
(1988) 07 CAL CK 0012
In the Calcutta High Court
Case No : A.O.O.T. No. 2853 of 1987

Calcutta Improvement Trust

APPELLANT

Vs

Sm. Jyotikana Das and Others

RESPONDENT

Date of Decision : 08-07-1988

Acts Referred:

Calcutta Improvement Act, 1911 — Section 43
Land Acquisition Act, 1894 — Section 11A, 9, 9

Citation : 93 CWN 225

Hon'ble Judges : K.M. Yusuf, J;G.N. Ray, J

Bench : Division Bench

Advocate : Udayan Dutta and S.N. Samajdar, for the Appellant; Samarjit Gupta, for the Respondent

Judgement

G.N. Ray, J.—This appeal is directed against order dated 2nd September, 1987 passed by the learned trial Judge in C. O. No. 9100(W) of 1986. It appears that the respondents No.1 and 2 moved a writ petition before this Court, inter alia, challenging the acquisition of some plots of land under the Land Acquisition Act, 1894. It appears that a general improvement scheme No.101 was framed by the Calcutta Improvement Trust for the purpose of general improvement of the area in and around the Dhakuria Station Road. The said scheme includes also the widening of Dhakuria Station Road. The said scheme was later on modified by the Board of Trustees for the improvement of Calcutta and it was decided that the land required for the purpose of the said scheme, as modified, would be acquired and the rest of the land should be released from the said scheme. The scheme was published u/s 43 of the Calcutta Improvement Act and the scheme was published in the newspapers and also in the Calcutta Gazette and it appears from the Gazette Notification that premises no. 20C which was previously numbered as premises No.20B Dhakuria Station Road was one of the premises proposed to be acquired. It also appears that initially the entirety of the said premises No.20C Dhakuria Station Road was sought to be acquired, but in view of the modification of the scheme, a portion of the said premises measuring 9 ch.

9.ft. only was intended to be acquired.

2. It is the case of the appellant namely the Calcutta Improvement Trust, that the acquisition proceeding being L.A. Case No. 101-7 of 1968 was modified and it was decided that 9 ch. 9 sq.ft. only appertaining to the said 20C, Dhakuria Station Road would be acquired for the purpose of widening the road. A notice u/s 9 of the Land Acquisition Act was issued on 10th June, 1986 for the purpose of acquisition of the said premises and the respondents Nos. 1 and 2 moved a writ petition before this Court, inter alia, challenging the said notification u/s 9 of the Land Acquisition Act.

3. A limited interim order was passed by this Court ex parte on the said application. On 1st August, 1986, the learned Advocate for the writ petitioner wrote a letter to the appellants which was received by the appellants on 31st July, 1986. By the said letter the appellants were informed that the learned trial Judge had passed an interim order directing the respondents including the appellants to maintain status quo as on 29th July, 1986 in respect of acquisition proceeding relating to petitioners until further orders. It is the case of the appellants that in view of such communication of the interim order passed by this Court, no further step was taken in respect of the said acquisition proceeding and no effect was given to the notification issued u/s 9 of the Land Acquisition Act. The matter thereafter was taken up for hearing before the learned trial Judge. It, however, transpires that the learned trial Judge by entertaining the writ petition passed an interim injunction/only for a week and granted the writ petitioners liberty to ask for extension of the said interim injunction. The writ petitioners, however, chose not to make any application for extension of the interim order. The appellants have contended that as the appellants were informed by the learned Advocate that an interim order was passed by this Court directing parties to maintain status quo as on 29th July, 1986 until further orders of this Court, the appellants did not proceed with the acquisition proceeding and the proceeding, as such, could not be completed.

4. At the hearing of the said writ proceeding the writ petitioners respondents contended before the trial Judge that as the acquisition proceeding was not completed within the prescribed time u/s 11A of the Land Acquisition Act, such proceeding had become invalid with the lapse of time. It appears that the learned trial Judge has accepted the said contention that in view of the operation of section 11A of the Land Acquisition Act, the land acquisition proceeding in respect of the premises in question had come to an end for not completing the said acquisition proceeding within the prescribed time. The learned trial Judge has also come to the finding that the scheme was modified but the notification u/s 9 was not correctly issued and such notification was issued without taking note of the alternation of the scheme. Accordingly, the learned trial judge has come to the finding that as such notification was also inoperative and in view of the operation of section 11A, there was no further scope to amend the said notification u/s 9. The Rule was, therefore, made absolute by the learned trial

Judge and the acquisition proceeding in respect of the premises in question was set aside.

5. Being aggrieved by the aforesaid decision of the learned trial Judge, the instant appeal has been preferred by the Calcutta Improvement Trust. Mr; Gupta learned counsel appearing for the appellants has submitted before this Court that in view of the aforesaid intimation given by the learned counsel for the writ petitioners that the interim order was passed by this court directing the parties to maintain status quo until further orders from this Court, the appellants had bona fide proceeded on the footing that they had no occasion to proceed any further with the acquisition proceeding and no action, therefore, was taken for completing the acquisition proceeding.

6. Mr. Gupta has contended that in the aforesaid circumstances, the writ petitioners cannot derive any benefit out of their own wrong about the existence of an interim order and thereby stealing a march over the appellants by resorting to section 11A. It has been submitted that it is only unfortunate that the learned trial Judge has taken a very technical view of the matter without appreciating the helplessness on the part of the appellants to take any step in completing the acquisition proceeding because of the wrong communication made by the learned Advocate for the writ petitioners that the learned trial Judge had passed an interim order for which there was no occasion to proceed with the acquisition proceeding. Mr, Gupta has contended that as on the basis of the erroneous communication made by the writ petitioners and/or their learned Advocate, the appellant did not proceed with the acquisition proceeding any further, the Court must hold that although in fact no permanent injunction was passed beyond the period on one week from the date of the order, such injunction must be deemed to have been continuing until the disposal of the writ proceeding by the learned trial Judge.

7. Mr. Gupta has also contended that unfortunately the notification issued u/s 9 of the Land Acquisition Act did not describe the extent of the acquired portion of the premises in question in terms of the modification of the scheme and instead of mentioning the portion of the said premises No. 20C, the entirety of the said premises was mentioned. Mr. Gupta has further contended that if the Court proceeds on the footing that till the disposal of the writ petition there was an interim injunction for which the acquisition proceeding could not be completed, the learned trial Judge should have quashed the notification u/s 9 on the ground that it was erroneous, but should not have held that the entire proceeding has come to an end because of the operation of section 11A of the Land Acquisition Act. Mr. Gupta has contended that if it is deemed that the interim injunction was continuing then even when the writ petition was finally disposed of by the learned trial Judge, there was time by which the acquisition proceeding could have been completed by issuing a notice afresh u/s 9. He has further contended that in the facts of the case a great injustice has been done to the appellants by setting aside the entire acquisition proceeding on the ground that the same has

become inoperative in view of the provisions of section 11A of the Land Acquisition Act.

8. The learned counsel for the writ petitioners-respondents has, however, submitted that it was unfortunate that the learned counsel on record failed to note the actual interim order passed by the learned trial Judge and on an erroneous misconception a wrong communication was given by such counsel. He has submitted that when the appellants appeared through counsel in the proceeding, it must be held that the appellants were aw(sic) about the correct position so far as the interim order passed by this (sic) was concerned. He has further submitted that in any event when the (sic) was made known to the appellants that an interim order was passed (sic) for a week and the same was not continuing until further orders of. Court, the acquisition proceeding should have been completed. It is contended by him that section 11A of the Land Acquisition Act is mandatory and if the acquisition proceeding is not completed within the stipulated time, such proceeding is bound to come to an end and the learned trial Judge, in the facts of the case, has correctly held that such proceeding has come to an end for non-completion of the acquisition proceeding within the statutory period. The learned counsel has further contended that sec. 9 of the notice under the Land Acquisition Act is erroneous on the face of it and there was no further occasion for the appellant to issue any such notice under sec. 9 because the land acquisition proceeding itself has come to an end and the learned trial Judge was, therefore, justified in holding that in any event such notice u/s 9 could not be revived. The learned counsel has, therefore, contended that no interference is called for in the instant appeal and the appeal should, therefore, be dismissed.

9. After taking into consideration the respective contentions made by the learned counsels for the parties, it appears to us that the appellant and/or authorities under the Land Acquisition Act did not proceed further with the land acquisition proceeding because of the wrong communication given by the learned counsel for the writ petitioners-respondents that this Court had passed an interim order directing the parties to maintain status quo. The appellant and/or the authorities under the Land Acquisition Act had bona fide proceeded on the footing that such interim order was continuing and as such there was no occasion to proceed further with the land acquisition proceeding. We are not inclined to accept the contention of the learned counsel for the writ petitioners-respondents that since the counsel appeared for the parties in the writ proceeding it must be deemed that they were aware of the real position so far as the order of injunction was passed by this Court by looking into the records. When a learned counsel of this Court appearing for the writ petitioners-respondents has informed the respondents in the said writ proceeding that an interim injunction was passed in a particular manner, the said respondents were justified in accepting such communication as correct and it is not reasonably expected that they should doubt about the correctness of such communication and make enquiry about the same. As the writ petitioners by the communication made by their learned

counsel prevented the appellant and/or the authorities under the Land Acquisition Act from proceeding any further with the land acquisition proceeding, the writ petitioners cannot be permitted to contend that such land acquisition proceeding has come to an end because of the operation of sec. 11 A. If the writ petitioners succeed on such a stand, it will be against the principles of equity and justice and the same will amount to a premium on a wrong committed by a party. In the aforesaid circumstances, Mr. Dutta, in our view, is justified in contending that although the interim order was passed only for a week, in the facts of the case it must be deemed that an interim order as communicated by the learned counsel was continuing till the hearing of the proceeding and as such, the appellant and/or the authorities under the Land Acquisition Act had no occasion to proceed any further with the land acquisition proceeding. In our view, Mr. Dutta is also justified in his contention that the learned trial Judge should have only cancelled the notification under sec. 9 of the Land Acquisition Act on the score that the same contained an erroneous description of the land intended to be acquired because of the subsequent modification of the scheme but the statutory period for completing the acquisition proceeding u/s 11A had not then expired if the Court had proceeded on the footing that the interim injunction was continuing until the disposal of the writ petition. In that event, there was still scope on the part of the appellant and/or the authorities under the Land Acquisition Act to salvage the acquisition proceeding by issuing a proper notice under sec. 9. If by issuing a fresh notice under sec. 9 the appellant and/or the authorities under the Land Acquisition Act fails to complete the acquisition proceeding within the period of limitation as prescribed in sec. 11A, the writ petitioners can successfully challenge the acquisition proceeding. In the aforesaid circumstances, we allow this appeal and set aside the order passed by the learned trial Judge and we held that in the facts of the case it must be deemed that until the disposal of this appeal the appellant and/or the authorities under the Land Acquisition Act have been suffering an interim injunction by which they have been prevented from completing the land acquisition proceeding. Accordingly, they will be entitled to the benefit of exemption under Explanation to Sec. 11A of the Land Acquisition Act to pass an Award in the acquisition proceeding in question. We, however, uphold the finding of the learned trial Judge that the notice under sec. 9 of the Land Acquisition Act is erroneous and the said notice is, therefore, quashed. Liberty is given to the appellant and the other respondents to issue proper notice under sec. 9 of the Land Acquisition Act.

In the facts of the case we, however, make no order as to costs.

K.M. Yusuf, J.

I agree.