

(1973) 08 CAL CK 0020
In the Calcutta High Court
Case No : C.R. No. 969 (W) of 1966

Mohon Koiri and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-08-1973

Acts Referred:

Constitution of India, 1950 — Article 154, 166(2), 166(3)
Land Acquisition Act, 1894 — Section 4, 5A, 6
Rules of Business Government of West Bengal — Rule 19, 20

Citation : AIR 1974 Cal 167 : (1974) 1 CALLT 23

Hon'ble Judges : Deviprosad Pal, J

Bench : Single Bench

Advocate : B.K. Dutta, for the Appellant; S.C. Bose, (for No. 4), U.C. Mallick and B.S. Bagchi, (for Nos. 1 to 3), for the Respondent

Judgement

Deviprosad Pal, J.—The petitioners are thika tenants in respect of more than 3/4th portion of the premises No. 121/5. Circular Garden Reach Road and it is stated that their forefathers constructed the huts standing on the same premises and have been residing with their respective families for more than 16 years. By a notification dated 1st March, 1962, u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act) the Deputy Secretary to the Government of West Bengal notified that the piece of land comprising premises No. 121/5, Circular Garden Reach Road, is likely to be needed for a public purpose, viz., for the expansion and development of Kidderpur Academy in Ward no. 85 of the Calcutta Municipality in the city of Calcutta. It is alleged by the petitioners that no public notice of the substance of such notification was given at convenient places in the locality as required under the law. No individual notice was alleged to have been served upon the petitioners who therefore could not get any opportunity of making any objection u/s 5-A of the Act. It is also stated in the petition that the Kidderpur Academy is a private institution and also is the owner of adjoining lands on the south-west side of the school measuring about one bigha and other adjoining land and those lands were lying vacant at present.

Thereafter by a declaration dated 26th February, 1965 issued u/s 6 of the Act, it was notified that whereas the Government was satisfied that the land was need for a public purpose, viz. for the expansion and development of Kidderpur Academy, it was declared that the said piece of land comprising premises No. 121/5, Circular Garden Reach Road was needed for a public purpose.

2. The petitioners have challenged the said two notifications issued under Sections 4 and 6 of the Act in the rule. An affidavit of Sri Manindra Sarkar has been filed on behalf of the respondent Nos. 1 to 3. Regarding allegation that no public notice of the substance of the notification issued u/s 4 of the Act was given at convenient places, the said affidavit specifically states that the notification u/s 4 of the Act was duly published in the Calcutta Gazette on the 15th March. 1962. The records of the land acquisition proceedings were also made available before this Court at the time of the hearing of this rule. On a perusal of the said records I am satisfied that the requirements of the law have been fully complied with and public notice of the substance of the notification has been caused at convenient places in the locality. In fact, the learned Counsel for the petitioners was allowed to have inspection of the said records and on such inspection he has in his fairness conceded that his grievance on that score was not maintainable.

3. The next point urged on behalf of the petitioners is that the purpose which was set out in the notification issued u/s 4 of the Act was expansion and development of the Kidderpur Academy. Such purpose was a vague one and there was no indication of the particulars of the development and expansion of the said Academy in the absence of which it was not possible to prefer any objection effectively u/s 5-A of the Act. Reliance was placed upon the decision of the Supreme Court in the case of *Munshi Singh and Others Vs. Union of India (UOI)*, . In my view this contention on behalf of the petitioners does not bear a closer scrutiny. The purpose for which the land is needed has been stated to be the expansion and development of the Kidderpur Academy. There is neither any vagueness nor any indefiniteness in the declaration of such purpose. In *Munshi Singh and Others Vs. Union of India (UOI)*, the notification merely mentioned that the land was needed for "plan and development of the area" and there was no proof that the interested persons were either aware of or were shown the scheme or the master plan in respect of plan development. On this fact it was held that the persons affected were unable to object effectively and hence the acquisition proceedings were quashed. It is true that u/s 4 of the Act the public purpose for which the land is needed, is to be particularised in order that the right to file objection u/s 5-A does not become an illusory one. Such right to file objection u/s 5-A of the Act is a substantial right when a person's property is being threatened with acquisition. (*Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others*, .) If such a right is to be effectively exercised, the person interested in the land proposed to be acquired must have an opportunity to submit his objection and this cannot be done if the notification u/s 4(1) while mentioning the public purpose does not give some definite indication

or particulars of the said purpose which would enable the person concerned to object effectively, if he so desired. In the absence of such specific or particular purpose being stated, the person affected cannot prefer any valid or proper objection. It is necessary to bear in mind that if the public purpose is not particularised it is difficult also for the authorities to carry out the various acts which may be required to be done u/s 4(2) of the Act. But as I have already stated the public purpose set out in the declaration does not suffer from any of the infirmities stated earlier. In the case of *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, , the purpose set out therein was "development and utilisation of the land as an industrial and residential area". The public purpose was considered to have been stated in the said declaration with sufficient particularity. In the present case, unlike the case of *Munshi Singh and Others Vs. Union of India (UOI)*, , the public purpose has been sufficiently particularised. Expansion and development of a school, viz.. Kidderpur Academy gives the persons interested in filing objection, a sufficient indication and opportunity to prefer objection effectively and exercise their right u/s 5-A of the Act.

4. The next question urged was that Kidderpur Academy being a private institution, acquisition for the expansion and development of such a school cannot be considered to be for a public purpose. In the affidavit filed on behalf of the respondent No. 4, it is stated that the said Academy is not a private institution but is a public institution under dual statutory control of Educational Directorate and the West Bengal Board of Secondary Education. It is further stated that it is the only Higher Secondary School for the local Bengalee boys in that part of the city. In view of such averment, it cannot be said that if the competent authorities have been satisfied that the expansion and development of the said Academy is a public purpose, such satisfaction has been an unwarranted one.

5. The next contention urged by the learned Counsel on behalf of the petitioners is that there was no satisfaction of the Governor that the land was needed for a public purpose and as such, the acquisition proceedings were without jurisdiction. u/s 6(1) of the Act when the Government is satisfied after considering the report, if any, made u/s 5-A(2) of the Act, 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 Secretary to such Government or of some officers duly authorised to certify its order. Thus, satisfaction of the Government after consideration of the report, if any made u/s 5-A is a condition precedent to a valid declaration. It is however immaterial whether such satisfaction is stated or not in the notification. For even if it is so stated, a person interested in the land can always challenge as a matter of fact that the Government was not actually satisfied. In such a case the Government would have to satisfy the Court by leading evidence that it was satisfied as inquired by Section 6 (*Rai Bahadur Ganga Bishnu Swaika and Others Vs. Calcutta Pinjrapole Society and Others*,). In the present case, from the records placed before me it appears that the Draft Notification u/s 4 of the Act was published after the

approval of the Deputy Secretary (Land Acquisition Dept.) was obtained on 1-3-1962. After the substance of the notification u/s 4 was caused to be published in accordance with the said section, objections were invited u/s 5-A of the Act and were also considered, and then a report u/s 5-A(2) was prepared on 12-11-1963 by the Second Land Acquisition Collector, Calcutta. It appears that on 8th February, 1965, the Assistant Secretary to the Government of West Bengal, Education Department, writes to the Commissioner of Presidency Division that he is directed by order of the Governor to convey administrative approval of the Governor to the acquisition in question required for the expansion and development of Kidderpur Academy. The Land and Land Revenue Department has been requested to take step for the acquisition of the land and to publish the draft declaration u/s 6 of the Act. The draft declaration obtained the approval of the Deputy Secretary of the Land Acquisition on 26-2-1965. Thereafter the declaration dated 26th February, 1965 was issued u/s 6 of the Act, the said declaration being annexure "B" to the petition. The said declaration states of the satisfaction of the Governor that the land is needed for a public purpose, viz., for the expansion and development of the Kidderpur Academy. The declaration also was expressed to be made by order of the Governor as required under Article 166(1) of the Constitution and the order was authenticated in the manner required by rules of the business. The fact that the enquiry u/s 5-A of the Act was held and objections were filed and heard, the fact that the Second Land Acquisition Collector, Calcutta, had recommended the acquisition and had sent his report to that effect and the Government thereafter issued the notification u/s 6 would, in the absence of any evidence to the contrary show that the condition precedent as to satisfaction has been fulfilled.

6. In view of the fact that the executive action of the Government was in fact expressed to be taken in the name of the Governor and that order was duly authenticated in the manner required by the rules of the business, the validity of the order cannot be challenged on the ground that it was not an order made by the Governor. (*Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another*,). What the authentication makes conclusive under Article 166(2) of the Constitution is that the order had been made by the Governor. It does not preclude the challenge of the order on the ground that the condition precedent to the validity of the order has not been complied with. (*Shambhu Nath Ghosh and Others Vs. Bejoy Lakshmi Cotton Mills Ltd. and Others*, .) The question as to whether in making the order, the Governor has acted in accordance with law cannot shelter behind the constitutional curtain of Article 166(2) of the Constitution. There is no doubt that where the authentication order states that the Governor is satisfied on a certain matter, there is a strong presumption of the regularity of the official act. The declaration made u/s 6 of the Act having been expressed to be made in the name of the Governor and the order having been duly authenticated, the constitutional protection under Article 166(2) of the Constitution as well as the presumption of regularity of official act cannot be assailed by merely stating that there was no satisfaction of the Governor without

alleging definite fact. In view of the presumption and the provision of Article 166(2), the burden lies upon the petitioners to support the assertion by placing the materials to rebut such presumption. (Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another,)

7. The learned Counsel for the petitioners next contended that under the Standing Orders made by the Minister-in-Charge of the Department of Land and Land Revenue framed under Rules 19 and 20 of the Rules of Business, there has been no satisfaction of the appropriate authority. To appreciate this contention it is necessary to bear in mind that under Article 154 of the Constitution, the executive power of the State is vested in the Governor and is exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 166(3) of the Constitution provides that the Governor shall make rules for the more convenient transactions of the business of the Government of the State and for the allocation among Ministers of the said business in so far as it is not business in respect to which the Governor is by or under the Constitution required to act in his discretion. Rule 19 of the Rules of Business as framed by the Government of West Bengal under Article 166(3) of the Constitution states that except as otherwise provided by any other rules, 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 direction as he thinks fit for the disposal of cases in the department. Rule 20 of the said Rules authorises each Minister to frame Standing Orders under which arrangement may be made with the Secretary of the department in respect of matters or classes of matters which are to be brought to the personal notice of the Minister. The Minister-in-Charge of Land and Land Revenue Department, has framed Standing Orders under the aforesaid Rules. The said Standing Orders were produced before me for consideration. Paragraph 5 of the said Standing Orders authorises the Secretary of the Department to dispose of all matters of the department subject to the provision of the said Standing Orders. The Secretary of the Department may by general or special order make arrangement for the disposal of cases by Deputy Secretary and Assistant Secretaries. By a general order issued by the Secretary. Land and Land Revenue Department made under para. 5 of the Standing Orders, it was directed that cases in the different branches of the Land and Land Revenue Department shall be disposed of, or when so required by any rule or order shall be submitted to the Minister-in-Charge, by or under the orders of the Deputy Secretary or the Assistant Secretary, as the case may be who is according to the office organization for the time being in force, in charge of the matters or classes of matters to which the cases respectively appertain, Clause 2 of the said order provides that all notifications and declarations relating to acquisition of land which are required to be published in the Official Gazette over the name of the Secretary to the Government of West Bengal shall be approved by or under the orders of the Deputy Secretary or the Assistant Secretary, as the case may be who is for the time being in charge of the matters or classes of matters to which the cases respectively appertain. When, however the Officer

dealing with a case decides that it is of such importance as to require its submission to a higher Officer in the Department, it shall be so submitted. From the various items appearing in paragraph 2 of the said Standing Orders it appears that the subject-matter of the present acquisition does not fall under any of the clauses of paragraph 2 of the Standing Orders which are to be brought to the notice of the Minister of Land and Land Revenue Department before issue of the order. That being the position, the contention raised that the Minister concerned was not satisfied or did not accord sanction does not bear any closer scrutiny. Under the Constitution the Government acts in accordance with the advice of the Ministers and the sanction is validly given by the Minister and the satisfaction of the Minister is sufficient in law. Unless there is any rule or Standing Order which requires matters like the present acquisition under the Act to be brought to the notice of the Minister before the issue of order, the Deputy Secretary and Assistant Secretary being duly authorised under the general order issued by the Secretary. Land and Land Revenue Department, under paragraph 5 of the said Standing Orders can exercise the power on behalf of the Governor. In the present case, the approval of the Deputy Secretary of the Land and Land Revenue Department having been duly obtained before the publication of the notification u/s 4 of the Act and also before the declaration u/s 6 of the Act, the condition precedent for the acquisition under the Act has been duly satisfied.

8. Mr. Dutt wanted to contend that the general order made by the Secretary, Land and Land Revenue Department authorising the Deputy Secretary and the Assistant Secretary to approve all the notifications and the declarations relating to acquisition of land is ultra vires the Standing Orders. As this point has not been raised in the petition, he is not entitled to urge such, a contention at this stage.

9. The result is that the rule is discharged. Interim order, if any is vacated. There will be no order as to Costs.