
(1965) 01 CAL CK 0002
In the Calcutta High Court
Case No : Civil Revision Case No. 449 of 1960

Hari Narayan Biswas and Others

APPELLANT

Vs

The First Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 05-01-1965

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 16, 36, 48, 6, 9

Citation : 69 CWN 280

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Apurbadhan Mukherji and Murari Mohan Mukherjee, for the Appellant; Somendra Chandra Bose and Manas Nath Roy, for the Respondent

Judgement

Banerjee, J.—An improvement scheme known as Scheme Y-M, comprising an area of 14.8926 acres, including premises No. 34A to 34H, Canal Road, West, Calcutta, was notified u/s 43 of the Calcutta Improvement Act, on or about June 25, 1942, and received the sanction of the Governor, as required u/s 48 of the Act, on or about December 31, 1943. Thereafter, a notification u/s 4 of the Land Acquisition Act was published, on January 4, 1945, and a declaration, u/s 6 of the Act was published, on November 15, 1945. Subsequently, however, it transpired that the entirety of the area declared for execution of the improvement scheme was not required for implementation of the scheme. Thereupon, one Jiban Krishna Kundu Chowdhury (predecessor-in-interest of respondent No. 3), who claimed to be interested in some lands under acquisition, prayed for abandonment of the excess land, under the provisions of section 78 of the Calcutta Improvement Act. Thereupon, on August 20, 1951, there was an agreement entered into between the respondent No. 2, Trustees for the Improvement of Calcutta, and Jiban Krishna Kundu Chowdhury to the following effect: * * * *

2. The Applicant will-

- (a) acquiesce in the acquisition of the blue land by the Board,
- (b) buy the green land from the Board,
- (c) accept the exemption of the pink land from acquisition in the manner and on the terms specified in the Schedule hereto.

3. The Board and the Applicant will respectively duly perform and observe all other acts, matters and things specified in the Schedule hereto which on their respective parts are to be performed or observed and all acts, matters and things necessary for the purpose of carrying out the object and intention of the agreement recorded by these presents including the execution, acceptance and registration of a Deed of Conveyance of the green land in a form approved by the Board.

* * * * *

5. If the Applicant fails to prove his title to the pink land or fails to pay the expenses incurred by the Board in finding out encumbrances relating to the pink land, or if the Applicant fails to perform any act, or matter or things necessary for the purpose of carrying out the object and intention of the agreement recorded by these presents (sic.) and to resume the acquisition of the pink land under the Land Acquisition Act.

THE SCHEDULE ABOVE REFERRED TO

The Terms of Arrangement: Re: Premises No. 34A to 34H:

(a) The blue land, measuring 15 sq. ft. more or less, to be acquired by the Board under the Land Acquisition Act, for Rs. 109/-including statutory allowance and all interests other than tenant's interests.

(b) The green land, measuring 1 kottah 4 chittacks 15 sq. ft., more or less, to be purchased by the applicant for Rs. 6,354/-.

(c) The pink land, measuring 11 kottahs 10 chittacks 30 sq. ft., more or less, to be exempted by the Board from acquisition on payment by the applicant to the Board of a fee of Rs. 17,1001-.

(d) If on actual measurement the area of the green land differs by more than 5 per cent. from the estimated area mentioned in clause (b), the difference will be added to or deducted from the said sum of Rs. 6,354/- at the rate of Rs. 4,500/- a kottah.

(e) The further payment that may be made under clause (d), after verification of area shall be made by the applicant, within 14 days of demand, or the refund, if due to the applicant, will be made by the Board as soon as possible after ascertainment of the amount.

(f) The boundary of the pink land exempted shall be finally determined by the Board after the construction of the intended new road has been commenced.

(g) The applicant must refund forthwith Rs. 109/-, being the Land Acquisition Collector's award for the blue land, and pay Rs. 21,000/- in cash, within one month from the date of confirmation of these proceedings or within such further time as the Chairman may allow subject to payment of interest at 5 per cent. per annum. And the Board will accept such amount as full payment towards the purchase price of the green land and the exemption fee for the pink land, the necessary adjustment being made by reducing the purchase price of the green land by Rs. 635/- and the exemption fee by Rs. 1,710/-.

(h) If the amount awarded to the applicant by the Land Acquisition Collector for the blue land be less than Rs. 109/-, the applicant shall forthwith pay to the Board in cash the difference between the sum actually awarded and Rs. 109/-, towards payment of the exemption fee and the price of the green land.

* * * * *

Jiban Krishna Kundu Chowdhury and after him the respondent No. 3, it appears from the affidavit-in-opposition affirmed on behalf of the Trustees of the Calcutta Improvement Trust, failed to make payments in terms of the agreement, applied for extension of time to pay and even then failed to pay within the extended time, excepting in part. Thereafter, on April 18, 1958, the respondent No. 3, wrote the following letter to the Law Officer of the Calcutta Improvement Trust:

With reference to your letter No. VM 31/50 dated the 8th instant, I regret to inform you that owing to circumstances over which I have no control I am unable to make further payments and finalise the exemption of the above premises. I, therefore, request you to resume the acquisition proceedings of the premises and also request you to correspond with me at the above-noted address and oblige.

2. On the application of respondent No. 3, the Land Committee of respondent No. 2 passed the following resolution, which was approved by the respondent No. 2:

The committee considered the Chief Valuer's note dated 13th December, 1958, on the applicant's letter dated 18.4.58, and agreed to allow the applicant to resile from the exemption terms approved by the Committee on 20th June, 1951, and accepted by him, subject to the following stipulations:-

(1) That the party would accept refund of the amounts paid to the Trust, viz., Rs. 9,013/8/- towards the exemption fee and Rs. 3,019/14/- as interest, without claiming any interest thereon;

(2) That the party would waive claim to any compensation u/s 48A of the L.A. Act, viz., for the delay that has occurred in the acquisition of the land beyond two years from the material date; and

(3) That the party would refund to the Trust Rs. 7/-, being the old material value of the structure falling within the blue land which was acquired for Rs. 55/- as per terms of exemption,

and called upon the respondent No. 3 to accept the terms of the resolution. After

some attempts at variation of the terms, the respondent No. 3 accepted the resolution by a letter sent on his behalf, dated May 14, 1959, which is set out below:

Received your letter No. C.M. 65 dated 27/28 April, 1959 and in reply to it I have been instructed by my client to accept the resolution of the Land Committee dated 21.1.59 approved by the Board on 14.3.59 conveyed by the letter No. C.M.1279 dt. 16.3.55. Now I would request you to send the matter before the 1st Land Acquisition Collector, Calcutta to complete acquisition of the same at an early date, and also be pleased to refund the exemption fee of Rs. 9,013/8/- and the interest of Rs. 3,019/14/- already paid by my client.

3. The petitioners, who are 19 in number, allege that they are several tenants in the buildings standing on the land, which is the subject-matter of this Rule. They wrote a letter, dated May 25, 1959, to the Chairman of the Calcutta Improvement Trust in the following language:

We, the tenants of the premises referred to above, beg to inform you that it has come to our knowledge that our londlord Shri Bimal Krishna Chowdhury of 24, Radhakanto Jew Street, Calcutta-4, has approached you to purchase the premises No. 34A to 34H, Canal West Road, Calcutta-4, by your Trust. If it is a fact, we would fervently request you to kindly arrange so that our tenancy in the above premises may continue under your Trust, as otherwise we will be put to immense trouble, if we are ousted, from these premises specially during these hard days of house problem. We do not want any compensation from your Trust.

Further, we like to inform you that most of us are occupying the above as tenant since 1944 that is since the inception of the buildings (for about 16 years).

So we would request you again to kindly see that our tenancy may continue under you if your Trust purchase the above mentioned premises.

4. The Chief Valuer of the Calcutta Improvement Trust replied to the letter, on June 4, 1959, as hereinafter quoted:

In reply to your joint petition dated the 25th May, 1959, I have to advise you that it will not be possible for the Trust to agree to your proposal. The Trust would expect to obtain from the Land Acquisition Collector vacant possession of the above premises after acquisition.

5. They also wrote a similar letter to the Chairman of the Calcutta Improvement Trust, on September 8, 1959, but to no effect.

6. While the petitioners were corresponding to the above effect, further steps for acquisition of the land were being taken and, on September 22, 1959, there was an award made by the respondent Land Acquisition Collector, in respect of the land and structures thereon, for a sum of Rs. 1,46,407.58 nP., jointly with respondent No. 3 and the petitioners.

7. Aggrieved by the refusal of their prayers, the petitioners moved this Court,

under article 226 of the Constitution, praying for a writ of Mandamus restraining respondents Nos. 1 and 2 from depriving the petitioners of the possession of the land and for a Writ of Prohibition restraining the respondents from disturbing the possession of the petitioners in the land, and obtained this Rule.

8. Mr. Apurbadhan Mukherjee, learned Advocate for the petitioners, contended that after an acquisition was abandoned, on the execution of an agreement u/s 78(5) of the Calcutta Improvement Act, the acquisition proceedings cannot be revived on breach of the agreement, from the stage reached prior to the date of the agreement and any acquisition proceeding sought to be revived as such must not be sustained. Mr. Mukherjee further contended that if the authorities were minded to acquire the land, on breach of the agreement, they must start land acquisition proceedings afresh. In order to test the validity of these arguments, it is necessary for me to refer to the language of sections 69 and 78 of the Calcutta Improvement Act, which I set out below:

69. The Board may, with the previous sanction of the State Government, acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act.

Explanation.-The power of the Board to acquire land under the Land Acquisition Act, 1894, may be exercised not only in respect of lands falling within an improvement scheme already framed but also in respect of lands relating to which the Board may frame improvement schemes in future.

78. (1) In any case in which the State Government has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

(2) The Board shall admit every such application if it-

(a) reaches them before the time fixed by the Collector, u/s 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(3) If the Board * * * admit any such application, they shall forthwith inform the Collector; and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and if the Board decide to allow the application they shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(4) Within the said period of three months, or with the permission of the Board, at any time before the Collector has taken possession of the land, u/s 16 of the Land Acquisition Act, 1894, the person from whom the Board have arranged to

accept the sum so fixed may, if the Board are satisfied that the security offered by him is sufficient, execute an agreement with the Board, either-

- (i) to pay the said sum three years after the date of the agreement, or
- (ii) to leave the said sum out-standing as a charge on his interest in the land, subject to the payment in perpetuity of interest at such rate not exceeding six per cent. per annum as the State Government may fix by notification, and to make the first annual payment of such interest four years after the date of the agreement.

Provided that the Board may, at any time before the Collector has taken possession of the land u/s 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as foresaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of the proviso to that sub-section, in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) * * * * *

(8) * * * * *

(9) * * * * *

(10) * * * * *

(11) * * * * *

(12) * * * * *.

9. Now the question for consideration is whether the abandonment u/s 78(5) of the Calcutta Improvement Act has the same effect as withdrawal from acquisition u/s 48 of the Land Acquisition Act, which is couched in the following language

Completion of acquisition not compulsory, but compensation to be awarded when not completed-

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damages suffered by the owner in consequence of the notice or of any proceedings thereunder and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

10. Mr. Somendra Chandra Bose, learned Advocate for the Land Acquisition Collector, as also Mr. Manas Nath Roy, learned Advocate for the Trustees for the Calcutta Improvement Trust, both contended that section 69 of the Calcutta Improvement Act brought into operation the provisions of Land Acquisition Act for acquisition of land and there can be no abandonment or withdrawal of the acquisition unless done under the provisions of section 48 of the Land Acquisition Act. The effect of abandonment of land, u/s 78(5) of the Calcutta Improvement Act, was, they contended, merely postponement of the acquisition under the terms of the agreement.

11. The learned Advocates further relied on the language of clause (5) of the agreement, hereinbefore set out, and contended that the authorities were competent to resume the acquisition on breach of the agreement.

12. In my opinion the broad contentions raised. on behalf of the respondents, Land Acquisition Collector and the Trustees for the Improvement of Calcutta are unworthy of acceptance. Section 69 of the Calcutta Improvement Act no doubt imports the provisions of the Land Acquisition Act for the purposes of the acquisition of land. But abandonment of acquisition is not acquisition and there is no reason why the special provisions for abandonment of acquisition, as in section 78(5) of the Calcutta Improvement Act, should not put an end to the land acquisition proceedings started u/s 69 of the Act. Once there is an abandonment of acquisition, there may be a fresh acquisition of the same land, u/s 80 of the Calcutta Improvement Act, by publication of a fresh declaration u/s 6 of the Land Acquisition Act. That procedure was not adopted in the instant case. Whether the old land acquisition proceedings can be revived against a party to the agreement for abandonment, on breach of the agreement, I need not decide in this case, because the petitioners were not parties to that agreement.

13. In the view that I take, I have to sustain the grievance made by the petitioners. Indisputedly they have their respective tenancy rights in the disputed land. After the abandonment of the old acquisition proceedings, their rights can only be acquired by fresh acquisition proceedings according to law. Not having done so, their interests cannot be acquired by the purported revival of an abandoned land acquisition proceeding. Whether the revived land acquisition proceeding has resulted in the acquisition of the interest of the respondent No. 3, I do not decide, particularly because he does not object to the acquisition of his interest under the procedure adopted. This may necessitate the making of a fresh award in his favour but I do not even decide that. I merely hold that the petitioners are not bound by the acquisition of their interest in the land as sought to be made and by the award as published.

14. Let a mandate issue restraining the respondents Nos. 1 and 2 from disturbing the possession of the petitioners in the disputed land. This Rule is

made absolute without any order as to costs.