
(1974) 03 CAL CK 0012

In the Calcutta High Court

Case No : Appeal from Original Order No. 766 of 1973

Mohan Koiri and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-03-1974

Acts Referred:

Constitution of India, 1950 — Article 166, 166(3)
Land Acquisition Act, 1894 — Section 6

Citation : AIR 1974 Cal 253 : (1974) 1 CALLT 410 : 78 CWN 583

Hon'ble Judges : Salil Kumar Datta, J;Gupta, J

Bench : Division Bench

Advocate : Bimal Chandra Datta and Usha Datta, for the Appellant; Bhabhani Sankar Bagchi, for Nos. 1 to 3, S.C. Bose and Amal Kumar Basu Choudhury for No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Salil Kumar Datta, J.—This is an appeal against the judgment and order of D. Pal, J., discharging the rule obtained by the petitioners. The petitioners' case, in short, is as follows: The petitioners are thika tenants in respect of 3/4th portion of premises No. 121/5, Circular Garden Reach Road in the suburb of Calcutta. They have been residing there since their fore-fathers for over 60 years constructing huts thereon. By a notification dated March 1, 1962, u/s 4 of the Land Acquisition Act, (Act I of 1894), the Government of West Bengal notified that a piece of land comprising premises No. 121/5, Circular Garden Reach Road is likely to be needed for a public purpose, not being a purpose of the Union, namely, for the expansion and development of Kidderpore Academy in Ward No. 85 of the Calcutta Municipality. This notification invited objections to the said acquisition from any person interested in the land within 30 days from the date of publication in the locality. The petitioners received no individual notice and being illiterate persons they could not file any objection u/s 5-A of the Act. Thereafter without giving any opportunity to the petitioners, a declaration dated 26th February, 1965, was published u/s 6 of the Act declaring that the said piece

of land was needed for a public purpose, partly at public expense and partly at the expense of the authorities of the Kidderpore Academy. The petitioners stated that the Kidderpore Academy is a private institution for which such acquisition was not available in law. The petitioners submitted that there was no inquiry before the declaration and the Kidderpore Academy had recently purchased in 1959 lands adjoining the institution which had been kept vacant. These facts were not considered by the Second Land Acquisition Collector in issuing the said declaration. It may be stated here that the notification and the declaration have been signed by the Deputy Secretary to the Government of West Bengal. The petitioners contended that there was no satisfaction of the Governor to the effect that the lands were needed for the public purpose and the Governor did not apply his mind in the matter. For all these reasons as also for the reason that expansion and development of a private institution are not public purpose, the petitioner moved an application in this Court under Article 226(1) of the Constitution praying for a rule nisi on the respondent the Government of West Bengal and others to show cause why a writ in the nature of mandamus should not issue directing them to forbear from giving effect to or to withdraw or cancel the notification and declaration mentioned above and also for a writ in the nature of certiorari quashing the said notification and declaration.

2. On this application a rule nisi was issued on June 15, 1966 in terms of the prayer referred to above and subsequently an interim order was issued staying further proceedings.

The respondents on being served with notice of the rule filed an affidavit-in-opposition denying all the material allegations made in the petition. It was stated that the notification u/s 4 of the Act was duly published in the Calcutta Gazette on March 15, 1962, as also at the convenient place in the locality including the notified area. The individual notices were also served but as the petitioners refused to accept the notices, they were served by hanging. No objection was received from the petitioners and in the report u/s 5-A the only objection, which was filed by the owner, was duly considered. It was stated that the acquisition proceeding was in accordance with law and the petitioners at that stage had no right to challenge the declaration.

3. An affidavit-in-opposition was also filed on behalf of Kidderpore Academy stating that the institution, the only Higher Secondary School for Bengal Boys in the locality, was a public one under the statutory control of the Education Directorate and West Bengal Board of Secondary Education. (sic) was further stated that no portion of the lands is remaining unutilised as alleged by the petitioners and a building on half of the vacant portion has been constructed while the other half has been kept vacant for a breath-ins ground for 1500 students reading in the institution as also for holding drills, physical exercises by NCC trainers etc. It was accordingly submitted that the petitioners were not entitled to any relief.

4. An affidavit-in-reply was filed on behalf of the petitioners reiterating the

statements made in the petition.

5. The learned Judge held that the public purpose for the acquisition has been particularised with sufficient indication. It was further held that the institution was under the statutory control of the Education Directorate and West Bengal Board of Secondary Education, the institution being the only institution in the locality. Accordingly, it was held that the acquisition was for a public purpose on proper satisfaction by the authorities concerned. The learned Judge further held that the acquisition was made in the name of the Governor as appearing in the notification and declaration. Accordingly, there was a presumption of regularity of the official acts and there is no evidence adduced by the petitioner to rebut the presumption. As to the contention that there was no satisfaction of the proper authority under the Rules 19 and 20 of the Rules of Business of the Government, it was held that under paragraph 5 of the Standing Orders the satisfaction could be made by a Secretary or Deputy Secretary and the acquisition was not required to be brought to the notice of the Minister, Land and Land Revenue Department, on the basis of a general order issued by the Secretary. A contention raised by the petitioner that the general order issued by the Secretary was ultra vires the Standing Orders was however not allowed to be raised as no point was taken in the petition of motion. For the above reasons, the rule was discharged. This appeal is against the said judgment and order,

6. Mr. Bimal Chandra Dutt appearing for the appellants has urged two grounds in support of the appeal. It has been contended that the acquisition is bad as it was for a private institution and there would be no protection if the authorities of the Kidderpore Academy after acquiring valuable land decided to dispose of the same for their personal benefit. It has been pointed out by Mr. Bhabani Sankar Bagehi learned Advocate of the State and also by Mr. Somendra Chandra Bose learned Advocate appearing for the Kidderpore Academy that an acquisition will be for public purpose even if any token portion of money required for the acquisition is paid out of public revenues or some fund controlled by local authority. In the declaration u/s 6 it has been stated that the land is required for the public purpose, partly at public expense and partly at the expense of the authority. It has been uniformly and consistently held by the Supreme Court, in Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, , Smt. Somavanti and Others Vs. The State of Punjab and Others, and also in Shyam Behari and Others Vs. State of Madhya Pradesh and Others, that where a part of the money, though insignificant, required for the acquisition is paid by the Government the acquisition will be for public purpose even though the balance portion comprising a substantial part thereof is paid by a private organisation if other requirements of law are satisfied. There can be no dispute that expansion of the only school in the locality is for public benefit and in the general interest of the Community. That being the position, Mr. Dutt's contention is not acceptable and it must be held that the acquisition is for a public purpose. As to the other objection regarding the disposing the acquired land for the personal benefit of the authorities of Kidderpore Academy, it would appear that the acquisition being by

the Government and not under Chapter VII of the Act, the land will vest on acquisition in the Government and not in the Academy. Accordingly, it cannot be said as at present advised that such acquisition will be for the personal benefit of the authorities for the time being of the Kidderpore Academy.

7. The next contention of Mr. Dutt is that there was no satisfaction of the Governor as required and the satisfaction of the Deputy Secretary is not sufficient to warrant an acquisition. It was further contended that the general order authorising the Deputy Secretary to make arrangement for disposal of cases by him without reference to the Minister or Secretary is ultra vires Rule 5 of the Standing Orders.

8. Before considering this contention it will be necessary to look into the notification and rules which have a relevant bearing. In exercise of the power conferred by Clause 3 of the Article 166 of the Constitution, Rules of Business have been framed by the Governor and the relevant rules are set out below:

"Notification No. 1209 A.R. dated 5th June, 1964. In exercise of the power conferred by Clause 3 of Article 166 of the Constitution of India, and in supersession of all previous rules made in this behalf, the Governor of West Bengal is pleased to make the following rules, namely:--

1. These rules may be called West Bengal Rules of Business.

2. In these rules unless the context otherwise requires--

(c) "Secretary" means a Secretary to the Government of the State and includes an Additional Secretary, a Joint Secretary, a Deputy Secretary, and under-Secretary and Assistant Secretary.

.....

3. The General Clauses Act, 1897, applies for the interpretation of those rules as is applied for the interpretation of a Central Act.

Part I

Allocation and disposal of business.

4. The business of the Government shall be transacted in the departments specified in the First Schedule and shall be classified and distributed between those departments as laid down.

5. The Governor shall on the advice of the Chief Minister allot among the Ministers the business of the Government by assigning one or more departments to the charge of a Minister.

Part III. Departmental disposal of business.

A. General.

19. Except as otherwise provided by any other rule, cases shall ordinarily be

disposed of by or under the authority of the Minister-in-charge who may, by means of standing orders, give such directions as he thinks fit for the disposal of cases in the department. Copies of such standing orders shall be sent to the Governor or the Chief Minister:

Provided that until such standing orders are made by a Minister, the standing orders which were made under the Rules of Business existing immediately before the commencement of these rules and which were in force in the department in charge of such minister immediately before such commencement, shall so far as may be, be deemed, to be the standing orders for that department made under this rule.

20. Each Minister by means of standing orders arrange with the Secretary of the Department what matters or classes of matters are to be brought to his personal notice. Such standing orders shall provide that residual cases not concerned by such orders may be disposed of by the Secretary of the Department unless in his opinion any such case is of such importance that it should be placed before the Minister for his orders."

9. The department of land and land revenue is a department under Rule 4 and the allocation of business includes acquisition of land for public purpose in the said department.

10. In pursuance of Rules 19 and 20 of the Rules of Business the then Minister Bimal Chandra Sinha, Minister-in-charge, Land and Land Revenue Department issued on May 13, 1959 standing orders, relevant clauses whereof are stated below:

"1. AH matters specified in Rules 12, 13 (2), 23, 24, 27, 28, 29 (1), 37, 39, 40, 45 (1) and 51 of the Rules of Business shall be brought to my notice.

2. Besides the above, the following matters or class of matters in the Land or Land Revenue Department shall be brought to my notice before the issue of orders.

(1) All cases in which question of policy or principles are involved.

(30) All important cases relating to land acquisition by companies or industrial concerns or by Government under Land Acquisition Act before there is any notification u/s 4, an agreement u/s 41.

3. In cases of extreme urgency requiring the immediate issue of orders, the Secretary may at his discretion take such action on behalf of the Minister-in-charge, if time does not permit of his first obtaining the Minister's order; all such cases shall be brought to the notice of the Minister-in-charge at the earliest opportunity.

4. In the foregoing standing orders, where reference has been made to important cases and matters, the Secretary and any of the Deputy Secretaries of the Department shall be competent to decide which cases or matters dealt with

by him are important.

5. Subject to the foregoing provisions, the Secretary shall dispose of all matters of the department. The Secretary of the Department may by general or special orders make arrangement for the disposal of cases by the Deputy Secretaries and Assistant Secretaries."

10-A. In pursuance of the powers so conferred, the Secretary of Land and Land Revenue Department issued general orders authorising the Deputy Secretaries or Assistant Secretaries to dispose of matters in his charge unless in his opinion it is of such importance that it should be submitted to a higher officer or cases involve major question of principles or policy which should be submitted to the Minister-in-charge through the Secretary. The Deputy Secretaries or Assistant Secretaries have also been authorised to approve notifications or declarations to be published in official Gazette in respect of matters in their charge subject to the reference to superior officer if the matter is considered by them to be of such importance.

11. Mr. Dutt has firstly contended that there was no satisfaction of the Governor and the Deputy Secretary issued the necessary notification and declaration on his own without any reference to higher authorities. Such action is impermissible under law and Mr. Dutt sought to make a distinction between the words cases and matters appearing in Rules 19 and 20 of the Rules of Business. This distinction it appears to us, is one without any difference and it would appear that in the connected rules as also else where the words are indiscriminately (used) without any distinction.

12. It is well known that a government has a huge establishment and it is not possible for the head of the State or its Ministers to apply their minds in all cases or matters as arise in course of administration. In *Carltona Ltd. v. Commissioners of Works* 1943-2 All ER 560 it was observed by Greene, M.R.

"In the administration of Government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them.....The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if it were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before the Parliament for anything that his officials have done under his authority....."

13. It is thus the essence of administration that the works of the Government are entrusted to its responsible officers by relevant rules. Such officers obviously are responsible officers whom the Minister by Standing Orders issued by him thought it fit to entrust his responsibility to discharge various functions of the Government. Accordingly, if under the rules, as Assistant Secretary or Deputy

Secretary duly authorised takes appropriate steps for acquisition of land not otherwise prohibited by the rules there can be no illegality in such action as it was initiated for convenient transaction of business on legal authority of the relevant rules and orders. If the opinion is thus formed by a responsible officer of the Government duly authorised under the rules, his satisfaction will amount the satisfaction of the Governor as required under the law, not being a matter requiring his personal discretion, unless it is established that the order is in excess of powers under the rules or otherwise mala fide or an exercise of power for collateral purpose which is not the case before us.

14. Mr. Bose in this connection referred to the following extract of Article 824 (page 390) of Volume 7 of Halsbury's Laws of England (Third Edition) :

"Where functions entrusted to a Minister or to a department are performed by an official employed in the ministry or department, there is no delegation because constitutionally the act or decision of the official is that of the Minister."

As to Mr. Dutt's contention that; Rule 5 of the Standing Order is ultra vires the Rules 19 and 20 of the Rules of Business it has to be seen that under the Rules of Business the Minister has been placed in charge of the department with overall responsibilities. The Minister in the Land and Land Revenue Department while framing standing orders, by Rule 5 has granted power for disposal of matters to the Secretary and has further authorised the Secretary of the Department to make by general or special orders, arrangement for disposal of cases by Deputy Secretary and Assistant Secretary. Rule 5 is subject to Rules 3 and 4 above and the combined effect of the rules is that a Secretary or Deputy Secretary shall be competent to decide which cases or matters dealt with by him are important and under Clause 30 of Rule 2 such matter is to be placed before the Minister if considered by him to be important. If in pursuance of this power the Secretary makes a special or general order, there will be no illegality in the matter as the framing of such rule has the sanction of the Minister.

15. For all these reasons, it appears to us that the Deputy Secretary was acting within his sanctioned powers in issuing the relevant notification and declaration and not referring the same either to the Secretary or to the Minister obviously on the finding of his own that such acquisition was not an important case to be placed before the superior authorities.

16. As all contentions raised on behalf of the appellant fail, this appeal is dismissed without any order as to costs. All interim orders are vacated.

Gupta, J.

I agree.