
(1967) 02 CAL CK 0001
In the Calcutta High Court

Durgapada Mukherjee

APPELLANT

Vs

Land Acquisition Collector, Burdwan and Another

RESPONDENT

Date of Decision : 17-02-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 144(g)
Land Acquisition Act, 1894 — Section 4, 5A, 6, 6(1), 6(2)

Citation : 71 CWN 499

Hon'ble Judges : S.K. Mukherjea, J;Arun Kumar Mukherjea, J

Bench : Division Bench

Advocate : A.K. Mukherjee and Nihar Ranjan Majumdar, for the Appellant;N.C. Chakrabarty and Manik Chandra Mitra, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mukherjea, J.—This is an appeal from a judgment and order January 7, 1966 by which the learned Judge discharged a Rule calling upon the Land Acquisition Collector, Burdwan, and the State of West Bengal to show cause why a Writ in the nature of mandamus should not be issued directing them to cancel or withdraw a notification dated November 3, 1961 and a declaration dated June 20, 1963 made u/s 4 and 6 of the Land Acquisition Act.

2. The Petitioner, who is the Appellant before us, is the owner of six acres of land in Asansol Sub-division in the district of Burdwan.

3. On February 12, 1960 a notification was issued u/s 4 of the Act by which it was notified that a piece of land was likely to be needed for a public purpose not being a purpose of the Union, namely for expansion of the factory of Sen Raleigh Industries of India Limited and for construction of quarters for their workers and staff and for providing other amenities directly connected therewith, such as schools, hospitals, markets etc. in certain villages. The Petitioner's land was covered by the said notification.

4. The Petitioner preferred an objection to the proposed acquisition u/s 5A of the Act on the ground that the land was not being acquired for a public purpose at all but for the purpose of the said company and the proposed acquisition constituted a fraud upon the powers conferred upon the State Government by the Land Acquisition Act. In November 1960, a local enquiry was held and eventually by a notification dated the 26th April 1962, the former notification was cancelled.

5. On November 3, 1961 a fresh notification was issued u/s 4 in respect of the same land, except for a small portion. It was notified that the land was likely to be needed for a public purpose not being a purpose of the Union viz. for industrial development at Asansol. The Petitioner's land was included in the said land.

6. The Petitioner again objected to the proposed acquisition u/s 5A of the Act and contended that although the Government was seeking to acquire his land ostensibly for a public purpose, in reality, the land was sought to be acquired for the purpose of enabling the private sector to acquire the land for a private purpose under the cover of industrial development at Asansol. The Petitioner claimed that the proposed acquisition was mala fide and not really intended to serve any public purpose as notified in the notification u/s 4 of the Act.

7. On July 20, 1963 a declaration was made u/s 6 to the effect that the said land was needed for a public purpose not being a purpose of the Union viz. industrial development at Asansol. In September 1963 a notice was served on the Petitioner u/s 9 intimating that the State Government was taking steps to secure possession of the land and the Petitioner should submit his claim for compensation. The Petitioner made further representations with no success.

8. On December 6, 1963 the Petitioner made an application under Article 226 of the Constitution. On that application the Rule was issued by the learned Judge out of which the present appeal arises.

9. The grounds taken by the Petitioner are that the notification and the declaration made under Sections 4 and 6 are invalid inasmuch as they are vague as to the purpose of the acquisition and do not state clearly the public purpose to be served by the acquisition, as a result of which the Petitioner has been deprived of his rights u/s 5A of the Act to object to the proposed notification. The other grounds taken by the Petitioner are that the real purpose of the proposed acquisition is to make available to Sen Raleigh Industries of India Limited land at a cheap rate for the extension of its factory premises and, therefore, the said notification, declaration and notice were issued by Respondents in colourable exercise of the powers conferred by the Act.

10. On behalf of the Respondents, I. Satyendra Kumar Mitra, the Land Acquisition Collector, Burdwan, has made an affidavit. He has denied that the notification and the declaration are vague or that the Petitioner was hindered in any way from making proper representations by reason of the vagueness of the notification.

11. He has added that assuming but not conceding that the Petitioner was entitled to any information, he did not, at any time, ask for such information. As for the allegation that although the State Government is seeking to acquire the land ostensibly for a public purpose, in reality, the purpose of the acquisition is to enable Sen Raleigh Industries of India Limited to acquire land cheaply for extension of its factory premises, the Land Acquisition Collector, in his affidavit says:

I submit that the notification will speak for itself and the apprehensions of the Petitioner are denied." Elsewhere, he says, -

"The allegations and submissions in the petition under reply to the effect that the acquisition is in reality for the purpose of Sen Raleigh Company are contrary to the impugned notification and declaration themselves.

12. These statements, of little assistance to the Court as they are, have been verified as submissions and not as statements true to his knowledge or based on information received by him and believed to be true.

13. On the question whether the notification and the declaration are vague as to the purpose of the acquisition and whether they convey any clear or adequate picture of the purpose to be served by the proposed acquisition, the learned Judge has held, and rightly held, that it is not necessary for the Government to give further particulars in the notification specifying the projects of industrial development or the industries which are sought to be established. In (1) Babu Barkya Thakur Vs. The State of Bombay and Others, , the Supreme Court held that it is not absolutely necessary to the validity of land acquisition proceedings that a statement that the land is sought to be acquired for a public purpose should find a place in the notification. The requirements of the law will be satisfied if, in substance, it is found on investigation that the land is needed for a public purpose.

14. Recently, in (2) Arnold Rodricks and Another Vs. State of Maharashtra and Others, , the Supreme Court rejected the contention that the purpose disclosed in a notification issued u/s 4 of the Land Acquisition Act notifying that "the land was likely to be needed for a public purpose viz. for development and utilization of the land as an industrial and residential area" in vague and is not genuinely or properly a public purpose.

15. The Petitioner cannot be heard to say that the purpose stated in the notification viz. that the land is likely to be needed for industrial development at Asansol, is vague or that the purpose disclosed in the notification, by itself, is not a public purpose.

16. The other contention that the Petitioner has been deprived of his right u/s 5A of the Act to object to the proposed acquisition by reason of the vagueness of the notification and want of particulars of the public purpose for which the land is likely to be needed, cannot be accepted. Apart from a bare statement of the

Petitioner which he made at the last stage in his affidavit, that he had asked for the relevant information, there is no evidence that he had really done so. Neither in the objection preferred by him u/s 5A nor in the petition, there is any hint that he ever asked for any information.

17. The learned Judge has observed that the proceeding u/s 5A has not yet been completed and the Petitioner has already filed an objection to the notification. He has not made any complaint of lack of particulars. If the Petitioner requires further particulars of the public purpose, referred to in the notification, he would be at liberty to obtain such information before his objection is heard by the Collector. If such information is refused he may possibly have another cause of action.

18. It appears, however, from the records that the Petitioner's objections have been finally disposed of. In fact, the Land Acquisition Collector himself says that the Petitioner's objections have been overruled. The declaration u/s 6 could hardly have been made if the Petitioner's objections had not been disposed of. It is, therefore not necessary in this appeal to decide whether the Petitioner has been prejudiced by the absence of particulars of the public purpose in preferring his objections u/s 5A of the Act. Since he has chosen not to ask for particulars at the proper stage, the question does not arise.

19. I may now turn to the more serious objection of the Petitioner that the real purpose of the proposed acquisition is not a public purpose at all but to make available to Sen Raleigh Industries of India Limited land at a cheap rate for the extension of its factory premises and that the notification and the declaration have been made in colourable exercise of the powers conferred by the Act.

20. The Land Acquisition Collector, in his affidavit, has neither denied nor admitted that the land is sought to be acquired for the purpose of extension of the factory premises of Sen Raleigh Industries Limited. It has never been the Respondents' case, a case they well might have made, that the land is needed for the purpose of Sen Raleigh Industries or of some other industry and that the said purpose is a public purpose, that is to say, industrial development at Asansol. In view of a number of decisions, it is not disputed that acquisition of land for the purpose of a company or for the purpose of an industry, in some circumstances, may be a public purpose.

21. Be that as it may, having regard to the allegations made by the Petitioner, the Respondents have a duty to state frankly and fairly, at least at the stage when the matter comes up before the Court, for what specific purpose the land is sought to be acquired and whether the land is sought to be acquired for the purpose alleged by the Petitioner.

22. In (3) Smt. Somavanti and Others Vs. The State of Punjab and Others, , the Governor, by a notification declared that the Petitioner's lands were likely to be needed for a public purpose viz. for setting up a factory for manufacturing various ranges of refrigeration compressors and ancillary equipments. The

Petitioner contended that his lands were not needed for a public purpose and the purpose disclosed in the notification was not a public purpose. In the affidavits, the State placed all the material facts before the Court on the basis of which the Court could come to the conclusion that the land was in fact needed for a public purpose. Reference was made to Section 6(3) of the Land Acquisition Act which provides that a declaration made u/s 6(1) and published in the Official Gazette u/s 6(2) shall be conclusive evidence that the land is needed for a public purpose. The Court held that the conclusiveness or finality attached to the declaration is not only as regards the fact that the land is needed "but also as regards the question that the purpose for which the land is needed is, in fact, a public purpose."

Mudholkar, J. in delivering the judgment was however careful to add:

Whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired is within the legislative competence of the State, the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside, for the moment, the purpose of a company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception, the declaration of the Government will be final:

He further observed:

If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been on the part of the Government a fraud on the power conferred upon it by the Act. In other words, the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of Section 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as Section 6(3) notwithstanding.

23. In this case, there is a specific allegation of colourable exercise of power and the real purpose of acquisition as alleged by the Petitioner, has been clearly indicated. In sharp contrast to the fair and full disclosure made in the affidavits by the State in (3) *Somawanti v. State of Punjab* and (2) *Arnold Rodricks v. State of Maharashtra*, (supra), no material has been disclosed in the affidavits by the Respondents from which the Court may come to any conclusion on the question. Not only has no material been disclosed but the specific allegation has also not

been traversed or at least, not traversed properly.

24. The Respondents, in my opinion, ought to have stated whether the apprehensions of the Petitioner are justified or not. The Land Acquisition Collector, I regret to say, has in his affidavit, evaded artfully, though ineffectively, answering the question whether the land is or is not sought to be acquired for the purpose of providing land cheaply to Sen Raleigh Industries of India Limited. As I have said, to acquire land for the purpose of a company may be a public purpose but when the question is pointedly raised, the Respondents must answer the question. In the present case, the Land Acquisition Collector has chosen not to answer. Merely to submit that the notification speaks for itself and to deny the apprehension of the Petitioner is to say little. It may mean that the Petitioner has no apprehensions or it may mean that what he apprehends is not going to happen. To say that his apprehensions are contrary to the notification and the declaration is to say less. No one is wiser by these submissions. At any rate, the Court is not.

25. Public Authorities enjoy large discretionary powers in public interest but these powers have to be exercised in good faith, openly and fairly. One of the tests of good faith is whether the authorities answer the question frankly and fairly when they are asked, for what specific public purpose these powers are sought to be exercised.

26. In the present case, the manner in which the Respondents have conducted themselves in dealing with the allegation of colourable exercise of power is the reverse of what is to be expected of Public Authorities.

27. I do not intend to say that the Petitioner's land is necessarily sought to be acquired for a purpose which is not a public purpose as declared in the notification, or that there are necessarily any mala fides in the matter but I do say that having regard to the nature of the allegation, the Respondents ought to have disclosed to the Court the specific purpose of the acquisition and whether the purpose is or is not what the Petitioner alleges it to be, the more so, when it transpires that the land was once sought to be acquired for the purpose of Sen Raleigh Industries of India Limited and on the objection of the Petitioner, the notification for acquisition was subsequently cancelled.

28. It is not merely the Petitioner who has a duty, as has often been said, not to suppress but to disclose all relevant facts and appear in Court with a clear conscience and clean hands. The duty is not less in the Respondents, especially when the relevant facts are peculiarly within the knowledge of the Respondents. This is not merely an abstract rule of ethics but a practical necessity dictated by circumstances. It arises, because in the absence of relevant material, the Court cannot do justice between the parties.

29. Here, in the absence of material which could have been brought before the Court by the Respondents alone, it is not possible for the Court to decide whether in the facts and circumstances of the case, there has been a colourable

exercise of power.

30. I do not again intend to say, that there has been necessarily a colourable exercise of power. Be that as it may, the question has to be decided and if the Respondents by not disclosing material facts and by refusing to answer the allegation of the Petitioner in clear terms make it impossible for the Court to decide it, the appeal ought to succeed because the allegation which can only be refuted by material which is solely and peculiarly within the knowledge and control of the Respondents, has been kept away from the Court by the Respondents.

31. It is true that it is for the Appellant to satisfy the Court that there has been a colourable exercise of power and in that sense, the onus of proof is on the Appellant. The Respondents, however, in a case like this, can hardly take shelter successfully behind a technical rule of evidence and reduce the Court into a mute spectator of events.

32. Half a century ago, the Privy Council in (4) *Murugesam Pillari v. Manickvasaka Pandara*, 44 Indian Appeals 98 deplored the practice of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof and failing accordingly to furnish to the Court the best material for its decision, and characterized it as "an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition." These views, reaffirmed by the Privy Council in (5) *Rameshwar v. Bajitlal*, AIR 1929 I 95, were endorsed and applied by the Supreme Court in (6) *Hiralal and Others Vs. Badkulal and Others*, .

33. The Indian Evidence Act does not, in terms, apply to affidavits but the principle underlying the illustration to Section 144(g), that is to say, the presumption that evidence which could be, and is not produced, would, if produced, be unfavourable to the person who withholds it, is of general application.

34. After all, when the proposed acquisition is impugned as acquisition in colourable exercise of power and there is a specific allegation of the real purpose of the acquisition, it is for the Respondents to disclose, except for good reasons, the relevant material or information, to enable the Court to pronounce on the matter and not to maintain a meaningful silence or indulge in equivocations and double entendres, rely on the doctrine of onus of proof and deflect the course of justice. For the Court to permit this to be done with success, will be to stultify itself, abdicate its functions and adjure its duties.

35. On the question, whether there was a demand for justice, learned advocate appearing for the State fairly conceded that the question was not raised at the hearing. We do not think it will be proper, in the facts and circumstances of this case, to permit the objection to be taken at this stage.

36. In view of the matter we have taken, the appeal succeeds. The order of the learned Judge is set aside and the Rule is made absolute. There will be no order as to costs. The order is made without prejudice to the rights of the Respondents to take such other steps as they may be entitled to under the law, for acquisition of the land which is the subject matter of the appeal.

Arun Mukherjea, J.

37. I agree.