
(2012) 06 CAL CK 0017
In the Calcutta High Court
Case No : Writ Petition No. 10095 (W) of 2002

Marjia Begum

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 5A(2), 6

Citation : (2013) 2 CHN 140

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Prabhat Kumar Chattopadhyay, for the Appellant; Sundarananda Pal, Arjun Ray Mukherjee for the State and Uttiya Roy for the fourth, fifth and eighth respondents, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WP under art. 226 dated July 17, 2002 is questioning a declaration dated April 23, 2002 (WP p.56) made by a Jt. Secretary to the Government of West Bengal u/s 6 of the Land Acquisition Act, 1894. The lands concerning which the declaration was made were mentioned in the schedule to a notification dated December 19, 2001(WP p.45) issued u/s 4 of the Land Acquisition Act, 1894. The notification was published in a newspaper on January 6, 2002. Claiming to be interested in some of the notified lands, the petitioner submitted a section 5A objection dated February 4, 2002 (WP p.46). In paras. 16 and 17 of the WP the petitioner has stated that the section 6 declaration was made and published without disposing of her section 5A objection giving her opportunity of hearing.

2. The respondents are contesting the WP and they have filed as many as four affidavits: an Affidavit-in-Opposition dated August 20, 2002, a Supplementary Affidavit-in-Opposition dated August 1, 2011 (original of this is not in the records of the case), a Supplementary Affidavit dated March 30, 2012 and a Supplementary Affidavit dated June 1, 2012.

3. In all the affidavits the respondents have filed they have sought to prove their

case that the petitioner's section 5A objection was duly heard and disposed of. In her replies the petitioner has stuck to her case stated in the WP that the section 6 declaration was made and published without disposing of her s. 5A objection giving her opportunity of hearing. Therefore, the question that requires examination and decision is whether the petitioner's section 5A objection was heard and disposed of.

4. Relying on the Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, Cantonment Board, Dinapore and others Vs. Taramani Devi, , M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others, and Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, , Mr. Chattopadhyay appearing for the petitioner has argued that since the section 6 declaration was made and published without disposing of the petitioner's section 5A objection after giving opportunity of hearing, everything including the section 4 notification is liable to be quashed.

5. Mr. Pal appearing for the respondents has strenuously argued to show that proper procedure was followed by the Collector who passed the award in the acquisition proceedings on March 20, 2003. As to the documents produced by the respondents with their affidavit dated June 1, 2012, he has said that he cannot improve the situation, if they do not prove the case that the section 5A objection was duly disposed of.

6. From the documents at pp. 20, 21, 22, 23 and 24 of the Supplementary Affidavit dated June 1, 2012 it is evident that the petitioner's section 5A objection was duly received by the Collector; that the Collector issued notice asking the petitioner to appear for her section 5A objection hearing on March 15, 2002; that the process server returned the hearing notice to the Collector on the grounds that he did not find the noticee (the petitioner).

7. There is nothing to show that further attempt was made to serve notice of the section 5A objection hearing on the petitioner. I am, therefore, unable to accept the case of the respondents that the petitioner was given opportunity of hearing u/s 5A(2).

8. Although I am of the view that the decisions cited in support of the petitioner's case (except the one in Hindustan Petroleum) are irrelevant, and that the principles stated therein have no manner of application to this case, I have no hesitation in holding that the section 6 declaration, as to the petitioner's lands, was made and published illegally.

9. The petitioner submitting the section 5A objection was entitled to a hearing. Her section 5A objection could not be disposed of without hearing her. Her allegations made in paras. 16 and 17 of the WP are of substance. The section 6 declaration, in so far as her lands are concerned, is liable to be quashed.

10. I, however, do not find any reason to quash the section 4 notification. Simply because the section 6 declaration is liable to be quashed, it is not to be

concluded of course that the section 4 notification is also liable to be quashed. All the contentions the petitioner can raise before the Collector who is under an obligation to hear her and decide her section 5A objection.

11. As to possession of the lands in question, Mr. Chattopadhyay has strenuously argued that since at the date the WP was filed the petitioner was in possession and during pendency of the WP the respondents have taken possession of the lands, an order should be made directing them to give the petitioner possession of the lands. I do not think such an order will be appropriate. This Court admitting the WP did not pass any restraining order. After making award and tendering compensation possession was taken.

12. For these reasons, I set aside the section 6 declaration (in so far as the petitioner's lands are concerned), allow this WP to this extent and order as follows. The award made by the Collector shall be deemed to be set aside in so far as the petitioner's lands are concerned. The Collector shall give the petitioner reasonable opportunity of hearing and decide her section 5A objection within ten weeks from the date this order is served. Possession of the lands, taken by the respondents, shall abide by the section 5A decision. No costs. Certified xerox.