

(2018) 07 CAL CK 0129
In the Calcutta High Court
Case No : W.P. 7004(W) of 2018

Kaberi Hazra

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 6, 9, 17, 17(4)
West Bengal Land Reforms Act, 1955 — Section 4C(5)
National Highways Act, 1956 — Section 3A
Constitution of India, 1950 — Article 226

Citation : (2018) 07 CAL CK 0129

Hon'ble Judges : HARISH TANDON, J

Bench : Single Bench

Advocate : Ashish Kumar Sanyal, Sunil Kumar Chakraborty, Hiranmoy Bhattacharya, Saunak Bhattacharya, Sumitabha Chakraborty, Kishore Dutta, Tapan Kumar Mukherjee, Soumitra Bandopadhyay, Subhasish Bandopadhyay, Manas Kundu

Final Decision : Disposed Off

Judgement

Harish Tandon, J.

The petitioner challenged notification dated 5th December, 1994 issued and published under Section 4(1) and declaration dated 27th January, 1995

under Section 6 of Land Acquisition Act, 1894 on various grounds including the vagueness in description of the property sought to be acquired for

public purposes. The petitioner claimed right, title and interest in respect of a plot of land measuring more or less .08 acres from the then recorded

owner namely Lalit Kumar Pramanick lying and situated in Plot No. 4651 under Mouza Krishnanagar, J.L. No. 17, Khatian No. 1645 under the limits

of Additional District Sub Registrar, Bidhannagar, Kolkata, West Bengal by dint of purchase dated 30th May, 1990.

Admittedly, the petitioner could not mutate her name in the records maintained by the statutory authorities but was served with the notice under

Section 9 of the Act 1 of 1894 issued in the name of the erstwhile recorded owner i.e. vendor of the petitioner. The petitioner attended the hearing

through her husband before the Land Acquisition Collector, North 24 Pgs and submissions were advanced on her behalf. According to the petitioner,

though she was represented before the Land Acquisition Collector but she was not served with any order acquiring the land nor any compensation

was ever offered or paid. She claimed to be in possession of the said purchased property all through out.

The writ petition proceeds that since no communication was made for nearly 25 years and the petitioner being in possession of the said land, it created

an impression that the said acquisition proceeding had been dropped. The petitioner subsequently applied for conversion of land to be used for

residential purposes and after having allowed by the competent authority, the mutation was effected in the record of the municipality and a plan for

construction of a building was submitted for sanction. The concerned municipality sanctioned the plan and the petitioner made construction of a

building which is known as Mega-City Inn. Subsequently, entire building was leased out to the lessees and being enjoyed by them upon payment of the

lease rent.

Subsequently, the petitioner was served with the notice under Section 4C(5) of the West Bengal Land Reforms Act, 1955 for cancellation of the

conversion order as it was allowed without noticing that the property was duly acquired and vested with the State after taking possession thereof. The

petitioner challenged the said notice before the Land Reforms and Tenancy Tribunal and further claimed to have gained knowledge of the acquisition

proceedings during the pendency of the proceeding initiated before the said Tribunal. The petitioner further made a representation before the

Additional District Magistrate and District Land and Land Reforms Officer, North 24 Pgs which was not attended to. The approach to the Tribunal

was not only restricted to non consideration of such representation but also the notice issued under Section 4C(5) of the West Bengal Land Reforms

Act, 1955 which came up for consideration before the Tribunal on 08/05/2018. The Tribunal dismissed the said application and the said order was

carried to this Court in WPLRT 25 of 2018.

Before the Division Bench an argument was advanced on behalf of the petitioner that the acquisition proceeding stood lapsed and, therefore, the

notice under Section 4C(5) of the West Bengal Land Reforms Act, 1955 is liable to be quashed. The State took a specific stand therein that the

validity of the said notice was dependent upon the validity of the acquisition proceeding and in absence of any challenge to the acquisition proceeding

the Court should not interfere with such notice. The Division Bench observed that the acquisition proceeding was initiated and award was passed on

April 10th, 1995 and since the petitioner refused to accept the compensation awarded by the Collector, it has been deposited with the concerned Court

on May 15th, 1995. It was further held that since no challenge was made out to the acquisition proceeding, no interim order could be passed in favour

of the petitioner. The Division Bench directed the parties to exchange affidavits and it is not in dispute that the said writ petition is still pending before

the Division Bench.

Taking inspiration from the aforesaid observations of the Division Bench, the writ petition challenged acquisition proceeding in the instant writ petition.

Mr. A.K. Sanyal, learned Senior Advocate, appearing for the petitioner fervently submits that the notification under Section 4(1) of the Act 1 of 1894

is invalid for want of specific description of the land sought to be acquired for construction of an approach road for Satellite Township in Mouza

Krishnapur. By referring the said notification, Mr. Sanyal would submit that the description of the plot is apparently vague with no specific description

sufficient enough to identify the portion of the land acquired by the State. According to him, it is indicated in the said notification that the middle portion

of Plot No. 4651 measuring .705 acres has been acquired without indicating the boundaries thereof. Mr. Sanyal vehemently submits that it is

imperative to indicate the area and the boundaries of the land acquired by the State under the aforesaid provision and if such notification does not

contain the full description. It is liable to be struck down being invalid and not in conformity with the aforesaid provision.

To support the aforesaid contention Mr. Sanyal relies upon a judgment of the Apex Court in case of Competent Authority & Vs- Baranagore Jute

Factory & Ors. Reported in (2005) 13 SCC 477 and a Co-ordinate Bench decision

of this Court in case of *Pramatha Nath Mukherjee & Ors. â?Vs-*

State of West Bengal & Ors. Reported in 70 CWN 503. Mr. Sanyal further relied upon another judgment of Supreme Court delivered in case of *B.B.*

Thakur â? Vs- State of Bombay & Ors. Reported in AIR 1960 SC 1023 for the proposition that Section 4 of the Act of 1 of 1894 is merely for the

purpose of carrying a preliminary investigation but Section 6 mandates a firm declaration by the Government with proper description and area

sufficiently identifying the need of public. Mr. Sanyal further submits that both the notification and declaration under the said Acquisition Act did not

contain the specific area and merely states the middle portion of the plot of land and, therefore, does not satisfy the statutory requirement and,

therefore, liable to be quashed and set aside.

Mr. Sanyal ardently submits that Sections 4 and 6 of the Acquisition Act mandates particularization of the land so acquired as any violation thereof

would entail the said notification and declaration invalid as held in case of *Ram Sewak â?Vs- State of U.P. & Ors.* reported in AIR 1963 ALL 24.

Lastly Mr. Sanyal submits that mere delay in approaching the Court questioning the legality and validity of the notification and declaration under the

Acquisition Act is not fatal if the contention depends upon the fresh explanation having offered by the petitioner therein and above all it is the

satisfaction of the Court which must weigh and relies upon the judgment of the Apex Court in case of *Tukaram Kana Joshi â?Vs- MIDC & Ors.*

reported in (2013) 1 SCC 353.

Mr. Advocate General appearing for the State respondents countered the submissions of Mr. Sanyal both on facts and law. According to him, the

petitionerâ??s husband attended the hearing fixed by the authority upon issuing the notice under Section 9 of the Acquisition Act and sufficiently

identified the portion of the land sought to be acquired by putting his signature. He further submits that the plan was prepared identifying the area and

the portion of the land acquired for such public purposes which would be duly reflected from notification as well as the declaration made under

Sections 4 and 6 respectively of the Acquisition Act and, therefore, it cannot be said that those notifications and declarations were in conformity with

the relevant provisions of the Act. He emphasized on the basis of the various documents annexed to the affidavit-inopposition to contend that the

petitioner was all along aware of the acquisition proceeding and the award made by the Collector, but refused to accept the compensation which left

the authorities with no choice but to deposit the same in the Court. He, thus, submits that mere mistake or error in mutating the name and allowing the

conversion does not affect the situation as the acquisition proceeding was complete the moment the compensation is deposited in the Court.

He further submits that the moment the authority realized that the order of conversion was bad and issued in ignorance of the acquisition proceeding, a

notice under Section 4C(5) of the Land Reforms Act, 1955 was immediately issued. Mr. Advocate General took a preliminary objection that the

petitioner cannot challenge the acquisition proceeding after lapse of several decades and, therefore, the writ petition is liable to be dismissed on the

ground of delay and laches.

He further countenances the submission of Mr. Sanyal that the petitioner was unaware of the award having passed by the Collector, by submitting

that the petitioner herself made an application before the Collector for allotment of alternative land conveying her intention not to accept the

compensation. He lastly submits that the writ petition is devoid of merit and should be dismissed. It is axiomatic to record that the petitioner has not

challenged the notification as well as the declaration on the ground that the land sought to be acquired is actually not for public purposes. The

provisions contained under Section 5A of the Acquisition Act was pressed in action only at the time of argument without having any foundation in the

pleading. The said Section provides an important right to raise objection after the notification is issued under Section 4(1) of the Land Acquisition Act,

but such right is not inflexible or rigid but controlled by Section 17(4) of the said Acquisition Act. In a situation covered under Section 17 of the

Acquisition Act, the appropriate Government may dispense with the provision of Section 5A and may proceed to make declaration under Section 6

thereof. The notification under Section 4(1) of the Act would evince that the provision of Section 17 was in fact invoked and / or applied and it was

further indicated therein that the provision of Section 5A of the Act shall not apply. It is, therefore, not open for the petitioner to take shelter under the

provision of Section 5A of the Act after participating for the hearing and in absence of any specific pleading in the writ petition.

In case of the Baranagore Jute Factory & Ors. (Supra) the Apex Court was considering a question as to whether the notification issued under Section

3A of the National Highways Act, 1956 is liable to be impinged having not sufficiently described the land acquired for widening the national highway.

In the said decision the notification indicates that which of the plots intended to be acquired as a whole and which of the plots are intended to be

acquired partly. There was no indication in the said notification that a plan was prepared sufficiently identifying the area, portion and the measurement

of the plots. An argument was advanced by the National Highway Authorities that the said Section envisaged the brief description of the property and,

therefore, it is not necessary to give a specific description thereof. Rejecting the aforesaid contentions, the Apex Court held:-

“So far as the question whether the impugned notification meets the requirement of Section 3-A(1) of the Act regarding giving brief description

of land is concerned, we have already shown that even though plot numbers of lands in respect of each mouza are given, different pieces of land are

acquired either as whole or in part. Wherever the acquisition is of a portion of a bigger piece of land, there is no description as to which portion was

being acquired. Unless it is known as to which portion was to be acquired, the petitioners would be unable to understand the impact of acquisition or to

raise any objection about user of the acquired land for the purposes specified under the Act or to make a claim for compensation. It is settled law that

where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has

to be given its due meaning. In our view, the impugned notification fails to meet the statutory mandate. It is vague. The least that is required in such

cases is that the acquisition notification should let the person whose land is sought to be acquired know what he is going to lose. The impugned

notification in this case is, therefore, not in accordance with the law.

6. While dealing with the question of brief description of land in the acquisition notifications, reference was made to some judgments of this Court

where acquisition notifications under Section 4 of the Land Acquisition Act had come up for consideration on account of challenge being levelled on

the ground of vagueness of the notifications. In most of these cases, plan of the area under acquisition was made part of the notifications to show that

the requirement of description of land was met. This leads us to inquire whether there was any site plan forming part of the impugned notification.

7. The availability of a plan would have made all the difference. If there is a plan, the area under acquisition becomes identifiable immediately. The

question whether the impugned notification meets the requirement of brief description of land under Section 3-A(2) goes to the root of the matter. The

High Court rightly observed: “It is just not possible to proceed to determine the necessity of acquisition of a particular plot of land without

preparation of a proper plan.” The appendix to the impugned notification shows that in many cases small parts of larger chunks of land have been

notified for acquisition. This is not possible without preparing a plan. But where is the plan? The notification in question makes no reference to any

plan. Our attention was drawn to averments in pleadings by the writ petitioners and replies thereto of the acquiring authority. The writ petitioners have

pleaded that there was no plan. Replies are vague and by way of rolled-up answers. There is no specific reply. It is obvious that there was no plan

and, therefore, none was referred to in the pleadings nor anything was produced before the Court at the hearing. Learned counsel for the competent

authority tried to submit before us that there was a plan at the time of issue of the notification and the writ petitioners ought to have inspected it, if they

so desired. He further submitted that the plan was produced before the High Court. We find that both these submissions are not sustainable as they

are not correct. A reference to the impugned notification shows that there is no mention of any plan. Without this how can anybody know that there

was a plan which could be inspected and inspected where? We are inclined to accept that there was no plan accompanying the impugned notification.

During the course of hearing we were shown a plan which we are unable to link with the impugned notification. This was a 1996 PWD plan. PWD is

a department of the State Government. The impugned notification is by the Central Government. NHA is established under a Central Act. The

competent authority under Section 3 of the Act is appointed by the Central Government. Therefore, this State Government plan of 1996 (the impugned

notification is of 1998) is of no assistance. The impugned judgment of the High Court emphasises the need for a plan. It is clear from the judgment of

the High Court that no plan was produced before it. The absence of any reference to a plan in the impugned notification and in fact non-availability of

any plan linked to the notification, fortifies the argument that the description of the land under acquisition in the impugned notification fails to meet the legal requirement of a brief description of the land which renders the notification invalid.â??

The Co-ordinate Bench of this Court in case of Pramatha Nath Mukherjee (Supra) held that where a portion of the plot of land mentioned in the notification does not specify the area with its description it raises strong presumption that the authority did not apply its mind and, therefore, such notice is liable to be declared invalid. The relevant observations are reproduced as under:-

Â â??21. Even more formidable is the contention of the Petitioner that the impugned order is ultra vires nor not specifying the portion of C.S. Plot No.

3 which is sought to be requisitioned even though it is admitted in paragraph 13 of the counter-affidavit that only a portion of that plot was sought to be

requisitioned. It is evident from the impugned order that only an area of 64 out of this plot was requisitioned though the entire area of this plot,

according to the Map produced by the Respondents themselves, is 2.58. In the impugned order only the area of the portion sought to be requisitioned is

given but not the description or the boundaries or any other particulars to identify that portion.

22. When a fractional area of a plot is mentioned, it means nothing to identify that area unless the location of that fraction, such as the east, west or

the like, or some other physical marks are also mentioned. The statement is the impugned order that possession of the specified area would be taken

on the given date, therefore, gave no indication as to the identity of the parcel which was meant and the object of rule 3(1) made under the Act, which

requires a copy of the order to be served upon the owner has thus been frustrated by this defect in the order.â??

There is no hasitation to the proposition laid down in BB Thakur (Supra) that the omission to use the expression â??public purposesâ? in a notification

under Section 4(1) of Act 1 of 1894 is fatal to the proceedings. The aforesaid judgment, in my view, cannot be of any assistance to the petitioner for

the reason that the subject notification in the instant writ petition clearly indicates the purpose of acquisition which is largely for the benefit of public. It

has been held in the said report that the purpose of notification under Section 4 is to carry a preliminary investigation whether the land was adopted for

the purpose for which it is sought to be acquired. Section 6 is a firm declaration by the Government that the land is needed for public purpose and such declaration must contain a proper description and the area sufficient enough to identify the land.

In Ram Sewak's case the Allahabad High Court held that what is requirement under the law is that the land is to be particularized in the notification and declaration without any vagueness and if the Court finds that the particulars given therein sufficiently indicates to public that which property is being acquired it would be a sufficient compliance thereof. Both the judgments are pointed to an issue that if the description of the land sought to be acquired is insufficient, vague and creates doubt in the minds of the public which portion is being acquired, such notification cannot be said to be in compliance to the provisions of the aforesaid Sections.

In the instant case, the petitioner was well aware that which portion of land is sought to be acquired and covered under the said notification and declaration. The husband of the petitioner was well apprised of such facts in the hearing conducted in this regard. The husband of the petitioner put his signature into a document thereby signifying his satisfaction in respect of the land under acquisition. Furthermore, both the notification and declaration contain a specific averments that a plan had been prepared and is available for inspection in the office of the Sub Land Acquisition Officer, North 24 Pgs. The State respondent produces the plan in course of the hearing and the area under acquisition has been delineated with red ink. It is a specific case of the respondents in the affidavit-in-opposition that out of .08 acres purchased by the petitioner, .05 acres is under acquisition.

The compensation was also determined for the acquired land and the petitioner refused to accept compensation and, therefore, the authority deposited the said amount in the Court within whose limits the property is situated. This Court is unable to accept the contention of the petitioner that she was unaware of the acquisition proceeding and was under the impression that the acquisition proceeding has lapsed and / or dropped. The notice of possession was also served upon the petitioner. Such facts are corroborated in the letter issued by the petitioner to the respondent authorities asking for allotment of alternative land instead of the payment of compensation. Such conduct of the petitioner is indicative of the fact that she was all along

aware that which portion of her plot of land had been acquired by the respondent authorities and, therefore, the stand that the notification and declaration does not contain a sufficient description of the plot is not available to her. The petitioner intended to shed the factum of participating in the hearing through her husband by making a statement that in fact there was no hearing conducted on that date and he was simply asked to put his signature on the said document. The aforesaid fact is also incorrect as there is a categorical statement in the writ petition that the husband of the petitioner advanced his submission before the authority and also produced the relevant documents.

Since this Court found that the petitioner was all along aware of the acquisition proceeding and never took the objection that the notification and declaration were bad for want of sufficient description of the acquired land, it would be mere academic to enter into in any question that the writ petition has approached the Court after enormous delay. It would be sufficient to note the observation of the Apex Court in case of *Tukaram Kana*

Joshi (Supra) wherein it is held that there cannot be any hard and fast rule that the High Court should refuse to exercise jurisdiction under Article 226

of the Constitution of India in favour of the party who moves it after enormous delay. When substantial justice and technical considerations are pitted

against each other, the cause of substantial justice deserves to be preferred. It would be apposite to reproduce the observations recorded in paragraph

13 of the said report which runs thus:-

“13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same

vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is

not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the

courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling,

that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such

discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon

principles substantially equitable.â??

In course of hearing it is submitted by Mr. Advocate General that the portion of a building constructed on the acquired land, if demolished, the

remaining portion cannot withstand independently though constructed on an unacquired land. Mr. Advocate General submits, on instruction that the

authorities have decided and, in fact, determined the compensation in respect of the entire building and the same can be paid to the petitioner. Such

stand has not been disputed by the petitioner as Mr. Sanyal is also joining with the submission of Mr. Advocate General that the rest portion of the

building standing on an unacquired plot of land cannot independently stand upon. These facts are brought for the first time in course of the hearing and,

therefore, this Court feels that the substantial justice would be subserved if the petitioner must be given an opportunity to challenge the quantum of

compensation so far as it relates to the building constructed by the petitioner.

Accordingly, this Court permits the petitioner to raise an objection on the compensation determined for the building before the competent authority

within 4 (four) weeks from date. With these observations, the writ petition is disposed of. However, there shall be no order as to costs.