

(1988) 10 CAL CK 0018
In the Calcutta High Court
Case No : C. R. No. 12350 (W) of 1980

M/s. Anchor Industries and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-10-1988

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 16, 17, 38(c), 4

Citation : (1989) 1 CALLT 233

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : Rabindra Nath Mitra, Mr. Prabir Roychowdhury, Mr. Pradip Dutta and Mr. Biswanath Ghosh, for the Appellant; B.C. Dutt, Malay Bose and Mr. Bimal Jyotsna Chatterjee, For the Respondent Nos. 5 and 6, Mr. S. N. Samajdar and Mr. P. K. Ghosh, For the State, Mr. S. K. Dutta, For Standing Counsel, for the Respondent

Judgement

Paritosh Kumar Mukherjee, J.—The present writ petition was originally moved on behalf of Messrs. Anchor Industries and others on December 12, 1980, challenging, inter alia, the notice contained in Memo No. 2483, dated November 28, 1980 (Annexure "D" to the original writ petition) issued by the 1st Land Acquisition Collector, Calcutta, for cancelling and/or setting aside the same, whereupon B. C. Basak, J. was pleased to issue a Rule, in terms of prayers (a) and (b) of the writ petition. As regards interim Order, B. C. Basak, J., passed an Order of status quo, as the Office of the Government Pleader, refused to accept service of the copy of the writ petition, as there was no clear 48 hours' notice. The said Rule was made returnable 8 weeks. Thereafter, the matter appeared before R. N. Pyne, J. (as His Lordship then was) on November 25, 1983, when. His Lordship directed the matter to go out of the list, with liberty to mention before the appropriate Bench.

2. On January 27, 1987, an application for addition of party being filed by Jute Technological Research Laboratories before me, the said application was heard and allowed, as the same was not opposed by anybody on behalf of the writ

petitioners and an, Order was passed in the presence of Mr. S. N. Samajdar, learned Advocate, appearing for the State respondents.

3. Thereafter, an application for vacating interim Order was filed on behalf of added party on February 27, 1987, which was heard by me and interim Order was vacated, when no one appeared, on behalf of the writ petitioners.

4. The Rule has been made ready "as regards service" on July 17, 1987, and an application for reconsideration of the Order, dated January 27, 1987, having been filed, the same was heard by me on July 21, 1987, and after hearing the learned Advocate for all the parties, the parties were directed to maintain status quo, as regards their possession, as on the said date, until disposal of the writ application.

5. On April 19, 1988, an application for amendment of the original writ petition, which was filed on December 24, 1987, was disposed of by me by allowing the writ petitioner to insert sub-paragraph (a) to sub-paragraph (r) and corresponding grounds, being grounds V, VI, VII, VIII, XIII, XIV and the additional prayers, namely, (ai), (i) and (ii) in the original writ petition.

6. Thereafter, the. Rule was heard by me from time to time and hearing was concluded on September 29, 1988, and judgment was reserved.

7. The case of the writ petitioners in the present writ petition, in short is as follows:

8. The petitioner No. 1 is a registered partnership firm. The petitioner Nos. 2 and 3 are the partners of the petitioner No. 1. The petitioners are persons interested, in respect of premises No. 97, Netaji Subhas Chandra Bose Road, Calcutta-40, comprising C.S. Dag Nos. 710, 712 and 719 of Mouza Shibpur and the said property is comprised of an area of 1 bigha 6 cottahs 7 chittaks more or less. The petitioners took thika tenancy right in the year 1974, and thereafter constructed structure, in the said plot of land, at their own cost for the purpose of carrying out their business and using the same "as godown", for their partnership business therein. Thereafter, the petitioners entered into an agreement for sale in respect of the said property with one Sm. Mani Devi Saraogi of 139, Mahatma Gandhi Road, Calcutta-7, (being the respondent No. 3), on January 21, 1976. In the said agreement, it was agreed between the parties that the aforesaid plots of land with structure standing thereon would be sold to the petitioner No. 1 at a price of Rs. 48,000 and a sum of Rs. 10,000 was paid by way of "earnest money".

9. After the aforesaid agreement for sale, the balance consideration money of Rs. 38,000 was duly paid by the petitioner No. 1 on January 20, 1979, but as the respondent No. 3. failed to comply with the terms contained in the said agreement for sale by not completing the sale, the petitioners had to be a suit in this Hon"ble Court, being Suit No. 134 of 1980, for specific performance of contract. In the said suit, the present petitioners also filed an application for

injunction and after hearing. Justice Mrs. Padma Khastgir was pleased to pass an Order, inter alia, restraining the respondent No. 3 from taking any step whatsoever from selling and/or alienating and/or registering and/or transferring or assigning or deal with the said premises No. 97, Subhas Chandra Bose Road, with any person and/or persons other than the plaintiffs, till the hearing of the application.

10. The aforesaid interim order was ultimately made absolute by His Lordship the Hon'ble Mr. Justice R.N. Pyne (as His Lordship then was) by His Lordship's judgement. Dated February 19, 1980.

11. On December 2, 1980, the petitioners came to learn from Sm. Moni Devi Saraogi, owner of the acquired property (being respondent No. 3 herein), that a notice u/s 12(2) of Act. I of 1894, being Land Acquisition Act, 1894, issued by the 1st Land Acquisition Collector, Calcutta, being notice No. 2483, dated 28.11.80 has been served upon the said and under the said notice the date of taking possession of the acquired property was fixed on December 3, 1980 at 11-30 A.M. True copy of the said impugned notice, u/s 12(2) of the said Act has annexed as Annexure "D" to the writ petition.

12. It is the further case of the writ petitioners that on December 3, 1980 authorised persons of the Office of the 1st Land Acquisition Collector, Calcutta, came to take possession of the property, when the petitioners resisted such possession and due to such resistance the said persons postponed the matter relating to taking over possession and went back threatening the petitioners to come again with "police force", on December 13, 1980, at 11 A.M.

13. It is the further case of the writ petitioners in the instant writ petition that in spite of best endeavours, the petitioners could not get copies of the relevant Notification and declaration issued under Sections 4 and 6 respectively, under the said Act, in respect of the land held and possessed by the petitioners, stated as aforesaid. The writ petitioners having been able to collect the extract of the Notification and declaration, have annexed the same separately at a subsequent stage, which has been made as Annexures "F" and "G" to the amended writ petition.

14. According to the petitioners, in the said Notification and declaration, the said lands though admittedly situated within the local limits of the Corporation of Calcutta, were sought to be identified with reference to C.S. dag numbers and while pretending to describe the boundary of the lands likely to be acquired it was recited to be bound "On the North -by Corporation Road". The Notification was dated September 30, 1975, and the Declaration was dated March 2, 1978. The C.S. dug numbers were assigned to the different parcels and land in the then Mouza of Shibpur, under Police Station -Tollygunge, under the settlement operation carried out under the provisions of the Bengal Tenancy Act, 1885. According to the petitioners, the system of identification with reference to C.S, dags became obsolete with the inclusion of the area within the local limits of the

Corporation of Calcutta and the Bengal Tenancy Act also ceased to apply to such area. Such inclusion, in the instant case had taken place in or about 1953, and since then different plots of land held by different persons, under separate title and boundaries are being identified with reference to their holding numbers, as assigned by the Corporation of Calcutta and the public street, on which they are situated.

15. In the instant case, in the Notification of 1975, and the Declaration of 1978, the recourse was taken to the system of identification, which had fallen into disuse and had become obsolete since 1953, as after the C.S. operation, there was R.S. operation, in the areas where the system of preparation of record of rights continued to remain in force.

16. It is the further case of the writ petitioners that within the city of Calcutta, the relevant Act, being inapplicable, there was no question of either preparation or maintenance of such record of rights or assignment of any dag number to any particular plot of land. According to the writ petitioners, this fact could not be unknown to the Land Acquisition Department and its subordinates. But in spite of the aforesaid fact, that the lands in question are situated within the local limits of the Corporation of Calcutta, the respondent Authorities issued the Notification, without at all "disclosing the distinctive particulars of the lands", with reference to which, such lands had been and could have been identified by the persons interested.

17. According to the writ petitioners, consequent to such failure and negligence, the Gazette publication of the said Notification and Declaration could not serve their intended purpose and, as such, cannot have any effect, as none could really know, nor any one could have information that the lands comprised in Corporation Holding No. 97, Netaji Subhas Chandra Bose Road, Calcutta-40, were likely to be acquired under the provisions of the said Act.

18. In the circumstances, although the writ petitioners were vitally interested and entitled to file objection, could not file objection to the legality and propriety of the purported acquisition u/s 5A of the said Act, which resulted in the purported acquisition of lands, depriving the writ petitioners of their valuable right, title and interest in respect of the said premises otherwise than in accordance with the provisions of the said Act.

19. It is the further case of the writ petitioners that they have been deprived of their valuable right to prefer an objection u/s 5A of the said Act. Reference has been made to the fact that there was no directions under Sub-section (4) of Section 17 of the said Act, and consequently, it was obligatory on the part of the respondent Authorities to proceed, in a manner which would enable the petitioners at least to know that their lands were the subject matter of the proposed acquisition.

20. It is the further case of the writ petitioners that the alleged purpose of the proposed acquisition as stated, was not as sufficient disclosure on the part of the

Statutory Authority or the "real purpose", involved in order to enable the persons interested to verify the truth of it and if so advised to object to it. Further, the Authorities themselves were not possessed of sufficient materials so as to arrive at a bona fide conclusion regarding the existence of a "so-called public purpose".

21. In that view of the matter and particularly having regard to the fact that a large area within the campus of Jute Technological Research Laboratory, Calcutta, is lying wholly unutilised and that there are other lands readily available, the acquisition of which would not have caused any injury at least by affecting any running business, the Authorities by proposing to acquire the lands in question did not really apply their mind and arrived fairly and reasonably at the satisfaction on the basis of the relevant materials.

22. It is the further case of the writ petitioners that the instant acquisition was being made for the purpose of "Jute Technological Research Laboratories", which is a part of a registered society, namely, "Indian Council of Agricultural Research" and the expenses in connection with the proposed acquisition are, according to the available information would be borne by the said Society.

23. Further, according to the petitioners, no part of the compensation for the said acquisition is to be paid directly out of the said funds controlled by the local Authorities. In the premises, there could not be any acquisition for "so-called public purpose" and for the benefit of a registered society, under the said Act. Further, the affairs of the said society are governed by its own rules as well as by the provisions of the Act under which it is registered. The land under acquisition in Regent Park was originally under the Tollygunge Municipality and during the year 1953, Tollygunge Municipality was merged and/or included in Calcutta Municipal Area and the lands within the Tollygunge Municipality came within the Municipal limits of Calcutta Municipal Corporation. The petitioners further alleged that if the Officers and/or the representatives of the Land Acquisition Department made spot enquiries and/or verification under the Land Acquisition Act, then they would have found instantly that since 1974, the writ petitioners M/s. Anchor Industries were occupying the lands in question as "tenant" and carried on business under the name and style of M/s. Anchor Industries, as stated above. According to the petitioners, due to negligence and inaction on the part of the Officers and/or the representatives of the Land Acquisition Department, the existence of M/s. Anchor Industries was totally ignored, though they were vitally interested, in the matter.

24. As such, according to the present writ petitioners, the purported proceedings and the award by reason of the facts and circumstances, as aforesaid, could not be binding upon the petitioners, who are also the occupiers and owners of the said lands.

25. In the Affidavit-in-opposition to the amended writ petition affirmed by one Tarun Prasad Basu, Assistant Secretary to the Land and Land Reforms Department, Government of West Bengal, the following facts have been stated.

26. That on or about August 24, 1974, the Secretary, Indian Council of Agricultural Research, who is also the Joint Secretary to the Government of India, Ministry of Agriculture, Research and Education, submitted "a proposal", to the District Collector, 24-Parganas, for taking necessary steps to acquire under the Land Acquisition Act, a piece of vacant land, being Khatian No. 183/1, 55, 76 and C.S. Dag Nos. 710, 712 and 719 of Mouza-Shibpur, Police Station-Jadavpur, Calcutta, measuring about 1 bigha 6 cottahs, 7 chittaks and 25 square feet, which is adjacent to Jute Technological Research Laboratories, a Research Laboratory under the Indian Council of Agricultural Research. The said land was reported to belong to M/s. Regent Estate Limited of 9, India Exchange Place, Calcutta.

27. Since the proposal mentioned hereinabove, was for public purpose, on or about November 27, 1975, the Deputy Secretary, Land and Land Reforms Department, Government of West Bengal published a Notification in the Official Gazette u/s 4 of the Land Acquisition Act, 1894.

28. After the Notification u/s 4, bearing No. 24620-LA, dated 30.9.75 was published and public notice of the said Notification was made by 1st Land Acquisition Collector, Calcutta on November 13, 1976, Enquirer was made u/s 5A of the Land Acquisition Act, and on the basis of the said enquiry report, a declaration u/s 6 of the said Act was duly made and published in the Official Gazette bearing No. 2-DA, dated January 2, 1978.

29. On or about February 28, 1980, a notice was issued to the persons concerned fixing the date of hearing on March 12, 1980, and after several adjournments the same was finally completed on July 25, 1980 and an award was made on November 21, 1980, and a notice u/s 12(2) of the said Act was issued on November 28, 1980.

30. Thereafter, notice u/s 16 of the said Act was served upon the persons concerned specifying that the possession of land would be taken on December 3, 1980 at 11-30 A.M.

31. At the hearing of the writ petition, the original records relating to the acquisition were placed before me wherefrom, I found that after passing of the Notification u/s 4 of the said Act, the 1st Land Acquisition Collector had submitted a report, on September 27, 1977, to the following effect:

A piece of land comprising C.S. Dag Nos. 710, 712 and 719 of Mouza-Shibpur, J. L. No. 42 and measuring more or less 0.1770 hectare (0.4375 of an acre) was notified for acquisition under Notification No. 24620 LA/1G-5/75, dated 30.9.75 published at page 2289 Part I of the Calcutta Gazette, dated 27.11.75. Public notice of the substance of the Notification was given in the locality on 13.11.76. Notices were also issued and served on the person known or believed to be interested inviting objections. No objection petition was filed. The land in question is needed for bona fide public purpose, namely for expansion of the Jute Technological Research Laboratory at Calcutta in Ward No. 97, of the Calcutta

Municipality in the city of Calcutta. There is no objection to the acquisition of the land on religious or public ground. Acquisition of the land in question is hereby recommended to be proceeded with.

32. It appears that the Deputy Secretary to the Government of West Bengal, Commerce and Industries Department, by his Memo, dated November 4, 1977, mentioned that he has been directed by the Governor of West Bengal that after considering the report u/s 5A of the Land Acquisition Act (Act I of 1894), the Governor has been pleased to order that the acquisition in respect of 0.4375 of an acre of land in Ward No. 97 of Calcutta Municipality for expansion of Jute Technological Research Laboratory, Calcutta, be proceeded with and to take necessary steps for publication of the declaration u/s 6 of the said Act, in an early issue of the Calcutta Gazette.

33. After the placing of the aforesaid facts from the amended writ petition as well as after placing the case of the respondents from the Affidavit stated hereinabove, Mr. Rabindra Nath Mitra, learned Advocate submits that the entire procedure adopted by the respondents since passing of the Notification u/s 4 of the said Act and in the matter of hearing objection u/s 5A of the said Act in a slipshod manner, and passing the Declaration u/s 6 of the said Act, the respondents had at no stage issued any notice and/or had given any opportunity, to the writ petitioners, who were very much in occupation and/or in possession of the said premises; since 1974, "as tenant" which would be evident from the records of the Calcutta Corporation.

34. According to Mr. Mitra, the writ petitioners had been carrying on business-in the said premises since 1974, and was utilising the said premises.

35. Further, according to Mr. Mitra, the broad fact remains that as at no point of time earlier to January 28, 1980, when the notice was issued to the person concerned fixing the date of hearing on March 12, 1980, and a consequential notice, u/s 12(2) of the said Act was issued on November 28, 1980, thereby fixing December 3, 1980, at 11-30 A.M. for the purpose of taking possession, the petitioners were not aware of such proceedings and, as such, could not file objections u/s 5A of the said Act.

36. In this context, Mr. Mitra has placed reliance on the latest decision of the Supreme Court in the case of Raghunath and Others Vs. State of Maharashtra and Others, , wherein the Supreme Court observed that once there is a valid Declaration, u/s 6 of the said Act, the scope Notification u/s 4 would get exhausted. This principle, however, does not apply to a cause, where the Declaration, u/s 6 proves to be invalid, as in the present case before me.

37. Accordingly, following points have to be decided by this Court:

(i) Whether the Notification u/s 4 and the consequential declaration u/s 6 are invalid in the eye of law, as admittedly, the writ petitioners being occupiers of the premises since 1974, no notice had been served upon them and no actual local

enquiry had been made at the spot by the Authorities of the Land Acquisition Department, after passing of the Notification u/s 4 ?

(ii) Whether the Notification u/s 4 is valid as the substance of the Notification was now published within 40 days of the said Notification u/s 4?

(iii) Whether any proper enquiry has been held before hearing of the objection u/s 5A of the said Act, in the facts of the present case, and the petitioners have been actually deprived of their valuable right of objections u/s 5A of the Act and, as such, whether there was violation of the principles of natural justice ?

(iv) Whether there was "any public purpose", behind the Order of acquisition, and Chapter VII of the Act has been complied with, in the facts of the present case?

(v) Whether the land sought to be acquired, not being vacant land, as would be evident from the records of the Calcutta Corporation, any such acquisition proceedings could be taken without notice to the occupier and/or tenant? Let us now take these points for adjudication.

38. In my view, no proper Notification u/s 4 has been issued by the Land Acquisition Authorities, in terms of the provisions of the Land Acquisition Act, 1894, as the Authorities had described the land/premises, in question, with reference to the obsolete C.S, Dag number in the said Notification, although admittedly the said premises on the date of Notification situated within the jurisdiction of Calcutta Municipal Corporation. The C.S. Dag number ceased to exist sometime in 1953, as the said premises fell within the jurisdiction of Tollygunge Municipality, and thereafter under the Calcutta Corporation.

39. Further, in my view, following the decision in the case of Pramatha Nath Mukherjee and Others Vs. St. of W.B. and Others, , wherein D. Basu, J. held that in the absence of sufficient particulars, so as to identify the land, without any proper demarcation with reference to the holding number and boundaries, the Order of acquisition cannot be sustained in law.

40. Reliance has also been placed in the case of Biswamitra Shukla and Others Vs. L.A. Collector, Burdwan and Others, , wherein A. K. Sinha, J, held that the actual area and the description of the part of the plots intended to be acquired are mandatorily required to be given under the provisions of the Act. This mandatory requirement cannot be complied with, by merely setting up a plea of estoppel by conduct on the part of the objectors.

41. In my view, in respect of issuance of public notice, in the facts of the present case, there was complete non-compliance with the pre-conditions, as it has been held in the case of Khub Chand and Others Vs. State of Rajasthan and Others, .

42. In paragraph 7 of the judgment in Khub Chand (supra), Their Lordships held: "Indeed, the wording of Section 4(2) of Rajasthan Land Acquisition Act (Act 24 of 1953) leads to the same conclusion. It says, "thereupon it shall be lawful for any

Officer, generally or specially authorised by the Government in this behalf, and for his servants and workmen to enter upon and survey and take levels of any land in such locality. The expressions "thereupon and "shall be lawful" indicate that unless such a "public notice" is given, the Officer or his servants cannot enter the land. It is a necessary condition for the exercise of the power of entry, The non-compliance with the said condition makes the entry of the Officer or his servants unlawful.

43. In my view, the said observation of the Supreme Court in the case of Khub Chand (supra) applies with full force in the facts of the present case.

44. Further, in my view, in the facts of the present case, the substance of the Notification under the said Act, was bound to be published in the locality within 40 days after publication of the Notification. u/s 4 in the Official Gazette and as in the instant case, the said substance of the Notification was published on November 13, 1976, long after one year from the date of publication of Notification in the Official Gazette, and such fact having been admitted by the respondents in paragraph 4(a) of the Affidavit affirmed on May 12, 1988, the purported. Notification is also bad and irregular and liable to be quashed.

45. In this context, reliance was placed on the observations of the Supreme Court in the case of C.K. Narayana Chary and Others Vs. Pothepalli Ashanna and Others, . In the said judgment, Their Lordships of the Supreme Court were pleased to hold in paragraph 3 that if "public notice of the substance" of the Notification is not given in the locality within 40 days from the date of publication of such Notification in the Official Gazette, the said Notification would be invalid and liable to be struck down.

46. In my view the above observation of the Supreme Court in C. K. Narayan Chari's case (supra), is also applicable in the facts of this case and Notifications are liable to be set aside.

47. Because of the admitted position that there was no local enquiry by the Land Acquisition Department, in view of the averments made in paragraph 4(a) of the Affidavit-in-opposition affirmed on May 12, 1988, as well as in paragraph 3 of the application for vacating interim Order filed on behalf of the State respondents on December 14, 1982, as stated hereinabove, the writ petitioners have not been admittedly served with either the said notice and accordingly deprived of the opportunity of making representations before the appropriate authority, u/s 5A of the said Act and all further consequential actions including passing of the Declaration u/s 6 of the said Act and further steps taken pursuant to the Order of acquisition, are liable to be quashed by issue of appropriate Writ, in the nature of Certiorari.

48. In this context, I may refer to the decision in the case of A. Soundarapandian Vs. State of Tamil Nadu and Others, , wherein following the observations of the Supreme Court, the Madras High Court held that the right to make representation during the enquiry u/s 5A of the Land Acquisition Act, is a very

"valuable right" and no person can be deprived of such right. If it is so done, there will be a clear violation of the principles of natural justice and the Declaration u/s 6 of the Act, which is otherwise declared conclusive, cannot be conclusive, because non-hearing of the objection by the interested party.

49. This Court, since it is quashing the land acquisition proceeding also on the ground of vagueness of the Notification u/s 4 and non-hearing of the objections under Sections 5A of the said Act, is not at this stage called upon to decide whether the acquisition has been made for "a public purpose" or there was no "public purpose" behind it.

50. In this connection, reference may be made to the fact that the land sought to be acquired, was for the expansion programme of the Jute Technological Research Laboratory in the 7th 5 Year Plan, which is evident from the Affidavit of the added respondent affirmed on September 2, 1987. It is further significant to note that the 7th Five Year Plan has started from January 1986, and therefore, the same was not in existence in 1975, when the alleged acquisition proceedings was taken up by the Authority.

51. As regards applicability of provisions of Part VII (Company Rules of Act 1 of 1894), the Jute Technological Research Laboratory being an institution established, under the Indian Council of Agricultural Research, which is "a society", registered under the Societies Registration Act, and as such, comes within the meaning of "company" u/s 38(c) of the Land Acquisition Act, 1894.

52. Further, in my view, as the land acquisition Authorities admittedly had not entered into agreement. with the said company for the purpose of such alleged acquisition of land under the provisions of Part VII of the Act, procedures for land acquisition for companies, have not been complied with, in the fact of the present case.

53. Regarding availability of unutilised lands lying in the hands of Jute Technological Research Laboratory, there is no evidence before this Court as to whether any other land is available for accommodating the Jute Technological Research Laboratory", and as such, this Court is not in a position to pass judgment upon the same.

54. In the result, the writ petition is entitled to succeed. 55. The Rule is made absolute.

56. The impugned land acquisition proceeding starting from the Notification u/s 4 and the declaration, u/s 6 and the notice u/s 12(2) of the Land Acquisition Act, 1894, are liable to be set aside by issue of appropriate Writ in the nature of Certiorari.

57. This will not, however, prevent the respondents to proceed with the land acquisition in accordance with law.

58. This judgment delivered today, on October 11, 1988, will be operative after

November 21, 1988.