

(1921) 02 CAL CK 0001
In the Calcutta High Court
In Re: Manick Chand Mahata

Date of Decision : 16-02-1921

Acts Referred:

Calcutta Municipal Act, 1923 — Section 20, 357, 556
Land Acquisition Act, 1894 — Section 6(3)
Specific Relief Act, 1877 — Section 45(e)

Citation : 66 Ind. Cas. 600

Hon'ble Judges : Greaves, J

Bench : Single Bench

Judgement

1. On the 6th January last I granted a rule at the instance of Manick Chand Mahata sailing on the Calcutta Corporation and the Calcutta Improvement Trust to show cause why they should not be restrained from acquiring or taking any further steps to acquire the premises No. 38, Banstolla Street, in this City, the property of Manick Chand, and the rule now comes before me for hearing. Manick Chand purchased the premises now in question in June 1919 for a sum of Rs. 72,000, so he stated, and On the 25th February 1920, he obtained the sanction of the Corporation to the creation of a new building on the site outside the Municipal alignment of Banstolla Street. He states that he has erected on the site, in accordance with the sanctioned plan, a new building at a cost of over Rs. 70,000, and that the market value of the premises is Rs. 2,50,000. On the 13th November 1920, he received notice from the Land Acquisition Collector of Calcutta that the premises were about to be acquired by Government for the widening of Banstolla Street.

2. It appears that, on the 7th April 1920, a resolution was passed by the Corporation in the following terms:

3. That the proposal to acquire premises No. 38, Banstolla Street (falling within the Barabazar alignment) under the provisions of the Land Acquisition Act at the cost of "the Trust be sanctioned."

4. The Trust is the Improvement Trust as would appear from the proceedings of the Corporation wherein the following appears:

Acquisition of 38, Banstolla Street. The Committee were asked to consider the question of acquisition of premises No. HS, Banstolla Street falling within the Barabazar alignment of the Improvement Trust.

Sanction has been accorded to the construction of a new three-storied building at No. 38, Banstolla Street, which falls entirely within the Improvement Trust's 60 feet north and south alignment in the Barabazar not yet sanctioned by Government, The Trust propose that the property be acquired under the Land Acquisition Act, the cost being borne by them. The estimated cost of acquisition is Rs. 59,300.

Resolved: That the proposal to acquire premises No. 38, Banstolla Street (falling within the Barabazar alignment) under the provisions of the Land Acquisition Act at the cost of the Trust be recommended for sanction.

5. Manick Chand alleges, and it is not denied, that the Improvement Trust have not obtained or even applied for sanction to any scheme affecting Banstolla Street and that the Board of Trustees of the Trust have not passed any scheme for widening that street, and that the Corporation have obtained no sanction from the Local Government for any project in connection with Banstolla Street.

6. The Calcutta Gazette of the 25th August 1920 contains the following Declaration No. 7087 L. A., dated the 20th August 1920:

Whereas it appears to the Governor in Council that land is required to be taken by Government at the expense of the Corporation of Calcutta for a public purpose, viz, for widening Banstolla Street at No. 38 in the Town of Calcutta, it is hereby declared that for the above purpose a piece of land measuring, more or less, 1415 of an acre bounded on the north by premises No, 37 and 39, Banstolla Street, east by premises No, 37, Banstolla Street, south by Banstolla Street, west by public passage, is required within the aforesaid Town of Calcutta. This declaration is made, under the provisions of Section 6 of Act I of 1894, to all whom it may concern.

7. It is signed by the Secretary to the Government of Bengal.

8. An affidavit was filed by the Deputy Surveyor of the Corporation on their behalf in which he states (paragraph 6) that the Board of Trustees have in contemplation a scheme for a proposed public street u/s 63 of the Calcutta Improvement Act affecting 38, Banstolla Street, and that they requested the Corporation to take steps to acquire those premises to keep down the expense of acquiring the same later on, and that, accordingly, the resolution of the Corporation was passed and it was arranged with the Board of Trustees that the Board should pay the cost of acquisition to the Corporation, which has been done.

9. The Advocate-General on behalf of the Corporation contended that the rule should not be made absolute on three main grounds: (i) That u/s 357 of the Calcutta Municipal Act, 1899, the Chairman, with the approval of the Corporation, may acquire any land and the building thereon for widening,

extending or otherwise improving any public street and that, u/s 556 of the same Act, the Corporation may acquire any land and buildings needed for carrying out any of the purposes of the Act, and that the provisions of these sections are not necessarily confined to cases where the Corporation is going itself to do the widening and that, in any case, the street, when widened, would be handed over to the Corporation. The second ground urged against making the rule absolute was that the procedure u/s 45 of the Specific Relief Act was not applicable having regard to Sub-sections (o) and (e), it being suggested that Manick Chand had another specific and adequate legal remedy, namely, by suit, and that the remedy was not complete, as the matter was now in the hands of the Land Acquisition Collector and the Local Government who could not be restrained u/s 45. Thirdly, it was urged that u/s 6 (3) of the Land Acquisition Act, 1894, the declaration of the 20th August last was conclusive evidence that the land was needed for a public purpose, and that u/s 48 of the Act the Government alone could withdraw from the Land Acquisition proceedings. On behalf of the Improvement Trust, Mr. Langford James relied, in addition to the above, on Section 52 of the Land Acquisition Act and on the meaning given to the word "conclusive" in Section 4 of the Indian Evidence Act.

10. I can dispose of Mr. Langford James' arguments very shortly. Section 52 of the Land Acquisition Act clearly has no application, as these are not proceedings commenced against any person for anything done in pursuance of that Act whatever the indirect effect may be of any order which I may make. And as regards Section 4 of the Evidence Act and Section 6 (3) of the Land Acquisition Act the fact that the declaration may be conclusive as to the land being needed for a public purpose does not, I think, in any way debar me from enquiring into the validity of the steps which led up to that declaration.

11. On behalf of Manick Chand, I was referred to Section 20 of the Municipal Act and the necessity of the sanction of the Local Government (which it is not suggested has been obtained) having regard to the fact that the cost of acquisition, it is said, must exceed one lac of rupees.

12. I now come to the three points urged by the Advocate-General. With regard to the first point, I am inclined to think that Section (1916) (sic)⁷ : 1 K. B. 595 : 85 L. J. K. B. 630 : 114 L. T. 463, 32 T. L. R. 211. of the Calcutta Municipal Act does not assist the Corporation as the land is outside the street alignment. Sub-section (2), again, cannot be called in aid on their behalf as no sanction of the Local Government has been obtained. Section 556, again, does not help them having regard to the fact that, under the provisions of Section 558, it is only on payment of the compensation moneys by the Corporation out of Municipal funds that the land or buildings acquired vest in the Corporation.

13. But, on broad grounds, I do not think that it was ever the policy of the Calcutta Municipal Act that the special powers given to the Corporation for acquiring land for certain purposes named in the Act were to be used to enable another body to acquire land through the medium of the Corporation, however

estimable the purpose. If this were so, the Corporation could use its power under Chapter XXV of the Act to acquire land for a private Corporation minded to erect for profit, sanitary dwellings for the poorer classes, or minded to improve Calcutta by removing slum areas and erecting dwelling houses on the area cleared. This, I do not gather from the Act, was the intention of the Legislature, and I think the powers of acquisition of land under the Act are limited to cases in which the Corporation itself is going to widen a street or effect an improvement. Again, I do not think that the Legislature, when, under the Calcutta Improvement Trust Act, it conferred powers of acquisition of land with certain well-defined safeguards, ever intended that the Trust should abrogate those safeguards and acquire land in this manner through the medium of the Corporation for the purpose of street widening and street improvements.

14. It remains to deal with the second and third points raised on behalf of the respondents.

15. With regard to the second point, I think "specific and adequate remedy" in sub-section (d) of Section 45 of the Specific Relief Act refers not to a general right of suit which must, unless expressly barred, always exist, but to some specific remedy expressly given by a particular Act. Again, with regard to Sub-section (e), am I to assume that the Local Government and the Land Acquisition Authorities will ignore any injunction which I may grant and continue the acquisition proceedings? It will be sufficient I think, in this connection to assume that they will stay their hands in view of my decision and not be parties to what I hold to be illegal and ultra vires action on the part of the Calcutta Corporation and the Improvement Trust. As to this see, generally, *Rex v. Speyer* (1916) 1 K. B. 595 : 85 L. J. K. B. 630 : 114 L. T. 463 32 T. L. R. 211. and the statement by Lord Beading, C. J., on page 610: "This is the King's Court: we sit here to administer justice and to interpret the law of the realm in the King's name. It is respectful and proper to assume that once the law is declared by a competent judicial authority it will be followed by the Crown." A statement which I venture to think is as apposite here in India as in the United Kingdom.

16. With regard to the third point, I have already expressed my opinion and I see nothing in Section 6 (3) of the Land Acquisition Act to prevent me inquiring into the legality and otherwise of the acts of the Calcutta Corporation and of the Improvement Trust. I make the rule absolute with costs against the Corporation and the Trust

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