

(1977) 07 CAL CK 0029
In the Calcutta High Court
Case No : Matter No. 88 of 1975

Daga Auto Service Pvt. Ltd. and Another	APPELLANT
Vs	
The Land Acquisition Collector (Special Railway Cell)	RESPONDENT

Date of Decision : 29-07-1977

Acts Referred:

Land Acquisition Act, 1894 — Section 5A

Citation : AIR 1978 Cal 1

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : Biswarup Gupta and S. Pal, for the Appellant; Bhaskar Gupta and M.A. Law, for the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—In this application under Article 226 of the Constitution the petitioners have challenged the notification u/s 4 of the Land Acquisition Act, 1894, the report made u/s 5-A of the said Act and the notification issued u/s 6 of the said Act dated 7th Jan., 1974. This application relates to the acquisition of premises No. 29, Chitta Ranjan Avenue, Calcutta and the area comprised is 0506 hectres. The said notification and the said report have been challenged on several grounds. Most of these grounds are similar to the grounds taken in the case of Banku Behari Dutt Vs. State of West Bengal, . In view of the said decision, learned counsel for the petitioner did not press most of these grounds. In view of the decision of the Supreme Court in the case of Kalumiya Karimmiya Vs. The State of Gujarat and Others, most of these grounds are no longer open to challenge by the petitioner. The only ground upon which this application was pressed was that the petitioner had suggested to the Land Acquisition Collector that there were alternative accommodations available in premises No. 20, Ganesh Chandra Avenue and premises No. 23, Chitta Ranjan Avenue, Calcutta but the Land Acquisition Collector, according to the petitioner, without applying his mind to the suitability of the alternative accommodation offered, had made

his report upon which the notification u/s 6 has been issued in the instant case. It was, therefore, urged that both, the report of the Land Acquisition Collector u/s 5-A of the said Act as well as the notification issued upon that report u/s 6 of the Act, are liable to be set aside.

2. In Para. 14 of the petition, the petitioners have stated that the object of acquiring the petitioners' property was stated by the representative of M.R.T.S. at the first day's hearing to be an opening for landing stairs to the platform for the line passing from south to north for the rapid transit underground system. It was submitted on behalf of the petitioners that the overhead manifestation of underground landing stairs was but insignificant and assuming without admitting that such landing stairs must be had there, if at all, only a portion of the south-east portion of the property of approximately 100 sq. ft. would be needed, of the total area of the petitioners' Petrol Pump consisting of 5140 sq. ft, approximately, that is, about 7 cottahs. It is the case of the petitioners that the respondent No. 1 agreed to investigate and find out the suitability of the alternative sites, viz. 20, Ganesh Chandra Avenue and 23, Chitta Ranjan Avenue, Calcutta. It was further stated that on the said alternative sites there were some kucha structures. It appears that thereafter the Land Acquisition Collector had referred the matter to the requiring authority, viz. Metropolitan Transport Project Railways and they by a letter dated 30th March, 1973 had intimated to the Land Acquisition Collector that the alternative premises would not suit them. The Land Acquisition Collector in his affidavit-in-opposition in answer to Rule Nisi, in the instant case, has stated that the suggestion of the petitioner company was referred to the Chief Project Engineer, M.T.P. Railways for consideration. The requiring authority, in reply, had intimated that the alternative accommodations, as suggested, would not suit the requirement of the requiring authority. The Land Acquisition Collector has further noted that the premises in question of the petitioners was acquired for a stair case for the use of the platform in connection with mass rapid transit system schedule. One Mr. Govind Narayan Fadke has affirmed an affidavit on 12th July, 1977 on behalf of the requiring authority. In his said affidavit he has stated, after giving the history of the scheme and the need for the said scheme, that at the time of the hearing of the objection, the proposed land acquisition plan, as per Gazette, was shown to the petitioners and at the lime of the hearing of the said objection, the petitioner company had prayed for exclusion of the petrol pump from acquisition and had suggested for the acquisition of adjacent premises, i.e. No, 20, Ganesh Chandra Avenue and 24, Chitta Ranjan Avenue, Calcutta. The said suggestion of the petitioner company was referred to the Chief Project Engineer for consideration. The requiring authority had intimated to the Land Acquisition Collector that the alternative premises, as suggested, would not be suitable. He has further stated that the requiring authority did not find any alternative suitable accommodation in that area on technical ground and therefore on consideration of the different aspect the Land Acquisition Collector had not entertained the suggestion for alternative sites.

The question that falls for consideration is how far any alternative accommodation suggested by a party whose land is proposed to be acquired requires to be considered by the Land Acquisition Collector before making his report u/s 5-A of the said Act. The main purpose of making a report u/s 5-A of the Act is to find out whether the purpose proposed is a public purpose and whether there is any objection to the acquisition of the land for the said purpose. Whether or not there is any alternative land which could be acquired or the purpose of acquisition would be better served by acquisition of any other property are not relevant as such but only relevant to the extent that if there is any alternative accommodation available which could be acquired without causing inconvenience or less inconvenience or the purpose intended would be better served by acquisition of that property and if the Land Acquisition Collector does not take that land into consideration for acquisition then the order and the report may become vulnerable as arbitrary. Now, in this case it appears that the Land Acquisition Collector was referred to certain alternative sites by the petitioners. The requiring authority stated that those sites would not suit them. It has been stated in the affidavit on behalf of the requiring authority that there were technical reasons why the said land, suggested as alternative sites, would not be suitable for the purpose intended to be served. It is not alleged that the preference of the requiring authority to the site in question of the petitioner for technical reason is mala fide or for oblique purpose. It is true that the requiring authority has not indicated any reason why for technical ground the alternative sites suggested has been found to be unsuitable. But it is not in all cases that the Land Acquisition Collector is required to go into the technical aspect of the preference in a particular acquisition proceeding. What he has to be satisfied, however, is that there are cogent reasons for not accepting the alternative property. To that limited extent, the Land Acquisition Collector is obliged to consider the question of any alternative site proposed to him. Reliance was placed on behalf of the respondent on certain observations of Basak, J. in the case of Saktipada Mandal and Others Vs. Collector, District Hooghly and Others, . There, the learned Judge had observed that whether the purpose of requisition or acquisition was a public purpose and whether the purpose is within the scope of the Act in question or not might be examined by the Court but if the requisition or acquisition was for public purpose and an order was passed for a purpose within the scope of the Act, then, according to the learned Judge that was the end of the matter so far as Courts were concerned. It was not for the Court, according to the learned Judge, to examine whether that object or purpose could be achieved by acquiring or acquisition of a particular land or not. It was a matter entirely for the Government and its officers to ascertain. The Court could not, learned Judge held, interfere in such a case or say that the particular object would be achieved by a particular land or not. If by aforesaid observations the learned Judge meant to indicate that what the Land Acquisition Collector was required to examine was whether a particular purpose was a public purpose and whether the land in question was adopted for that purpose then no exception could be taken to that view of the matter. But I do not think it was intended to be

laid down that if in a particular case for acquisition other alternative sites were available which were better suited and easily available even then if the acquiring authority rejects the alternative sites without reason it could not be said that the action of the requiring authority was not bona fide. Reference was made to certain observations of mine in the said decision of Banku Behari Dutt Vs. State of West Bengal, . There also the petitioner had suggested certain alternative sites but the requiring authority indicated that the alternative sites suggested would not suit the purpose on technical reasons. In my decision, I had indicated that fact. I also noticed that apart from that the Land Acquisition Collector in his order and in his affidavit had indicated that the alternative sites proposed would be more expensive.

3. Therefore, I found that the Land Acquisition Collector had exercised his functions properly and had not abandoned his discretion. But dealing with this aspect of the matter I had observed as follows (at p. 399):--

"Furthermore, in this case, the questions that the Land Acquisition Collector had to determine were whether there were any valid objections to the acquisition, if the purpose of acquisition was a public purpose and if the premises in question proposed to be acquired was a suitable premises; in these circumstances the fact that there was alternative suitable premises would not, in my opinion, entitle the objector to ask the Collector not to recommend the acquisition of the premises in question. In this case, therefore, the Collector was not obliged, in my opinion, to consider whether there was technical reason for preference of the premises in question unless it was suggested that the preference of the requiring authority was not a genuine preference but was for oblique and mala fide purpose. In such a case whether there are valid grounds for preference indicated by the requiring authority or not would become a relevant factor for consideration. But in the instant case there is no allegation that preference alleged by the requiring authority was for any oblique or ulterior purpose, In these circumstances, if the Collector has made his recommendation taking into consideration the preference though not supported by reasons of the requiring authority together with the fact that the proposed alternative sites would entail payment of more compensation for acquisition, in my opinion, it cannot be said that the Collector has not discharged his functions u/s 5-A of the Act or had abdicated his discretion in this matter."

In this case there is no separate reason of the Land Acquisition Collector as to why the alternative sites could not be acquired or should not be acquired. But here also there is no suggestion that the preference of the requiring authority for technical reason was for any oblique or ulterior purpose. Furthermore, it has not been indicated that the alternative sites were better suited for the purpose. Merely suggesting an alternative is not enough because the requiring authority or the acquiring authority is entitled to make a choice from several alternatives even assuming that they are alternatives. But it has to be indicated that the alternative sites proposed are better sites in the sense that either these would

better subserve the purpose of the requiring authority or that these would cause less hardship to the persons whose properties are being acquired or that these would be less expensive for the purpose. None of these suggestions was made on behalf of the petitioners. In the aforesaid view of the matter, I am unable to accept the challenge to the report u/s 5-A of the Act and consequently to the notification u/s 6 of the Act.

4. In the premises, this application fails and is accordingly dismissed. There will, however, be no order as to costs. The Rule is discharged.

5. The interim order will continue for a period of three weeks.