

(1968) 07 CAL CK 0025

In the Calcutta High Court

Case No : C.R. No's. 225 and 468 (W) of 1964

Biswamitra Shukla and Others

APPELLANT

Vs

L.A. Collector, Burdwan and Others

RESPONDENT

Date of Decision : 05-07-1968

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145
Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : 74 CWN 349

Hon'ble Judges : A.K. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Sinha, J.—These two rules are taken up together for the sake of convenience as they involve substantially the common question of fact and law relating to certain acquisition proceedings adopted by the respondents for acquisition of parts of two plots of lands belonging to petitioners. Shortly put, the facts as pleaded are that the petitioners are the owners of two plots of land being c.s. plots Nos. 354 and 355 within the Municipality of Asansol. The respondent No. 4 who is a very influential man in the locality and a member of the Parliament has his residential house at Young Road which is situated just on the opposite side of the petitioners' said lands. He tried to persuade the petitioners in many ways to sell the said lands to him. One G.S. Atwal a deceased brother of respondent No. 4 tried to occupy one of the said plots by force and on a complaint on behalf of the predecessors of the petitioners and some of the present petitioners a proceeding u/s 145 of the Code of Criminal Procedure was started being Misc. Case No. 2 of 1948 and the petitioners ultimately were held to be the persons entitled to remain in possession of the said plot. Having thus failed in his repeated attempts to get the said land from the petitioners or their predecessors, the respondent No. 4 successfully persuaded the respondent No. 2, the then Administrator of the Municipality, to acquire these lands for his benefit and at his own expense under the cloak of land acquisition proceeding on

the pretext of creating a Park and he had already paid Rs. 39,000/- to the Municipality for the purpose of payment of compensations. These plots, it is stated are situated on the extreme southern side of the area of the Municipality of Asansol and at some distance to the north of these plots which is outside the jurisdiction of the Municipality is Budha Village which is inhabited mainly by farmers who cannot have any necessity of a Park. This apart, locality itself is very thinly populated and vast areas of land are lying vacant which only indicate that there cannot be any necessity of converting such area into a park at such a huge cost. The entire proceeding for acquisition, it is stated, is malafide.

2. It is also stated that the respondents wanted to acquire only a portion of the said two plots and the total area of the land in the notification u/s 4 was not properly given and thereafter this notification was amended by inclusion of larger area and publication simultaneously with the declaration u/s 6 was bad. There was no publication of substance of notification u/s 4 and thus the petitioners were deprived of filing an objection u/s 5A and they were also not given any hearing. The award again, was given in joint names. In substance, the acquisition proceedings were adopted without compliance with the mandatory provisions of the Land Acquisition Act. The petitioners thus felt aggrieved by the acquisition proceedings and came up to this Court and successively obtained the above two rules.

3. Quite a large number of grounds were taken but Mr. Roy learned Counsel for the petitioner at the hearing raised the following points:

(I) The acquisition of the parts of the disputed plots without clear specification of such parts in the impugned notifications and declarations is entirely bad in law.

(II) Simultaneous publication of the amended notification u/s 4 along with the declaration u/s 6 of the Act is entirely illegal and ultra vires.

(III) The entire acquisition proceeding is malafide as the lands are being acquired for the benefit of Atwals, the respondent No. 4 and not for alleged public purpose.

(IV) A joint award given by the Collector cannot be sustained as valid award under the law.

4. In support of the first point Mr. Roy learned Counsel for the Petitioners referred to the notification u/s 4 as also the declaration u/s 6 to show that only parts of the disputed plots without more were mentioned. His argument is that without proper specification or better particulars or description of the parts of the disputed plots even u/s 4 no effective objection against any such proposed acquisition could be made u/s 5A of the Act. Compliance with such requirements is mandatory would be also clear from sub-section (2) of section 4 where after publication of substance of notification u/s 4 the Officers authorised may enter upon the land and amongst other things set up boundaries of the land but this cannot be done unless there is proper particulars of the land in the notification. Therefore, mentioning of particulars is a condition precedent to the publication of

valid notification u/s 4. This right of objection is a very valuable right and if the petitioners are deprived of such a right by the failure of the respondents in not describing the land intended to be acquired properly, then the other consequences which will follow from this representation will be totally ineffective with the result that the entire acquisition proceeding would be bad in law. It was also submitted that mere mentioning of the parts of the plots without more is not in compliance with sub-section (2) of section 6 of the Act. In order to comply with that provision a clear and a specific description of the parts of the plots intended to be acquired would be necessary failing which the declaration u/s 6 cannot stand. Reliance was placed in support of the contention on a Bench decision of this Court reported in (1) Ganesh Chandra Banerjee and Others Vs. State of West Bengal and Others, in which it has been held that where an unspecified parts of a plot is made the subject matter of the acquisition the mere mentioning of the total area of all the plots under acquisition is not sufficient compliance with the requirements of sub-section (2) of section 6 of the Act and when a part of a plot belonging to a particular owner is sought to be acquired some more definite statement with regard to area of the unspecified part of the plot should appear in the declaration.

5. Mr. Murari Mohan Dutta, learned Advocate on behalf of the respondent No. 2, however, contended that in the instant case some of the petitioners did file objections u/s 5A but they never raised this question before the Collector. On the other hand from the first paragraph of one of such objections (annexure B2 of the petition) it would be quite clear that the petitioners understood as to what portions of the disputed plots were intended to be acquired and therefore they are estopped from raising such questions in this Court for the first time. I cannot agree. The statements in the first paragraph of such objections, to my mind, do not indicate that the petitioners did understand the actual area or the position of the part of the disputed plots which were intended to be acquired. Even so, the fact remains that there are several other petitioners who did not join in such objections. It cannot be said that the knowledge of these petitioners will be deemed to be the knowledge of others. The actual area and the description of the part of the plots intended to be acquired are mandatorily required to be given under the provisions of the Act. This mandatory requirement cannot be complied with by merely setting up a plea of estoppel by conduct on the part of the objectors. On a fair reading of the provision of section 4(1) and (2) as also section 5A of the Act it seems to me that mentioning of particulars in respect of part plots is an essential requirement of valid notification u/s 4 and of such requirement is not complied with the notification itself, cannot be sustained as valid. See (2) Khub Chand and Others Vs. State of Rajasthan and Others, . In this case section 4 notification was cancelled because there was no substance of notification published. As regards declaration u/s 6 it will be noticed that in the above bench decision the learned Advocate for the respondents at the time of disposal of the rule made a clarification as to the actual area and extent of the parts of the plots that were intended to be acquired and on such clarification the

rule was discharged but this was not upheld in appeal.

6. Mr. Dutta then submitted that the petitioners never took the ground that parts of plots without more were intended to be acquired and thus acquisition was invalid. This is also not correct. I have been referred to paragraphs 3, 4 and 10 of the petition and also ground No. 11 of the petition from which it will appear that this question is sufficiently raised in the writ petition. Apart from this, the omission is glaring on the face of both the notification u/s 4 and declaration u/s 6. So on the face of the document of the respondents themselves such a question can be raised by the petitioners even at the hearing. Considering all these both the notification u/s 4 and declaration u/s 6 cannot be sustained as valid.

7. There is yet a more formidable point raised by the petitioners which is that simultaneous publication of the amended notification u/s 4 and declaration u/s 6 is bad. It is submitted that after the publication of notification u/s 4 another amended notification was published in which the total area of the land given in the original notification u/s 4 was increased from 1.70 acres to 1.85 acres on 12th September, 1963. Simultaneously the declaration u/s 6 was also published on the same date and in the same gazette. Therefore, the notification u/s 4 with the correct description of the area really came into existence on 12th September, 1963 but such notification having been simultaneously published with the declaration u/s 6 there was violation of mandatory provisions of section 5(A) with the result that petitioners were deprived of a very valuable right to file objection against the proposed acquisition. This contention must be accepted. It is true that the publication of simultaneous notification u/s 4 and declaration u/s 6 may not be always bad but those contingencies relate to cases where normal procedure of acquisition of land under the Land Acquisition Act is not followed. Cases may be visualised where in case of urgency filing of objection u/s 5(A) may be dispensed with and thus there may not be any impediment in the way of publishing simultaneously both the notification u/s 4 and declaration u/s 6 but in other cases where the normal procedure is followed there must be an interval of the statutory period between the publication of the notification u/s 4 and declaration u/s 6 to enable the interested persons to file objections. Here in the instant case, the notification u/s 4 must be deemed to have come into existence only after the notification u/s 4 amending the previous notification u/s 4 was published but there being no intervening period left for compliance with the procedure u/s 5A of the Act the declaration u/s 6 must be held to have been vitiated with serious irregularities. This view finds support in a decision of the Supreme Court in (3) Smt. Somavanti and Others Vs. The State of Punjab and Others, .

8. The next point raises the question of malafides of acquisition proceedings raised by the petitioners in these rules. It was contended by the petitioners that the entire acquisition of the petitioners' land were made at the instance and for the benefit of respondent No. 4 and his brothers and this will be clear from the

admitted fact that he already paid Rs. 39,000/- to the Municipality exclusively for the purpose of such acquisition. This method was adopted by him as in spite of his repeated attempts he could not persuade the petitioners to part with their land amicably. Mr. Dutta, learned Advocate for the respondent No. 2, however, sought to repel this contention and argued that the respondent No. 4 made a gift to the Municipality of amount Rs. 35,080 and not Rs. 39,000/- and there was nothing wrong on the part of the Municipality to accept this amount as gift which is permitted under the Bengal Municipal Act. It was, however, pointed out on behalf of the petitioners that such an amount could not form part of the fund of the Municipality since it was given only for a particular purpose viz., for the purpose of acquisition and thus the Municipality had no absolute control over the amount. The acquisition of the petitioners' land could not be, therefore, said to be the acquisition for a public purpose at the cost of the Municipality but it was purely for a private purpose that is, for the benefit of the respondent No. 4. On the view I have taken on the first two points I do not feel inclined to enter into these questions and I do not express any opinion on them. This point is left open.

9. The last point taken by the petitioners in the second rule relates to the question as to the validity of the joint award. On the view already taken it is, however, not equally necessary to enter into this question; even so, I will deal with the point raised. But before I do so, I will deal with a preliminary point raised by Mr. Dutta. The point is that the petitioner filed the claim for compensation before the Land Acquisition Collector and therefore they are precluded from prosecuting the writ petitions or at any rate challenging the validity of the entire acquisition proceedings before this Court upon both these writ petitions. In support of this he relied on several decisions of this Court reported in (4) Tirthalal De Vs. The State of West Bengal and Others, ; (5) 70 CWN 13 (notes of cases); (6) AIR 1997 Cal. 89 and (7) AIR 1967 Mad 118 and also on an unreported bench decision of this Court in F.M.A. 188 of 1957. These decisions, in my view, have no application to the facts of the present case because it has been clearly stated in paragraph 27 of the writ petition in C.R. 488 (W) of 1964 that the petitioners Nos. 1 and 5 under protest and without prejudice to their rights and contentions in the said C.R. 225 (W) of 1964 filed the claim for compensation u/s 9 of the Act. So if any claim was preferred for compensation in respect of the disputed land by these two petitioners under protest and without prejudice to their rights and contentions in the earlier rule I fail to see how this act could at all operate as an estoppel against the petitioners to prosecute the writ petitions. Then again the other petitioners did not file any such claim and the claim petition filed by these two petitioners in absence of any express authority could not be deemed to have been filed on their behalf. So, in any event, by this claim petition the other petitioners cannot be debarred from prosecuting the writ petitions in this Court. Reliance was, however, placed on behalf of the petitioner on a bench decision of this Court reported in (9) 67 C.W.N., 647, in which it has been held that even withdrawal of the compensation money could not operate as an estoppel or waiver as there cannot be waiver of

fundamental rights. Reliance was also placed on two decisions of the Supreme Court reported in (10) Behram Khurshed Pesikaka Vs. The State of Bombay, and in (11) Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others, . I do not feel inclined to express any opinion on this point also. As already indicated, the facts of the present case are quite different.

10. Apart from this in the second rule the award itself is challenged on the ground that joint award given by the Collector is not valid under the law. So even if any claim for compensation was filed no part of the proceeding was accepted as valid by the petitioners. I, therefore, find no substance on the point raised by Mr. Dutta. That being so, it remains to be seen as to whether the joint award given by the Collector in respect of the disputed plots is valid or not. It appears that the Collector has given the award in the joint names of the petitioners without apportioning the compensation money and this, it is submitted, contravened the provisions of section 31 of the Act. This point is already covered by a decision of D.N. Sinha, J., as his Lordship then was, reported in Rabinbha Kumar Basu Vs. S.K. Banerjee and Others, , in which it has been held that an award given by the Collector jointly in the name of the interested persons without apportionment is invalid. I respectfully follow the said decision. For all the reasons given above, the impugned notification u/s 4 and declaration u/s 6 and the award dated 20th March 1964 must be quashed and I order accordingly.

The result, is, both the petitions succeed. The rules are made absolute but there will be no order as to costs.