of filing of the writ petition till the date of receipt of the order of the Supreme Court would stand excluded, and the limitation of one year would start only thereafter.

12. In *State of Kerala and Others Vs. Antony Fernandez and Another*, the Section 4 notification was published on May 27, 1993, it was challenged by filing a writ petition that was allowed by judgment dated July 2, 1993 ordering that till final decision was taken in the Section 5A objection, the writ petitioner should not be dispossessed, final decision in the objection was taken on January 18, 1994 when the Collector forwarded his report, and the Section 6 declaration was published on June 8, 1994. It was held by the Supreme Court that the period from July 2, 1993 to January 18, 1994 was to be excluded while calculating the limitation u/s 6.

13. In *S.H. Rangappa Vs. State of Karnataka and Another*, , the Section 4 notification was published in the newspaper on February 23, 1988, the Section 6(1) declaration was made signed by the competent authority on February 22, 1989, and the declaration was published in the Official Gazette on March 9, 1989. The question was whether the declaration ought to have been published within the period prescribed by the proviso to Section 6(1), and it was held by the Supreme Court that the requirement was only to make the declaration within the time limit, not to publish it within that time.

14. I am unable to accept the contention that since the Section 6 declaration was not made and published in the present case within one year from June 16, 1998, when in view of the order dated August 31, 1998 the respondents could make and publish it after obtaining the court"s leave, it must be held that the proceedings initiated by the Section 4 notification lapsed. This court made the order permitting the Collector to give decision in the Section 5A objection. The respondents were restrained from enforcing the report of the Collector submitted

after disposing of the Section 5A objection. Hence there was no scope to make and publish the Section 6 declaration that could be made only by enforcing the report submitted by the Collector. Simply because it was said in the order that the respondents would be entitled to enforce the decision provided they obtained the court's leave, it cannot be said that they were under an obligation to obtain the court's leave for the purpose. It is also necessary to note that the Collector recorded in his Section 5A report that the petitioners threatened him with contempt proceedings, if steps were taken for making and publishing the Section 6 declaration. On these facts, I am unable to appreciate the contention that the proceedings lapsed. The three decisions cited by counsel for the respondents fully support the case of the respondents that in view of the interim order of this court dated August 31, 1998, there was no scope to make and publish the Section 6 declaration, and hence it cannot be said that the proceedings lapsed.

15. It is beyond comprehension how the petitioners who filed this case almost immediately after the Section 4 notification was published and obtained the order dated August 31, 1998 that is still in force can today contend that the delay in concluding the acquisition proceedings by the respondents is indicative of the fact that the acquisition proceedings were initiated by a colourable exercise of power. The delay has occasioned because of the present case. In *Radhey Sham Gupta and Others Vs. State of Haryana and Others*, , the court was examining whether unexplained inordinate delay in completing the acquisition proceedings in question might taint them with the vice of a colourable exercise of power and thus wholly vitiate the proceedings. In that case the notification u/s 4 of the Land Acquisition Act, 1894 was issued on September 8, 1972, the first Section 6 notification was issued on November 29, 1972, the Section 9 notice was issued on August 5, 1981, and thereafter the writ petition was filed contending that the Section 4 notification was vitiated by a colourable exercise of power. On these facts it was said that unexplained delay on the part of the State might lead to a conclusion that the power to initiate the acquisition proceedings had not been exercised bona fide.

16. In support of his fourth point Mr Dutta has relied on *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, in which it was held that formation of opinion on public purpose and suitability must be preceded by application of mind to relevant factors and rejection of irrelevant ones.

17. A copy of the objection dated September 8, 1998 submitted by the petitioners to the Collector has not been produced by them. However, from the report of the Collector dated November 12, 1988 produced by him with his opposition, it appears that case of the petitioners was argued before the Collector by their advocate who contended that description of the property given in the Section 4 notification was incorrect; that the purpose stated in the notification was not a public purpose; that Rajasthan Emporium was carrying on its business from its permanent accommodation in Dakshinapan; that since no member of the public was to be benefited by the acquisition, it could not be said

that it was for a public purpose; that the decision to initiate the acquisition proceedings was therefore taken mala fide; that even after expiration of twenty-five years from the date of requisition, the property was not de-requisitioned and on the contrary to deprive the owners thereof the acquisition proceedings were initiated; and that accordingly the proceedings were illegal, invalid and without jurisdiction. It appears from the report that the Collector also recorded the points which were submitted in writing by Rajasthan Small Industries Corporation Ltd., the requiring body. After recording the submissions of the parties the Collector dealt with them in his report. He has stated that the property has been clearly described in the notification; that it is not correct to say that the acquisition is not for a public purpose; that the property is suitable for the purpose stated in the notification; and that the previous requisition of the property was not a bar to taking steps to initiate the acquisition proceedings. I am therefore unable to accept the contention that the Section 5A objection was disposed of without any application of mind, or that it was disposed of considering irrelevant factors, ignoring the relevant ones. It is apparent from the report that the collector considered all the relevant factors stating which the petitioners objected to and the corporation wanted the acquisition of the property.

18. With respect to his fifth and last point Mr. Dutta has relied on Municipal Board, Saharanpur Vs. Imperial Tobacco of India Ltd. and Another Etc., in which the Supreme Court decided to consider whether Imperial's factory premises could be brought within the tax net of water tax, though the point involving a mixed question of law and fact had not been taken by Imperial at any stage in the hierarchy of proceedings. It was not the case that from the case stated in the pleadings the point could not be taken, only the point was taken for the first time in the Supreme Court. Their Lordships decided to consider the point on the ground that it would go to the root of the power of the Municipal Board to tax non-residential premises by way of water tax.

19. It has not been alleged in the writ petition that since the acquisition proceedings were initiated for acquisition of the land for a company, it was a mandatory obligation of the respondents to follow the provisions of Part VII of the Act. Mr. Dutta has submitted that though no such case has been stated in the writ petition, he can take the point at the time of arguments and it has to be decided by the court, since the point goes to the root of the government's power. I cannot brush aside Mr. Bihani's contention that the company named in the Section 4 notification being a government company, in view of the provisions of Section 3(e) of the Act, there was no need to follow the provisions of Part VII. I find absolutely no reason to permit the petitioners to argue a case, not stated by them in their pleadings. The point is essentially based on relevant facts, which they were required to state in support thereof in their pleadings. Even otherwise, I do not find any merit in the argument, because, even if the acquisition is for a company, it will be considered one for a public purpose, if it is made at the public expense. There is no reason to say that no part of the compensation will be paid by the government or a government company or a company controlled by the

government. At the present moment, one has to proceed on the basis of what has been stated in the Section 4 notification; and in that it has been specifically stated that the acquisition is for a public purpose at the public expense.

20. For these reasons, I find no merit in the writ petition. It is, accordingly, dismissed. There shall be no order for costs.

Urgent certified xerox of this order, if applied for, shall be supplied to the parties on the usual undertakings.