
(1987) 05 CAL CK 0014
In the Calcutta High Court
Case No : F.M.A.T. No. 3645 of 1986

Jiban Krishna Karmakar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-05-1987

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 4, 5A, 6, 6(1)

Citation : 92 CWN 226

Hon'ble Judges : Mahitosh Majumdar, J;M.N. Roy, J

Bench : Division Bench

Advocate : Kunja Mohan Sinha and Swadesh Bhusan Bhunia, for the Appellant;K.N. Laha for the Respondent Nos. 1 and 2, Kamalesh Banerjee for the Respondent No. 4 and Rameshwar Saha for the Respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

Mahitosh Majumder, J.—This appeal is directed against the judgment and order passed by Mr. Bhagabati Banerjee J. on 28th November, 86 in C.O. No. 144491(w)/85. Sri Jiban Krishna Karmakar, the founder and head master of Vivekananda Missionary Institution at No. 8/B, Dum Dum Road, Police Station - Cossipore, Calcutta-700030 (for short the writ petitioner hereafter) filed a writ petition in the Hon'ble Court challenging the declaration being No. 11702LA dated 24th September, 1981 and an award made by the First Land Acquisition Collector on 10th September, 1985. The declaration impugned in the writ petition is contained in Annexure 3 to the writ petition, which reads thus : - THE CALCUTTA GAZETTE, EXTRAORDINARY, OCTOBER 1, 1981 CALCUTTA - No. 11702LA/IS-6/79 dated 24th September, 1981 Whereas the Governor is satisfied that land is needed for a public purpose, namely, for the construction of the new school building of the Kumar Ashutosh Institution (Main) Dum Dum, Calcutta, in ward no. 2 of the Calcutta Municipality in the City of Calcutta, it is hereby declared that a piece of land comprising premises no. 8B, Dum Dum Road (portion) and measuring, more or less 1.070 of a hectare (2.645 of an acre) and

bounded on the

North : By private passage appertaining to premises no. 9, Dum Dum Road.

East : By 8A, 8C and 8D, Dum Dum Road.

South : By private passage appertaining to premises no. 8A, Dum Dum Road.

West : By remaining portion at 8A and 8B, Dum Dum Road is needed for the aforesaid public purpose partly at the public expense and partly at the expenses of the Kumar Ashutosh Institution (main,) within the aforesaid Ward No. 2 of the Calcutta Municipality in the City of Calcutta.

This declaration is made under the provision of Section 6 of Act 1 of 1894 to all whom it may concern.

A plan of the land may be inspected in the office of the First Land Acquisition Collector, Cal-5 Bankshali Street, Cal-1.

The writ petitioner did not annex a copy of the award. The factual matrix as cast in the writ petition presents short history of the earlier writ petition being C.O. No. 7157(w)/81 wherein the writ petitioner challenged the legality and validity of the Notification u/s 4 of the Land Acquisition Act, 1894 (for brevity the said Act hereafter) praying, inter alia, for quashing the said notification and for a mandate upon the respondents to forbear from giving any effect or further effect to the said notification. The Notification u/s 4 of the said Act which was challenged in the C.O. No. 7157(w)/81 is contained in Annexure A to the writ petition at page 24 of the Paper Book. Grounds of challenge in the earlier writ petition were that being a tenant in respect of the land more or less 16 cottahs the writ petitioner ought to have been treated as one of the objectors and his objection, though filed out of time, should have been entertained, considered and disposed of by the concerned authorities on merits. In support of the contention as raised in the writ petition that the concerned authority did not act properly, the writ petitioner annexed certain documents as contained in Annexure B,C,D,E,F and G to the writ petition. The said writ petition was disposed of by Mr. Justice Basak on 8th June, 1981 by the following order : -

After hearing the learned Advocates for the parties, I pass the following order. It is recorded that none of the learned Advocates object to the order being passed.

The objection of the petitioner, though filed out of time, be accepted, considered and disposed of by the authorities concerned on merits and the final order be passed by 31st July, 1981 after giving the petitioner personal hearing and after the appropriate "authorities making local inspection upon notice to the petitioner.

The application is, thus, disposed of.

I make it clear that I have not gone into the merits of the case.

2. From a reference to the said order it appears that order was passed by this Court in the absence of the respondent no. 4. It is also very interesting to note

that the Requiring Authority namely, Kumar Ashutosh institution (Main). (for short" the said Institution) Boys Service was not made one of the respondents in the writ petition and the said landlord Brojendra Nath Halder nor the said Institution had any occasion either to represent in the matter nor had any knowledge of the order passed by this Court on 8th June, 1981. After the passing of the order passed by this Court in the aforesaid C.O. No. 7157(w)/81 the writ petitioner did not inform the respondents the gist of the order nor did they send xerox copy of the certified copy of the order to the First Land Acquisition Collector although the writ petitioner was repeatedly asked to send the same. In the background of factual aspect of the matter as detailed above the writ petition was moved on 7th, October, 1985 against the declaration issued as far as back on 24th September, 1981 for quashing the same after lapse of 4 years from the date of issue of the declaration. The grievance of the writ petitioner was that inspite of an order passed by this /Court on 8th June, 1981 the respondents failed and neglected to carry out the directions passed by this Court though they were fully aware of the order passed by this Court. As the order was passed in presence of the learned Counsel appearing for the State, it was also the case of the writ petitioner that he was under the impression that the proceeding had been dropped since the respondents did not take any step to carry out the order passed by this Court. After lapse of 26 months from the date of the passing of the order of this Court the writ petitioner sometimes in the month of August, 1983 sent a letter to the First Land Acquisition Collector to the following effect : -

Kindly refer fro the order passed by His Lordship the Hon''ble Mr. Justice B.C. Basak on 8/6/81 in respect of the aforesaid land. The matter has been closed for ever. But now 1 understand that you have permitted Kumar Ashutosh Institution (Main) Boys Section to acquire the said land and they are trying to do so.

Since it amounts to clear contempt of Court, I would request you not to allow said Institution to disturb my possession of the said land in any way. In case I do not hear anything from you within two weeks from the receipt of this letter it will be deemed that you do not want to obey the order of the Hon''ble High Court and in that event, I will be forced apply for contempt of Court against you which please note.

3. It was stated in paragraph 19 of the writ petition that two years thereafter sometimes in August, 1983 the authorities of the Kumar Ashutosh Institution (Main) Moys attempted TO encroach upon the disputed land and as impugned notification u/s 4 of the Land Acquisition Act, 1894 related to the acquisition of the land which is in possession of the writ petitioner, the writ petitioner thought that the encroachment was made at the instance of the respondent no. 2. From the facts as disclosed from the letter dated 12th August, 1983 as also in paragraph 19 of the writ petition if would be evident that the writ petitioner did not take up the matter with the concerned Land Acquisition Collector for effective implementation of the order passed by this Court on 8th June, 1931 nor did they make any enquiry in the office of the Land Acquisition Collector as to whether

there was any declaration under the relevant section of the said Act in respect of the land being a portion of the premises no. 8B, Dum Dum road which was said to be in possession of the writ petitioner. Thereafter, the writ petitioner caused an enquiry to be made in the master and came to know that the respondent no. 2 in flagrant violation of the solemn order passed by this Court, illegally, mala fide and arbitrarily made a declaration u/s 6 of the said Act and also made an award dated 10th September, 1985. It was also the grievance of the writ petitioner that the respondent no. 2 without giving any notice to him who was said to be the tenant in respect of the disputed land and which fact was known to the respondent as made in the correspondence to the writ petition made an award. The writ petitioner also referred to the Title Suit No. 184 of 1984 before the Munsif, 3rd Court, Sealdah which ultimately went in favour of the writ petitioner before the Trial Court. A proposal for acquisition of 16 cottahs of land being a portion of premises no. 8B, Dum Dum Road, Calcutta-30 was initiated under Department Memo No. 493-Eduz (s) dated 22nd April, 1977. Pursuant to the same a notification u/s 4 of the said Act bearing No. 173-LA dated 13th December, 1979 was published in the Calcutta Gazette for acquisition of the land for a public purpose namely, for the construction of New School Building of the said Institution measuring 2,645 of an acre in respect of premises no. SB, Dum Dum Road (portion) as it was required by Education Department. Lastly Mr. Bhunia contended that there was no sufficient compliance of section 6(1) of the said Act by reason of the token grant of Rs. 10/- constituting infinitesimal part of the owner and non-deposit of that amount either before and after the issue of declaration u/s 6 of the said Act.

4. The case of the respondents no.1 and 2 was that the records revealed a substance of notification u/s 4 of the said Act was published on the spot, local thana, notice board of the First Land Acquisition Collector's Office and Calcutta Collectorate on 31/3/80 inviting objections from the interested persons within one month from the date of such publication on the spot. Only one objection petition u/s 5A of the said Act was received from the owners of the Land, respondent no. 4 within the statutory period which was heard on 6/6/80 and by a report u/s 5A was disposed of on 30/7/80. The writ petitioner did not file his objection u/s 5A of the said Act in time. Objection filed by the writ petitioner on 17th July, 1980 was rejected by First Land Acquisition Collector. The last date for filing objection petition having expired, the said objection could not be taken up for consideration and the writ petitioner was duly informed of the said decision of the authority by letter dated 8th September, 1980 as contained in Annexure E to the writ petition. Before publishing the declaration u/s 6 of the L.A. Act on 1/10/81 the site was inspected and it was found that the portion of the land viz. 16 cottahs to be acquired mostly consisted of a tank and low vacant land lying in a desolate state for a long time. The portion of land. (4 cottahs) occupied by the writ petitioner was separate and unaffected by the said acquisition.

5. It was also specifically stated by the respondents no. 1 and 2 that after the passing of the order passed by this Court on 8th June, 1981 the writ petitioner

did not communicate the full text of the order passed by this Court to the First Land Acquisition Collector. In the absence of any communication of the aforesaid C.O.No. 7157(w)/ 81 could not be carried out. The writ petitioner without enclosing a copy of the order dated 8th June, 1981 informed the respondent no. 2 the matter is closed for ever". The respondent no. 2 by his letter no. 1614LA dated 5th September, 1983 requested the writ petitioner to send a copy of the court's order dated 8th June 1981. The said letter dated 9th September 1983 had not been annexed to the writ petition nor the same was produced before us, but after repeated insistence by the learned Counsel appearing for the writ petitioner to produce the same both on 13th May and 15th May, 1987 the original copy of the said letter bearing Memo No. 1614LA dated 9th September, 1983 addressed to Sri J.K. Karmakar, was produced. The said Memo dated 9th September, 1983 reads thus : -

With reference to his letter quoted above, he is requested to submit a copy of the said order passed by Hon'ble Justice B.C. Basak on 8/6/81 in respect of the aforesaid land within two weeks from the receipt of this letter positively".

6. The writ petitioner thereafter sent a letter dated 7th September, to the Land Acquisition Collector to the following effect : -

I am in receipt of your Memo No. 1614LA date 5/9/83 and have noted the contents. I have applied for the certified copy of the order of the Hon'ble High Court and shall produce a xerox copy of the same to you as soon as it is available.

7. The fact of the exchange of the letters was neither disclosed in the writ petition nor the same were filed as Annexures in the writ application.

8. Despite the repeated requests the writ petitioner did not furnish a xerox copy of the order passed by the Court on 8th June, 1981. Further case of the said respondents no. 1 and 2 was that the Enquiring Officer of the Office of the respondent no. 2 met with the learned Advocate of the petitioner and also his junior for the aforesaid but they did not co-operate by supplying the copy of the order of the Court dated 8th June, 1981. It was asserted by the said respondents no. 1 and 2 that it would be evident from the copy of the certified copy of the order passed by the Court on the 8th June 1981 (Annexure H to the writ petition) that the writ petitioner obtained certified copy on 16th December, 1983 after applying for the same on 29th November, 1983. The writ petitioner, after obtaining the certified copy of the said order did not supply the copy of the said order to respondent no. 2. In the affidavit-in-Opposition filed on behalf of the respondents no. 1 and 2, it was stated that the writ petitioner himself categorically informed respondent no. 2 by his letter dated 7th September, 1983 that he had already applied for the certified copy of the order and produce xerox copy thereof as soon as it was available but in fact the writ petitioner did not apply for the certified copy till 29th November, 1983.

9. Respondent no. 2 duly and validly complied with the provisions of the said Act

and thereafter possession of the 2645 of an acre of land at 8B, Dum Dum Road, Cal-30 was made over to the respondent no. 5 on 18th September, 1985 and certificate of possession was issued on the said date. It was also the case of the respondents no. 1 and 2 that the proper authority to hear objection u/s 5A was the respondent no. 2 but the writ petitioner went on making correspondence with the Director of Public Instruction without informing the respondent no. 2. After hearing objection of the respondent no. 4 u/s 5A of the said Act, the concerned authority made declaration u/s 6 of the said Act. The said declaration was published in the Gazette in 1st October, 1981 after inspection of the site.

10. The respondents no. 1 and 2 in the Affidavit further stated that the writ petitioner had all along been referring to the order of B.C. Basak J. passed on 8th June, 1981, but did not serve a copy thereof upon the respondents no. 1 and 2 so as to enable them to hear his time-barred application u/s 5A of the said Act in effective compliance of the order passed by this Court. The writ petitioner rather falsely stated in the letter dated 7/9/83 that he had applied for certified copy of the order passed on 8th June, 1981 by this Court and further promised to send a xerox copy of the said order as soon as the same would be available. The writ petitioner was aware of the fact that the application for certified copy was not made till 29th November, 1983. Without the application for certified copy of the order dated 8th June, 1981 the writ petitioner made incorrect statement so as to create confusion in the matter. It was specifically claimed by the respondents that the petitioner never communicate the gist or contents of the said order. A token grant of Rs. 10/- in terms of G.D. No. 453-Edn (s) dated 22nd April, 1983 was placed at the disposal of the Land Acquisition Collector, Calcutta to legisse the L.A. Proceedings in respect of premises no. 8B, Dum Dum Road, Cal-30.

11. The case of the landlord respondent no. 4 was that he was not served a copy of the writ petition being C.O.No. 7157(w)/81. In the affidavit-in-opposition it was asserted that no notice of hearing was served upon the landlord and the said matter was not decided in his presence.

12. Serious grievances of the respondent no. 4 was that without a notice of hearing to the respondent no. 4 C.O.No. 7157(w)/81 was decided in his absence.

13. The case of the respondent no. 5 as it appeared from Affidavit-in-Opposition, the said institution was not a party to the earlier writ petition in C.O.No. 7157(w)/81. The earlier writ petition was decided without impleading the respondent no. 5 as one of the respondents. The case of the respondent no. 5 that instant writ petition was moved without serving copy of the writ petition on the respondent no. 5. The respondent no. 5 not having been served with a copy of the writ petition requested the learned Advocate for the writ petitioner by a registered letter dated 21st November, 1985 to supply the said institution with a copy of the said writ petition. The said letter was duly acknowledged by the learned advocate for the writ petitioner on 21st November, 1985 but no copy was supplied to the respondent no. 5 and the respondent no. 5 having failed to obtain the copy of the application from the learned Advocate of the writ petitioner

approached the respondent no. 2 for obtaining a copy of the said writ petition. Ultimately respondent no. 2 made a copy of the writ petition available to the respondent no. 5. It was also the case of the respondent no. 5 that the land which is sought to be acquired for the development and expansion of the school building of the said Institution is a piece of land and a portion of premises no. 8B, Dum Dum Road measuring about 2645 of an acre nearly equivalent 16 cottahs of land. At all material times, the land was vacant. The writ petitioner was not in possession of any portion of the aforesaid land and the land was in fact needed for expansion and development of the said Institution for accommodation and for the teaching guidance of more than one thousand students.

14. The Institution has only at the relevant time three storied building and there is no space for expansion. The said Institution was established in the year, 1933 and it is a premier Institution of the locality. The recent report of the education department revealed the needs of the development of the Institution which is now co-education Institution of Classes 11 and 12 to accommodate the students already in the Institution and the growing demand of the students of the locality and the said Vivekananda Missionary Institution of which the writ petitioner claims to be the founder Headmaster is not one of the recognised Institution under the West Bengal Secondary Board of Education nor the said Institution was recognised by the Government of "West Bengal. The portion of land occupied by the writ petitioner's said Institution was separate and distinct and no portion of the said land was acquired by the aforesaid acquisition. The said Institution is no way connected with any (Mission.

15. It was further the case of the respondent no. 5 that the acquisition was complete by the publication of the Notification u/s 6 of the Land Acquisition Act and there being delay in giving possession of the land after depositing the sum of Rs. 59,920/- on 18/5/83 by respondent no. 5 in pursuance of the letter of respondent no. 2 under Memo No. 1023LA dated 20/4/83, the said respondent no. 5 by its letter under Memo No. K/LA/32/84 dated 13/7/84 through the Headmaster requested the respondent no. 1 to arrange for giving possession of the said land at an early date. In pursuance of the letter dated 24/4/83 the respondent no. 5 deposited the entire money.

16. The respondent no. 2 failed to collect the copy of the order of the Court dated 8/6/81 inspite of its best effort and fixed inspection and necessary action u/s 11 of the said Act on 25/6/85 and respondent no. 5 was informed through a office copy of the letter by Memo No. 726/1-LA dated 24/6/85. Thereafter hearing u/s 11 of the said Act was fixed on 29/8/85 and respondent no. 5 was informed by copy of the letter under Memo No. 1011/1-LA dated 20/ 8/85. After all the proceedings contemplated under the law being completed, date of possession was fixed on 18/9/85 and possession of the land in question was duly delivered to respondent no. 5 and a certificate of possession was also issued on 18th September, 1985.

17. Mr. Swadesh Bhunia, the Learned Senior Advocate appearing in support of the appeal submitted that the orders impugned in the writ petition are wholly illegal and without jurisdiction as the respondent Nos. 1 and 2 without complying the order passed by the court on 8th June, 1981 issued declaration u/s 6 of the said act. Mr. Bhunia further submitted that the purported acquisition was made without giving notice to the writ petitioner and the decision taken by the concerned authorities was vitiated by violation of the order passed by Mr. B.C. Basak, J. on 8th June, 1981.

18. The next contention of Mr. Bhunia that the respondents did not at all apply their minds to the facts of the present case and purported to have completed the acquisition proceedings contrary to the provisions of the said Act without serving any notice to the writ petitioner and without giving him any opportunity of being heard even when directed by this court to do so. Mr. Bhunia further claimed that the judgment and order of the Learned Court below could not be sustained by reason of non-consideration of the basic grievance of the writ petition as made in the writ petition, Award impugned in writ petition having been made without complying with the relevant provisions of the said Act is invalid, illegal and inoperative in law. That the token grant of Rs. 10/- demonstrated that section 6(1) of the said Act was consciously bypassed and it was colourable exercise of power. Mr. B.C. Dutta appearing for the respondent No. 5 seriously resisted the pleas of Mr. Bhunia by contending inter alia that the instant writ petition was utterly misconceived by reason of nondisclosure of material fact. Mr. Dutta also submitted that the petitions had once acquiesced in proceedings without raising any objection, after order was passed by this court and allowed subsequent events to take place. Mr. Dutta further submitted that the award once being passed, the writ court ceased to have any jurisdiction to set aside the award which was neither annexed with the petition nor the declaration was effectively challenged. The order passed on 24th September, 1981 could not be challenged in the year 1985 by reason of the unexplained delay and laches on the part of the writ petitioner. Mr. Dutta submitted that the writ petitioner did not deliberately and consciously disclose the facts relating to the letters dated 5th September, 1983, and 7th September, 1983. It is also seriously contended by Mr. Dutta that the other letters namely, letter dated 21st September, 1983 and letter of Late Ganga Narayan Chanda, the learned Advocate dated 24th September, 1983 were deliberately also held back from this Court for the purpose of leaving an impression that there was no action on the part of the State respondents in complying with the order of this court passed on 8th June, 1981. The said two letters dated 21st September, 1983 and 24th September, 1983 are set out hereinbelow : -

(1) "With reference to his letter quoted above, he is requested to furnish a copy of the order of the Hon"ble High Court along with a Xerox copy of the same by 30.9.83 positively.

If he fails to submit the same by this time, necessary action would be taken as

per law."

(2) "Although my client Sri J.K. Karmakar by his letter dated 7.9.83 has already informed you that he has applied for certified copy of the order but he has not yet received the same. Your Advocate resisted my client's application at the time of hearing and His Lordship also directed him to inform you about the order that was passed as there was a time limit for your action. If your Advocate has not done so you cannot lay the blame on my client your threat in the last line of your letter under reply is wholly uncalled for. If my client's possession in the disputed land is disturbed in any way, he will hold you liable for contempt which please note.

19. As regards the token grant of Rs. 10/- which according to Mr. Bhunia was not a sufficient compliance of section 6 of the said Act, Mr. Dutta seriously joined the issues by contending, inter alia, that the deposit of the amount of Rs. 10/- is immaterial and the factum of deposit either before or after the declaration of section 6 of the said Act did not vitiate the acquisition proceedings. Reference is made to several decisions of the Supreme Court including the judgment of the Supreme Court in K. Savanth Vs. The Mysore State Road Transport Corporation and Another, as also the judgment of the Supreme Court in Manubhai Fehtalal Patel v. State of Gujarat, (1983) 4 S.C.C. 553, 555 which, inter alia, held even that one rupee contribution from the exchequer to enable the acquisition for public purpose is not a colourable exercise of power.

20. Mr. K.N.Laha, the learned Advocate for the State submitted that the conduct of the writ petitioner disentitled him to ask for a relief by reason of the following reasons :-

(1) That the writ petitioner did not explain the delay in not coming before this Court during the period between September 1981 and 6th October, 1985. Failure on the part of the petitioner to explain the delay would constitute a bar to the maintainability of the writ application. The writ petitioner deliberately made a misleading statements in paragraph 21 of the writ petition. On a plain reading of the said paragraph, it would appear that the writ petitioner did not deliberately disclose the material and relevant fact as to when the enquiry was made in the matter nor did he disclose as to when and from whom the writ petitioner came to learn that the respondent No. 2 issued the declaration u/s 6 of the said Act. It is very strange that the writ petitioner did not annex a copy of the award although prayer for quashing the award was made. The conduct of the writ petitioner is reprehensible and it is required to be deprecated by this Court.

(2) The petitioner not having challenged all the events that took place between this between 24th September, 1981 and September, 1985 could not ask for any relief under Article 226 of the Constitution of India.

(3) Mr. Laha referred to the judgment of the learned Court below and laid the emphasis on the following portion of the judgment:-

(a) "The possession of the land was taken over on 18.9.85 had been totally suppressed. The respondent No. 1 and 2 categorically stated in the affidavit-in-opposition that it may be noted that the petitioner never submitted a copy of the Hon"ble Court's order dated 8.6.81 not any of the letters nor had he applied for a date for hearing of his time-barred objection dated 17.7.80 which was directed to be heard by the respondent No. 2 as per the said order".

(b) "Further the petitioner is guilty of not producing the copy of the order which was suppressed by the petitioner and it appears that with some ulterior motive, the petitioner created a condition under which as stated by the respondent No. 1 and 2 that the respondent No. 1 and 2 could not carry out the said order".

(c) "In any event, at this stage, the petitioner is not entitled to any relief from this Court inasmuch as many thing had happened in the meantime which could not be set at naught by this court. If the order passed in the earlier Civil Order was violated, in that event the petitioner should have filed a contempt application. But instead of filing a contempt application for alleged violation of the order dated 8th June, 1981, the petitioner cannot come before this Court and file a writ application on 7.10.85. I am of the view that this writ application is frivolous".

(4) There was absolute suppression of material facts as would appear that no avernment was made as regards the letters as referred to hereinbefore.

21. Mr. Laha also submitted that the petitioner after making reference the letter dated 12th August, 1983 did not refer to the letters on 5.9.83, 21.9.83 and 24.9.83 for the purpose of misleading the court to the effect that the concerned respondent did not answer to the complaint lodged by the petitioner on 12th August, 1983. Mr. Laha referred to the affidavit wherefrom it appears that althroughout the writ petitioner made a wrong statement in letters that he applied for the certified copy of the order, but no such application of the certified copy was applied for till 29th November, 1983 and even after the receipt of the certified copy on 16.12.83, the writ petitioner did not send the xerox copy of the said order so as to bring to the notice of the concerned respondents about the exact test of the order. Mr.Laha submitted that after issue of the declaration of section 6 and u/s 6(1) of the said Act the writ petition cannot be maintained on the ground of suppression of material facts and for delay.

22. After considering the rival contention of the parties although we are not required to go in for all other contentions by reason of the suppression of material facts, even then in support of our view we may deal with the question of the suppression of material facts as laid down by the English Courts as also by the different High Courts of our country.

23. It was stated by Bachawat, J. in para 36 of Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, that a petitioner has no right to move the court under Article 32 for enforcement of his fundamental right on a petition containing misleading and inaccurate statements, and if he filed such a petition

the court will dismiss it. On this aspect the only other Supreme Court decision which can be referred in State of Haryana and Others Vs. Karnal Distillery Co. Ltd. and Another, .

24. A person invoking the writ jurisdiction of the court must make a full and candid disclosure of all material facts and refrain from deliberately keeping back material circumstances from the court. It is a fundamental principle followed by English Courts that if the applicant for one of the prerogative writs is guilty of the suppression of material facts in his application and of an attempt to mislead the court thereby, his application should be rejected, and the court should refuse to consider it on the merits. This principle also applies in India and to applications under Article 32 and 226 of the Constitution. In Rex v. Kensington Income Tax Commissioners, 1917(1) KB 485, it was held as follows : -

If on the argument showing cause against a Rule Nisi, the court comes to the conclusion that the rule was granted upon the affidavit which was not candid and did not fairly state the facts, but stated them, in such a way as to mislead and deceive the court, there is power inherent in the court, in order to protect itself and prevent an abuse of its process, to discharge the rule Nisi and refuse to proceed further with the examination of the merits. The rule of the court requiring *uberima fides* on the part of an application for an *ex parte* injunction applies equally to the case" of an application for a rule Nisi for a writ of prohibition.

In the above case, Lord Cozens-Hendy, M.R., observed --" -- the prerogative writ is not a matter of course. The applicant must come in the manner prescribed and must be perfectly frank and open with the Court.

In the same case, Scrutton, L.J. observed -- " It has been for many years the Rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court-to obtain relief on a *ex-parte* statement he should make a full and fair disclosure of all the material facts facts, not law. He must not mistake the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will not set aside any action which it has taken on the faith of the imperfect statement.

25. With regard to the argument that a second" application, for prohibition would not lie after the discharge of the first application, even if the applicant should in second application, state all the facts frankly and that in view of this it was not proper that the application should be dismissed without consideration of the merits merely on the ground of failure to state material facts, Lord Cozens Hendy observed - "All I can say is, if that is the rule of the Crown Office, it is a rule which is perfectly well settled, and anybody, who goes to the Crown Office, must take the consequences of that rule. We cannot and we ought not, to refuse to

give effect to what seems to me to be a most salutary rule of practice, merely because it may prevent this lady from ever getting what she seeks".

26. The power which the High Court has, under Art. 226, is a discretionary one and when the question before the court is whether it should exercise its discretion in favour of a party or not, it would certainly bear in mind the conduct of that party. It would refuse to exercise its discretion in his favour if he makes a false statement or suppresses facts in his application to the court. Thus, if the petitioner obtains an interim order by suppression of material facts in his petition he will not be entitled to any relief under the Article 226. If, in such a case the facts are so stated as to mislead or deceive the court, it has inherent power, in order to prevent an abuse of the process of the court, to discharge the interim order and to refuse to enter into the merits of the case. Reference may be made to the full bench judgment of the Allahabad High Court in *Asiatic Engineering Co. v. Achhru Ram*, AIR 1951 All. 746(FB) and Kerala High Court in *K. Ananthan Pillai Vs. The State of Kerala and Another*, .

27. Apart from the above, the token grant of Rs. 10/- was placed under the disposal would appear from the Annexure P to the affidavit in opposition on behalf of respondent at page 159 of the Paper Book. The contention of Mr. Bhunia could not be accepted on the ground that there was sufficient compliance of section 6(1) of the said Act. The view that we have taken find support from the various judgments of different High Courts as also the Supreme Court in *Bai Malinabu v. State of Gujrat* (Supra) and *Manubhai Fehtalal Patil v. State of Gujarat* (Supra).

28. In *Indrajit C. Parekha of Ahmedabad v. State of Gujarat* 1985(1) SCC 824 the Supreme Court observed "A nominal contribution out of public revenues would satisfy the requirements of the proviso to section 6(1)". The observation is that "whether such contribution meets the requirement of the law would depend upon the facts of every case. It must necessarily be taken to refer to the requirement of some law other than the proviso to sec. 6(1). No such law was pointed out in the present case, and it is not necessary for purpose of this appeal to enter on a discussion as to what such other law could be".

29. The payment of one anna was held sufficient in *Sree Raja Kandregula Srinivasa Jagannadha Rao Pantulu Bahaddur Vs. State of Andhra Pradesh and Another*, . The second proviso to sec. 6(1) makes it incumbent on the State to participate in the payment of compensation. Even a one rupee contribution from the public exchequer for the acquisition of law by the E.S.I. is adequate and defeats the plea of colourable exercise of power.

30. The contribution to the tune of Rs. 1/- from public exchequer to enable the acquisition for public purpose was unsuccessfully challenged in a Supreme Court Case.

31. It is not correct to determine the validity of acquisition keeping in view the amount of contribution but the motivation for making the contribution would help

in determining the bonafides of acquisition. Further in Malimabu's case 1972 contribution of Rs. 1/- from the State Revenue was held adequate to hold that acquisition was for public purpose with state fund. Therefore, the contribution of Rs. 1/- from public exchequer cannot be dubbed as illusory so as to invalidate the acquisition.

32. Apart from the above reasons, as indicated above, we are in agreement with reasoning of the learned court below as rightly and ably placed before us by Mr. Laha.

33. In view of the foregoing reasons, as also indicated above, the appeal cannot be accepted and, accordingly, the appeal is dismissed. Since we have dismissed the appeal, it is not necessary for us to consider the application for additional evidence. Accordingly, the application is also dismissed.

There will be no order as to costs.

M.N. Roy, J.

I agree.