

(1956) 04 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 1 of 1956

Maheswar Bharali

APPELLANT

Vs

The State of Assam and Another

RESPONDENT

Date of Decision : 11-04-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 3, 4, 5A, 5A(2), 6

Citation : (1956) 04 GAU CK 0003

Hon'ble Judges : Sarjoo Prosad, C.J; Ram Labhaya, J

Bench : Division Bench

Advocate : P.N. Das, for the Appellant; R.K. Goswami, Jr. Govt. Advocate, for the Respondent

Judgement

Ram Labhaya, J.—Maheswar Bharali, petitioner in this proceeding, has challenged the validity of the Government Notification No. RA 234/53/16 dated 46-9-1955 under the following circumstances. The petitioner owned about 2 Kathas 10 Lechas of town land covered by periodic patta No. 36, dag No. 40 of Tihu town in Kamrup District.

The managing body of the Tihu School (which is on land contiguous to petitioner's land) applied to the Collector, Kamrup on 23-4-1953 for acquisition of land measuring about 2 K. 10 L. of which an area of 2 K. 3 L. belonged to persons other than the petitioner. They were directed to deposit a sum of Rs. 2359/- for payment of compensation to be awarded to the owners of the land sought to be acquired. This amount was deposited on 25-9-1953.

Thereafter the State Government published its notification No. RA. 234/53/3 dated 3-11-1953 in the Assam Gazette, under the provisions of Section 4 of the Land Acquisition Act and invited objections, if any, u/s 5A from persons interested in the land. The petitioner objected to the acquisition of his land on 9-3-1954. An enquiry was made by the Col^l lector of Kamrup and he submitted his report to the State Government recommending merely the acquisition of 2

Kathas of land belonging to the petitioner.

Objections to the acquisition of the rest of the land had his support. On receipt of this report, the State of Assam allowed objections to the extent recommended by the Collector and then made a declaration No. RA. 234/53/16 dated 16-9-1955 u/s 6, Land Acquisition Act and directed the Collector to proceed with the acquisition on terms set forth in the memorandum No. RA. 234/53/22 dated 3-10-1955.

Pursuant to the declaration and the order of the State Government the Collector proceeded to take possession of the land. The validity of the declaration has been challenged on the following two grounds :--(1) There was no public purpose to justify the acquisition and (2) that in any case no part of the compensation to be awarded to the petitioner is to come from public revenues or from any funds controlled by a local authority.

2. Annexure "D" to the petition is the report dated 7-2-1955 made by Sri B.M. Dam, Additional Deputy Commissioner, Kamrup to the Government on objections raised to the proposed acquisition after the publication of the notification u/s 4, Land Acquisition Act. In his view 2 Kathas of land from Dag No. 40 belonging to the petitioner could appropriately be acquired for the purposes of the school. He found that the land in question had been let out to some blacksmiths and washermen on ground rent.

The tenants had built ugly shacks on the site. The occupants of these shacks were dumping rubbish and were also easing themselves on the school land towards the west, thereby rendering it unsanitary. He found human excreta at several places by the side of the school field. He was firmly of the opinion that 2 Kathas of the petitioner's land could : be appropriately acquired for the Tihu High School without causing any undue hardship to the petitioner.

3. By order dated 11th March the objections of the petitioner to the acquisition of these two Kathas were disallowed as stated above. On 3-10-1955 the Government accorded sanction to the estimate of compensation for the land to be acquired. It came to Rs. 969/8/-.

The Deputy Commissioner was directed to proceed with the acquisition of the land covered by declaration dated 10-9-1955, but he was told not to commence the proceeding until the estimated cost had been deposited in full in the treasury by the School authorities. The payment for land was to be made and audited as though the land was being" acquired for the Government.

4. The material facts do not appear to be in dispute. An affidavit in opposition has been sworn by Shri S. Das, Additional Deputy Commissioner of Gauhati. He has averred that the Tihu Town School is a Government aided institution and therefore is controlled by Government.

It was necessary to acquire the land in question for the purposes of the school and on the school committee depositing the amounts sufficient for the payment

of compensation to the owners, the Deputy Commissioner published a preliminary notice u/s 4. After necessary inquiry on objections the final declaration was issued u/s 6. He further affirmed that acquisition of land for Tihu School was for a public purpose and as compensation was to be paid from the Government Treasury, it was immaterial whether the amount was realized by the Government from the institution or not.

5. Section 6(1), Land Acquisition Act provides that

subject to the provisions of Part 7 of this Act when the appropriate Government is satisfied, after considering" the report, if any, made u/s 5-A, Sub-section (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of the Secretary to such Government or of some officer duly authorised to certify its orders." There is a proviso to this clause which will be dealt with separately. Clause (1) of Section 6 authorises the Government to publish a declaration if it is satisfied after considering the report, if any, u/s 5-A that any particular land is needed for a public purpose or for a company.

It cannot be disputed at all that the Government of Assam felt fully satisfied that the land was needed for a public purpose. This is clear from the language of the declaration. It is true that the declaration has not adopted the language of Section 6(1) of the Act. But the words used indicate in no uncertain manner the satisfaction of the State Government. It was stated that it appeared to the Government of Assam that land was required for a public purpose. This statement satisfies the requirements of Section 6(1).

6. Before the publication of the declaration the procedural requirements of the Act were fully complied with. A notification u/s 4 was issued. Objections were invited. These were heard. (sic) giving reasons for the acquisition of the land in dispute was submitted to the State Government.

The State Government on a consideration of the report felt satisfied that acquisition of 2 Kathas of the land in dispute was necessary for a public purpose and then issued a declaration. The procedure followed is not open to any objection and in view of the facts revealed by the report of the Additional Deputy Commissioner, we do not think that the Government took any erroneous decision on the objections of the petitioner.

The land is admittedly contiguous to the school land. It was being used in a manner which was obviously detrimental to school interests. No control could be exercised over its use, if the ownership did not vest in the school. The sheds are also unsightly and create a sort of an obstruction to the school from the road. Land also is needed for a play-ground.

We feel satisfied that the land is needed for the purposes of the Tihu School. We also feel fully satisfied as the Government did that the land, is needed for purposes which are public.

7. Mr. Das endeavoured to argue that the needs of the School could not be regarded as a public purpose. Section 3(f), Land Acquisition Act describes what the expression "public purpose" includes. It includes the provision of village sites in districts in which the appropriate Government shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision.

No definition of the expression is given. The expression however has been interpreted to include

a purpose, i.e. an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.

"Hamabai Framjee v. Secy. of State for India" 39 Bom 279 : AIR 1914 PC 20 (A). It is not necessary that the land should be made available to the public at large. All that is necessary is that it should serve the general interest of the community.

A school certainly does serve such a purpose. Establishment of educational institutions has been held to be a public purpose in connection With charitable endowments. Mr. Das has not been able to give us any authority in support of his contention that the needs of educational institutions like a school, college or university cannot be regarded as public purposes, I entertain no doubt that the purpose for which the land in question is sought to be acquired is within the ambit of the expression "public purpose".

8. Section 6(1), Land Acquisition Act authorises the publication of a declaration u/s 6(1) if the Provincial Government is satisfied that the land is needed for a public purpose. The determination of the nature of the purpose is left to the Government. Clause 3 provides that the declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be.

It follows that the satisfaction of" the State Government is subjective. It is expressly made conclusive and therefore not open to objection. Clause 3 has been interpreted in "Sheikh Samiruddin v. Sub-Divisional Officer" AIR 1954 Assam 81 (B) and it was held relying on Vedlapatla Suryanarayana Vs. The Province of Madras, and Brij Nath Sarin Vs. Uttar Pradesh Government and Another, that the declaration was final and could not be questioned in a Court of law. The contention is covered by the decision of this Court which affords a complete answer to it.

9. Mr. Das has argued relying on "Province of Bombay v. Khushaldas S. Advani" 1950 SCR 021 : AIR 1950 SO 222 (E) that the question whether the acquisition was for a public purpose was a justiciable issue. The majority decision in the case however lends no support to his contention. In fact it goes against him. It was held in that case by the majority of the learned Judges that the language of the statute--if in the opinion of the "Provincial Government"-- showed that the

statute intended that the entire act of requisition including the determination of the nature of the purpose was a subjective and an administrative act.

the words used in Section 6(1) Land Acquisition Act are "When the appropriate Government is satisfied". The language is similar in effect. The determination of the need for a public purpose is left to the appropriate Government. The section contains an additional provision in Clause 3 and this provision makes the declaration of the Government u/s 6(1), conclusive. This puts the matter beyond the pale of controversy.

The decision reported in "The Assam Co. Ltd. v. The State of Assam" AIR 1953 Assam 177 (F), to which reference has also been made, is also of no assistance to the petitioner. That case is easily distinguishable. It was held therein that one necessary condition of the validity of a law authorising compulsory acquisition or taking of possession was that it should have a public purpose or purposes, and the question whether acquisition or requisition permitted, was for public purposes was held to be a justiciable matter. Here the validity of Land Acquisition Act or of the provision contained in Section 6 is not in question.

Section 6 clearly provides that the appropriate Governments should be satisfied that the particular land is needed for a public purpose. This decision also does not support the contention raised and the view which prevailed with this Court in "AIR 1954 Assam 81 (B)", therefore must be adhered to. The declaration is not therefore invalid by reason of the absence of a public purpose as argued.

10. The proviso to Section 6(1) enjoins that the declaration u/s 6(1) shall not be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by local authority.

The acquisition is not for a company or for any local authority.

The acquisition is not for a company or for any local authority. It is therefore argued that compensation to be awarded must come wholly or partly out of public revenues. It is pointed out that no part of the compensation is intended to be paid out of the public revenues. The estimated amount has already been received from the School authorities. The declaration therefore does not comply with the requirements of the proviso.

11. It appears that the State Government was alive to the requirements of the proviso. The declaration states in express terms that the land is required to be taken by the State Government at public expense and for a public *purpose. The affidavit put in by Shri S. Das, Additional Deputy Commissioner does show that the declaration was issued after deposit of the money regarded as sufficient for payment of compensation to the owners, in the Gauhati treasury.

It was also stated that compensation would be paid from Government treasury and it was immaterial whether the amount was realised by Government from the institution or not. Leaving out of consideration the contention of law raised in the

affidavit, the statement of fact made is only to the effect that an amount sufficient for the payment of compensation has already been deposited in the treasury by the School authorities. This statement does not whittle down the effect of Government declaration of 16-9-1955.

The Government there have stated that the acquisition is at public expense and for a public purpose. The amount deposited represents merely the Government estimate of the compensation. The petitioner is disputing the correctness of his estimate and the issue as to the quantum of compensation is to be determined by the Court in the future. It cannot be said whether the amount deposited would be sufficient for awarding such compensation as is found to be payable ultimately.

It is therefore also not possible to say that the Government has not or will not contribute any portion of the compensation from public revenues as stated in the declaration and as required by the proviso. It may not therefore be found that there has been a non-compliance with the requirements of the proviso. No relief therefore can be granted to the petitioner under Article 226 of the Constitution in this proceeding. The petition is dismissed and the rule discharged.

Sarjoo Prosad, C.J.

12. I agree and have nothing to add. Despite the strenuous efforts of the learned Counsel I can find no illegality in the Land Ac question proceedings complained of in the present case. I wish to emphasise that the points raised by him are in fact fully covered by the decision of this Bench in AIR 1954 Assam 81 (B).