

(1966) 02 CAL CK 0002
In the Calcutta High Court
Case No : A.F.O.O. No. 34 of 1965

Kalipada Banerjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-02-1966

Acts Referred:

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

Citation : AIR 1966 Cal 480

Hon'ble Judges : H.K. Bose, C.J.; B.C. Mitra, J

Bench : Division Bench

Advocate : Arun Kumar Dutt and Nanda Lal Pal, for the Appellant; N.C. Chakraborty and Bhabani Sankar Bagehi, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This appeal is directed against a judgment and order of D. Basu, J, dated September 11, 1964, whereby a Rule Nisi obtained by the appellant in an application under Article 226 of the Constitution was discharged.

2. The appellant runs a Soorki Mill, Saw Mill etc. at Municipal holding No. 16, Chatubabu's Ghat Lane, measuring more or less 212 1/4 acre, in the District of Howrah. A notice u/s 4 of the Land Acquisition Act, 1894, (hereinafter referred to as the Act) was published in the Calcutta Gazette on November 3, 1960 in which it was stated that the said land was likely to be needed for a public purpose, namely, extension of Salkia Anglo Sanskrit School and Ushangini Balika Vidyalaya. It was also stated in this notice that the land was to be acquired partly at public expenses and partly at the expenses of the authorities of Salkia Anglo Sanskrit School. By a notice dated February 28, 1961, the appellant was informed that the date of the enquiry u/s 5A(2) of the Act was fixed on March 6, 1961 and the appellant was asked to be present on the spot in support of his objections which were filed on February 12, 1961. On July 9, 1962, the appellant filed another objection in which he asked for cancellation of the said plot of land from the proceedings for acquisition thereof on the ground that the land was not

required for a public purpose. A declaration dated April 6, 1962, u/s 6 of the Act was published in the Calcutta Gazette on April 26, 1962. In this declaration also it was stated that the land was needed for the public purpose hereinbefore mentioned and the acquisition was to be made partly at the public expenses and partly at the expenses of the authorities of the said school. As the appellant did not obtain any redress of his grievances on the basis of the objections filed by him, he moved an application under Article 226 of the Constitution and obtained a Rule Nisi which was discharged by the judgment and order hereinbefore mentioned. This appeal is directed against this judgment and order whereby the Rule Nisi was discharged.

3. Various points were canvassed before the trial court in support of the petition. But the only contention raised and argued before us by Mr. Arun Kumar Dutt, learned Advocate for the appellant, was that the notification u/s 4 of the Act must be struck down, as it was a fraud on the Statute. It was argued that in this notification it was stated that the expenses of acquisition were to be paid partly out of public funds and partly by the Authorities of the said School. The notification u/s 4 of the Act was dated October 26, 1960. But by referring to a letter dated April 17, 1961, from the Assistant Secretary to the Government of West Bengal, to the Collector, Howrah, Mr. Dutt argued that up to the date of that letter, namely, April 17, 1961, no decision had been taken by the respondent No. 1 to contribute out of public funds, any part of the expenses of the acquisition. It was argued that in the said letter it was for the first time suggested that the Education Department of the respondent No. 1 would have to make a token grant towards the cost of the acquisition in order to legalise the land acquisition proceedings. It was, therefore plain that at no time prior to April 17, 1961, any decision was taken by the respondent No. 1 to pay any part of the expenses out of public funds. That being so, it was argued that the statement in the notification u/s 4 of the Act that part of the expenses was to be paid out of public funds was entirely false and such a false statement was a fraud on the Statute.

3a. It appears from a letter dated February 19, 1962, from S.C. Chakraborty, Deputy Secretary to the Government of West Bengal, to the Commissioner of the Burdwan Division that a decision was taken to contribute a sum of Rs. 10 only out of public funds. It is to be noted that this decision was taken before publication of the declaration u/s 6 of the Act which is dated April 6, 1962. Mr. Dutt, however, argued that it was not enough that a decision to pay part of the expenses out of the public funds should be taken before publication of the declaration u/s 6 of the Act, but such a decision must be taken before publication of the notification u/s 4 of the Act to validate an acquisition proceeding. In this case Mr. Dutt argued that it was quite plain that the decision to make a contribution out of the public funds was not taken before publication of the notification u/s 4, which, therefore, must be struck down. Mr. Dutt further argued that the declaration u/s 6 of the Act could not be assailed, as a decision to pay part of the expenses out of public funds was taken before publication of the declaration. But, he argued, that the notification u/s 4 could not be sustained as

there was no manifestation of any intention of the respondent No. 1 to contribute any sum out of the public funds towards the expenses of the Acquisition.

4. In support of this contention Mr. Dutt firstly relied upon a decision of this Court in *Rajendra Kumar Ruia and Another Vs. Govt. of West Bengal and Another*, in which my Lord The Chief Justice (Bose, J. as he then was) held that if there are sufficient materials before the Court to show that the acquisition was not made bona fide but was a fraud on the Land Acquisition Act, or was an evasion of the Act, the Court would be astute to scan such act with disfavour and would set it aside if necessary. Relying upon these observations Mr. Dutt argued that the Section 4 notification in this case was a fraud on the Statute and it should, therefore, be held that the acquisition was not sought to be made bona fide. This decision in our opinion has no application to the facts of this case. The question raised by Mr. Dutt is not one of lack of bona fides in exercise of the powers under the Land Acquisition Act, but that the Notification u/s 4 of the Act was bad as the intention to contribute out of public funds was not taken prior to publication of this Notification. The next case relied upon by Mr. Dutt is a decision of the Madras High Court reported in *Syed Dilawar Hussain Vs. Collector of Madras (Land Acquisition Officer, Madras) First Line Beach, Madras*, in which it was held that in order to entitle the Government to make a declaration u/s 6(1) there must be an unmistakable manifestation of the intention of the Government to pay at least a part of the compensation out of the public revenues and such manifestation must be antecedent to the publication of the declaration u/s 6(1) of the Act. This decision also does not support Mr. Dutt's contention as in this case the manifestation of the intention to contribute out of the public funds was in fact made before publication of the declaration u/s 6(1) of the Act. This decision is no authority for the proposition that the decision to contribute out of the public funds must be taken and expressed before publication of the notification u/s 4 of the Act. Mr. Dutt next relied upon a decision of the Supreme Court in *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*. The observations in this decision relied upon by Mr. Dutt are to the effect that if there is any lacuna in a Statute, such lacuna cannot be supplied by a liberal construction of the Statute and though it was the duty of the Court to try and harmonise the various provisions in an Act, it is not the duty of the Court to stretch the words used by the Legislature to fill in gaps and omissions in the provisions of the Act. This observation in our opinion has no application in the facts of this case and in any event it does not support the contention of Mr. Dutt.

5. Mr. N.C. Chakraborty, learned Government Pleader, appearing for the respondents contended that there was no merit in the contention raised on behalf of the appellant. He argued that at the time when the Section 4 notification was published, there was no occasion either to take a decision or to express any intention of making a contribution out of the public funds. He further argued that Section 4 notification merely gave notice that a particular plot of land was likely to be needed for a public purpose and there was no question at this stage of taking any decision to make a contribution out of the public funds.

It might be, it was argued by Mr. Chakraborty, that upon hearing of the objections u/s 5A of the Act the Government might decide to release the land together. It was next argued that Section 4, as the heading indicated was concerned with a preliminary investigation and with the powers of officers upon publication of such a notification. This section, it was further argued, was not in any way concerned with the question of costs of acquisition. It was next argued that the proviso to Sub-section (1) of Section 6 of the Act required that a declaration under that section should not be made unless the compensation for the property was to be paid by a Company or wholly or partly out of public revenues or some funds controlled or managed by a local authority. This proviso required that before the declaration u/s 6(1) was made the decision to contribute the expenses out of public funds must be taken. In this case it was argued by Mr. Chakraborty that the requirement of the proviso to Sub-section (1) of Section 6 of the Act was quite clearly complied with as the decision to make a contribution of Rs. 10 out of the public revenues was in fact taken before the publication of the declaration u/s 6(1).

6. In our opinion this contention of Mr. Chakraborty is well founded. The question of taking a decision to contribute the whole or part of the expenses of acquisition out of public funds does not arise at or before the publication of the notification u/s 4 of the Act. Such a decision is, indeed, entirely unnecessary at the stage of a publication of that notification. It may be that upon hearing of the objections u/s 5-A of the Act the Authorities may decide not to acquire any part of the land or to acquire a part only of the same. A decision to make a contribution out of public fund at this stage would be altogether purposeless and where the acquisition proceedings are dropped altogether, will be redundant. Indeed, there is nothing in Section 4 to warrant a conclusion that a decision to contribute must be taken before publication of the notification under that section.

7. The question of payment of the expenses of the acquisition either entirely or in part out of the public fund arises before publication of the declaration u/s 6(1) of the Act. The proviso to that sub-section prohibits publication of a declaration unless the compensation was paid by a company or wholly or partly out of public revenues. In this case the intention to contribute a sum of Rs. 10 out of the public revenues was expressed by the respondent No. 1 before publication of the declaration u/s 6(1) of the Act, There was, therefore, sufficient compliance with the requirement of the statute. Mr. Chakraborty referred to the decision of the Supreme Court in Smt. Somavanti and Others Vs. The State of Punjab and Others, and contended that in that case the notification u/s 4 of the Act was dated August 25, 1961 and the Government of Punjab sanctioned a sum of Rs. 100 for the expenses of acquisition on September 29, 1961, yet the majority of the Supreme Court upheld the acquisition proceedings. Mr. Chakraborty also relied upon a Bench decision of this Court reported in 67 Cal WN 647 Amarendra Nath Nath v. State of West Bengal, in which it was held that if the amount contributed out of public funds was small, that would not necessarily give rise to the inference that the acquisition proceedings were colourable. In this case,

however, no such contention was raised by the learned Advocate for the appellant, namely, that the contribution by the respondent No. 1 being only of a small sum of Rs. 10, the exercise of the powers under the Act is colourable. We, therefore, need say nothing more on this question.

8. In our opinion the trial court was right in rejecting the appellant's contention that the notification u/s 4 of the Act was bad and should be struck down as the intention to contribute to the expenses of the acquisition was not manifested before publication of the notification.

9. For the reasons mentioned above this appeal is dismissed with costs assessed at three gold mohurs.

10. Let the operation of this order remain stayed for four weeks from this date.

Bose, C.J.

11. I agree.

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