

(2000) 08 CAL CK 0051
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, W.P. No. 5242 (W) of 1997

Angshuman Roy and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 26

Land Acquisition Act, 1894 — Section 10, 11, 11A, 17, 17(1)

Citation : (2000) 3 CALLT 486

Hon'ble Judges : Dipak Prokash Kundu, J

Bench : Single Bench

Advocate : Mr. S.B. Bhunia and Mr. Deb Kumar Mukherji, for the Appellant; Mr. A.N. Banerjee, Mr. Saktinath Mukherjee and Mr. Saptanshu Basu, for the Respondent

Judgement

D. P. Kundu, J.—One late Amarendra Nath Roy was the owner of premises No.6A and 6B, Gour Mohan Mukherjee Street, Calcutta-6 (hereinafter referred to as the said premises). The said Amarendra Nath Roy died intestate on or about April 18, 1981 leaving behind his sons (1) Samiran Roy, (2) Arun Kumar Roy, (3) Samaresh Roy, (4) Ajoy Roy, (5) Ashoke Roy. (6) Soumitra Roy, (7) the petitioner No. 1, Angshuman Roy, (8) a daughter Mrs. Madhuri Pal and (9) a widow Smt. Rani Bala Roy, the petitioner No.2.

2. A Notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) was issued on April 24, 1976 declaring that the said premises along with certain other premises would be needed for public purpose namely for construction of a building for cultural activities in memory of Swami Vivekananda and were likely to be needed for the aforesaid purpose partly at the public expense and partly at the expense of Ramkrishna Mission, the respondent No.3. Late Amarendra Nath Roy preferred an objection and availed himself the opportunity of section 5A of the said Act. Thereafter on March 6. 1978 a notification u/s 6 of the said Act was issued in respect of the said premises along with certain other premises. Thereafter the entire proceedings for the acquisition

of the said premises along with certain other places lapsed u/s 11A of the said Act.

3. Thereafter a notification dated February 2, 1995 was issued and published u/s 4 read with sub-section 4 of section 17 of the said Act dispensing with the provisions of section 5A of the said Act in respect of premises No.6 along with the said premises. The said notification has been annexed to the writ petition as annexure "A". Thereafter a declaration dated March 27, 1995 u/s 6 of the said Act was issued and published in respect of premises No.6 and the said premises. By a notice dated 24.1.1997 under sections 9 and 10 of the said Act the petitioners were directed to hand over possession of the said premises at 1 P.M. on 28.1.1997. A copy of the said notice dated 24.1.1997 has been annexed to the writ petition as annexure "E". In the writ petition the petitioners inter alia, prayed for the writ in the nature of mandamus commanding the respondents not to give effect to the notice dated 24.1.1997. The learned Advocate for the petitioners in course of his argument admitted that the petitioners are not in possession of the said premises.

4. It appears from paragraph 14 of the writ petition that challenging the notifications dated February 2, 1995 u/s 4 of the said Act and declaration u/s 6 of the said Act dated March 27, 1995, the petitioners moved a writ application giving rise to C.C. No. 14574(W) of 1996. It appears from paragraph 15 of the writ application that an order of status quo was refused by Prabir Kumar Samanta, J. and the petitioners preferred an appeal being FMAT No. 359 of 1996. It further appears that in connection with the said appeal the petitioners moved an application for interim order before the Appeal Court. It further appears that on 15.10.1996 a Division Bench of this High Court where I was one of the members of the Bench passed the following order :

"15.10.96.

Keeping in view of the greater public interest we are not inclined to entertain this appeal. Particularly in view of the fact that all other brothers have entered Into an agreement with the Ram Krishna Mission. it s stated that Mr Mukherjee learned counsel appearing on behalf of Ram Krishna Mission that family of the petitioners shall be given accommodation not less than they were enjoying and further even price of the land has been agreed upon with other brothers.

A copy of the agreement which has been handed over to as is being handed over to Mr. Bhunla learned counsel from appellant.

Keeping in view of the fact that at the site in question a monument of national importance In memory of Swami Vivekananda shall be constructed, the parties will come to terms. Further more, we are of the opinion In the event the writ application succeed the petitioners may be compensated sufficiently in monetary terms.

For the reason aforementioned the prayer for stay refused. it is stated that

building is in a dangerous condition and it may be collapsed any time. in our opinion it is an additional ground to refuse stay at this juncture.

However we direct either Ram Krishna Mission or Calcutta Municipal Corporation may take suitable steps for demolition of the building, so that life and property of the third party may not be danger.

This appeal is treated as on day's list an appeal and application are dismissed with aforementioned observation.

Let a plain copy of the order counter signed by the Assistant Registrar of Court be given to the learned counsel for the parties for the usual undertaking."

5. The learned Sr. counsel for the petitioners In course of his argument argued the following points:

1. The acquisition Is for Ram Krishna Mission which has been adjudged as Hindu organisation by the Supreme Court of India and there cannot be any acquisition under the said Act on public purpose.

2. Admittedly Ram Krishna Mission is governed by the provisions of Society Registration Act and acquisition for such society must be done according to the provisions of Land Acquisition (Company) Rules, 1953.

3. The acquisition u/s 17(1) of the said Act therefore, must comply with the provision of the first proviso to section 6(1)(II) of the said Act.

4. For acquisition u/s 17(1) of the said Act compensation must be paid from date on issuance of notice dated 2.2.95 u/s 4 of the said Act.

5. In some cases which have been annexed to the writ petition accommodation as well as compensation were provided for and there Is no reason why the same procedure should not be followed.

6. The premises under acquisition being declared by Parliament as monument of national Importance It cannot be acquired for other purposes by the State Government. It should be kept Intact and it should not be changed.

6. Re : Point No.I.

It has been held by Supreme Court in *Bramchari Sidheswar Shai and others etc. Vs. State of West Bengal etc.*, that persons belonging to or owing their allegiance to Ramkrishna Mission or Ramkrishna Math belong to a religious denomination within Hindu religion or a section thereof as would entitled them to claim the fundamental rights conferred on either of them under Article 26. India is a secular country. Under the scheme of our Constitution the term "secular" means equality of religion. Any person living in India has fundamental right to profess, practise or propagate any religion subject to public order, morality and health and to other provisions contained in Part-III of the Constitution of India. Acquisition of the said premises and handing over the same to Ramkrishna Mission for construction of a building for cultural activities in memory of Swami

Vivekananda does not, in my opinion, amount to favouring Hindus. It appears from notification u/s 4 read with sub-section 1 of section 17 of the said Act that the said premises had been sought to be acquired by the Government at the public expense for a public purpose viz. undertaking cultural activities by Ramakrishna Mission Authority in memory of Swami Vivekananda. In *Satyabrata Chowdhuri v. State of West Bengal* reported at 1990 (2) CLJ 469 it has been held by a single Bench of this High Court that acquisition of birth place of Swami Vivekananda and making over the same to Ramkrishna Mission is one for public purpose. From the declaration made under provision of section 6 of the said Act it appears that the said premises were needed for public purpose namely for construction of building for cultural activities in the memory of Swami Vivekananda. In *Pandit Jhandu Lal and Others Vs. The State of Punjab and Others*, a Bench of five Judges of Supreme Court held that the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. It was held that an acquisition for a company may also be made for a public purpose within the meaning of the Act, if a part or the whole of the cost of acquisition is made by public funds. In such a case, Supreme Court held, it is not necessary to go through the procedure prescribed by Part-VII of the Act. If on the other hand the acquisition for a company is to be made at the cost entirely for the company itself such an acquisition comes under the provisions of Part-VII. In the instant case for the purpose of acquisition of the premises in question State of West Bengal had allotted money. Therefore, in view of the decision of Supreme Court in *Pandit Jhandu Lal* case (supra) the said premises had been sought to be acquired for public purpose and Part-VII of the said Act is not required to be followed. In *Kanaiyalal Maneklal Chinai and Another Vs. State of Gujarat and Others*, of the reported decision it was held by the Supreme Court-

"We may observe that a notification issued u/s 6 is by subsection (3) conclusive evidence that the land is needed for a public purpose".

7. In the instant case also notification issued u/s 6 clearly shows that the said premises were sought to be acquired for the public purpose. Under the circumstances I am of the view unless a case of mala fide or colourable exercise of power is proved such acquisition cannot be touched. In the instant case there is no allegation of mala fide or colourable exercise of power. Therefore, I am of the view that the acquisition sought to be made which is under consideration of this Court in the instant case were legal and valid and was for public purpose.

8. I do not accept the argument of learned Advocate for the petitioners that the acquisition sought to be made was for Ramakrishna Mission which is a Hindu organisation and for that reason no acquisition can be made for public purpose at public expense and I reject such contention.

9. Re: Point Nos. 2 & 3.

Admittedly Ramkrishna Mission is a Society registered under Society Registration

Act and is a company within the meaning of the said Act but when State Government proposes to spend money, which may be a part of the whole amount, for such acquisition then such acquisition takes the character of acquisition for public purpose and not as acquisition for the company only. Therefore, in view of the decision of a Bench of five Judges of Supreme Court in Pandit Jhandu Lal case (supra). In this type of case it is not necessary to go through the procedure prescribed by Part-VII of the said Act. Therefore, the arguments made by the learned Advocate for the petitioners cannot be accepted and the same are rejected.

10. Re: Point Nos. 4 & 5.

It is now well settled that enquiry u/s 11 of the said Act as to value of land or premises are administrative and not judicial. It is further well settled that award though conclusive against Government is subject to land owner right to have the matter referred to the Court u/s 18 of the said Act. Therefore, if the petitioners do not accept the award awarded by the Collector u/s 11 of the said Act then they may very well prefer a reference u/s 18 of the said Act. Thus in my view the points No.4 and 5 raised by the learned Advocate for the petitioners cannot be determined in a writ Court.

Re: Point No.6.

This point has not been pressed by the learned Advocate for the petitioners.

In view of the discussions made hereinabove I am of the view that the writ petitioners are not entitled to any relief as sought for or otherwise. The writ application is dismissed. Interim order, if there be any, is vacated. However, there shall not be any order as to costs.

11. Application dismissed