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**(1951) 06 CAL CK 0003**  
**In the Calcutta High Court**  
**Case No : Civil Revn. Case No. 845 of 1951**

Nader Chand Mallick

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

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**Date of Decision :** 19-06-1951

**Acts Referred:**

Constitution of India, 1950 — Article 226(1)

Land Acquisition Act, 1894 — Section 11, 12, 12(2), 16, 18

**Citation :** AIR 1952 Cal 67

**Hon'ble Judges :** Sinha, J

**Bench :** Single Bench

**Advocate :** Paresh Lal Shome and Gouranga Sundar Chatterji, for the Appellant; Jajneswar Majumdar and Smriti Kumar Roy Choudhury, for the Respondent

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## Judgement

Sinha, J.—This is a Rule issued upon the respondents to show cause why writs in the nature of Certiorari, Mandamus & Prohibition should not be issued under Art. 226 (1) of the Constitution, to restrain them from giving effect to an order made by the Special Land Acquisition Collector, Hooghly, directing the taking of possession of a certain piece of land, to be made over to an institution known as the "King George V Silver Jubilee Maternity Home & Child Welfare Centre."

2. The facts are briefly as follows:

The petitioner is the owner of a plot of land situated at Hooghly, bearing C. S. Dag No. 1121 of Mouza Hooghly, P. S. Chinsurah District Hooghly. This plot of land is vacant & adjoins the above-mentioned Public Institution. The said institution urgently requires land for extension of staff quarters & improvement of the clinic & this plot has been acquired under the Land Acquisition Act, & the order complained of is an order for taking possession of the land in order to vest it in the acquiring authority & then to make it over to the said institution.

3. The petitioner purchased this land in 1933. He has not built any structure on

it, although he has considerably improved it by levelling, fencing etc. He says that the ancestral house of his family adjoins the plot & although he lives there now with his brothers, the house itself has been allotted to his brothers, the idea being that he should have this plot for building a house for himself. According to him, he could not build a house because of the scarcity of building materials, but he has not abandoned the intention of doing so. By Notification No. 10286 L. A. dated 30-11-1949, published in the Calcutta Gazette dated 8-12-1949, under S. 4, Land Acquisition Act, it was duly notified that the land was likely to be acquired for extension of the Staff Quarters & improvement of the "King George V. Silver Jubilee Maternity Home & Child Welfare Centre", & all persons interested were requested to file their objections before the Special Land Acquisition Collector, Hooghly. The petitioner duly filed his objection under S. 5A, Land Acquisition Act. After hearing his objections, & making necessary enquiries, it was decided that the acquisition should be made. I myself cannot think of a more deserving object for acquiring land by the State than for the extension of a Maternity Home & Child Welfare Centre; & no fact has been placed before me to show that the decision by the Land Acquisition Collector was wrong. The real ground upon which the petitioner bases his application is that the provisions of Ss. 11 & 12 of the Act were not complied with. It is argued that non-compliance with the procedure laid down by these sections has made the award of the Special Land Acquisition Collector dated 10-4-1951, bad, & as such, no possession could be taken under S. 16.

4. To appreciate the objection, it is necessary to recapitulate the procedure which is followed under the Land Acquisition Act 1 (1) of 1894, for the acquisition of lands. Whenever it appears to the Provincial Govt. that land in any locality is needed for a "public purpose", a notification to that effect must be given in the official Gazette & the Collector must also cause public notice of the substance of such notification to be given at convenient places in the locality. It is for the Provincial Govt. to decide what is a "Public Purpose", - "*Wijeyesekera v. Festing*", (1919) A. C. 646, Province of Bombay Vs. Kusaldas S. Advani and Others, . After these preliminary steps have been taken, it becomes lawful for the officers to the Govt. to enter & survey the land; & to take all necessary steps to find out whether the land is really adapted for the purpose. (S- 4).

5. Any person interested in the land can thereupon apply to the Collector under S. 5A, objecting to the acquisition, & the Collector must thereupon give the objector an opportunity of being heard.

After hearing such objections, he makes his report to the Provincial Govt. If, after considering the report, the Provincial Govt. is satisfied that the particular land is needed for a public purpose then a declaration is made under S. 6. The declaration is conclusive evidence that the land is needed for a public purpose. It must be noted that after this declaration is published, the point whether the land should be acquired or not is no longer open. The only thing that remains to be done, is to decide the question of compensation which must be paid in respect of

the land. In fact, the Collector then proceeds to mark out & measure the land (S. 8) & gives notice under S. 9, that the Govt. intends to take possession of the land & calls for claims as regards compensation to be submitted to him.

6. In this particular case, it is admitted that all the above steps have been duly taken. In fact the petitioner duly submitted his application for compensation, to the Special Land Acquisition Collector, Hooghly.

7. The next step to be taken by the Collector is to proceed to enquire as to the objections (S. 11). The only objection that can be entertained at this stage is as to the measurement & compensation. The measurement again is only for the purpose of ascertaining the compensation.

8. After the inquiry has been made on the day fixed, or on any other day to which the enquiry has been adjourned, the Collector makes his award. The award fixes the measurement & the compensation to be paid.

9. It is alleged in this case that the provisions of S. 11 were not complied with. Upon the notice being given under S. 9, the petitioner preferred an objection & notice was served upon him that his objection would be heard upon a particular day. The inquiry was made on 17-6-1950, when the petitioner appeared through his pleader who argued the question of compensation & filed documents to show what the compensation should be.

I cannot therefore understand the argument advanced before me that the hearing on 17-6-1950 was not under S. 11. I have looked into the order-sheet which clearly shows that the notice dated 3-6-1950 & the inquiry dated 17-5-1950, were all regarding compensation. In fact, it could not be otherwise. The question of acquisition was already a closed chapter, & the only points" that could be agitated were measurement of the land & compensation. Measurement is not attacked, so the only thing upon which an inquiry could be made was the question of compensation. It is clear, however, that on that date (namely 17-6-1950) no award was made because on 11-7-1950, the Land Revenue Department requested the Collector to hold up further proceedings. On 8-3-1951. the Govt. again ordered the Collector to proceed with the Land Acquisition Case, which he did, & made his award on 10-4-1951, & duly filed it. There is no evidence to show that on the day the award was actually made, either the petitioner or his lawyer was present. It is urged that this procedure has vitiated the award. It is firstly said that under B. 11, the award must be made then & there, when the inquiry has been concluded, in the presence of the petitioner and/or his representative. There is nothing in the section which warrants such a proposition. The inquiry is certainly a preliminary to the making of the award. As happened in the present case, the inquiry is often made on the spot & it is not at all reasonable to expect that the award should be made then & there.

10. It is next argued that in any event, a further notice should have been given to the petitioner to be present at the time when the award was made. Again, I

find no provision in the Act for such a notice. The Collector, holding the inquiry or making the award is not a Court & the proceedings are not judicial proceedings. "British India Steam Navigation Co. vs. Secretary of State" 15 C.W.N. 87; "Gokul Krishna Banerji and Another Vs. Secy. of State, .

11. There is therefore no question of pronouncing the Award in the same manner as the decision of a Court of Law.

12. But while there is no provision for giving notice immediately prior to the making & filing of an award, S. 12 makes provision for giving notice after the making of the award, where any person interested in the award is not present (either personally or through a representative) at the time of the making of the award.

13. Under S. 12 (1), the award when made & filed is conclusive evidence between the Collector & the persons interested whether they have respectively appeared before the Collector or not. Under S. 12 (2) the Collector must give "Immediate notice" of such an award to such of the persons interested as are not present personally or by their representatives when the Award was made. It has been held however that the giving of the notice is for the benefit of the public & not the objector, & the award is not vitiated if not given immediately. ("In the matter of Govt. & Nanu Kothare 80 Bom. 275.)

14. In the present case, a notice was issued & was purported to have been served upon the petitioner on 23-4-1951. There is an endorsement of the process-server on the back of the notice. The original endorsement states that the petitioner was not found at his residence as he was then at Calcutta & the notice was returned. This last sentence has been subsequently scored out & the statement is substituted that it was served by affixing it upon the front door. The original date of service looks to me to be like 20-4-1951, altered to 23-4-1951. In view of the fact, that the rule was issued on 23-4-1951, all this internal evidence makes me very suspicious about the service. It is however necessary to deal with the matter further because the Govt. agrees that it will treat the notice as not properly served & will serve the notice again & desist from taking possession until it has been so served.

15. It is then argued that if notice under S. 12 (2) has not been served, possession under S. 16 cannot be taken, because the award cannot yet be taken to have been "made", or if made is an invalid award. In "Macdonald vs. Secretary of State" 4 I C. 914 (Lah.) it has been held that until an award is announced or communicated to the parties concerned, it cannot be said to be legally made. "To hold" said the learned Judges (Rattigan J. & Shah Din J.):

That an award is "made" as soon as it is signed by the Collector would in many cases result in grave hardship & we therefore feel fully justified in holding that an award is not made until it is announced or communicated to the person interested. We cannot believe that the legislature intended that an award should be deemed to be "made" when the Collector signs the document & without

saying a word about it, locks it up in his office. To take an extreme case, the Collector signs an award & without announcing it files with various other documents in his office. He is then transferred & it is only some seven months afterwards that his successor comes across the "award" under S. 18 of the Act, the persons interested would be barred from applying for a reference to the Civil Court as more than six months had elapsed from the "making" of the award.

16. With great respect, I do not think that it is possible to say that an award is not "made" under S. 11, until notice has been given under S. 12 (2). An award is made when the Collector draws up & signs the award. The function is not a judicial one & there is no necessity of announcing it. Next comes the filing & lastly, a notice is served under S. 12 (2) upon persons who were not present (personally or through a representative) at the time of the making of the award. The giving of notice is required by law & it must be given, but if not given, it cannot make the award invalid. This is clear from a consideration of S. 18 of the Act. That section says that where a person is present, "at the time" when the Collector made his award or where he got notice under S. 12 (2), the time limit to object to the award & ask for a reference is six weeks, otherwise it is six months.

17. If there can be no award, if there is no notice, then prescribing the outside limit of six months becomes meaningless. In my opinion, the intention was to make the award binding in any event, after the expiry of six months from the award. The hypothetical cases enunciated in "Macdonald vs. Secretary of state", (ibid) rather overlook the significance of "filing" an award. If it is filed as of record, parties have means of access to it. A party, whose objection has been inquired into under S. 11, is not entitled to sit down & just wait for the notice to be given.

18. In the case of "In the matter of Government & Nanu Kothare", 30 Bom. 275, Chandavarkar J. states as follows:

So far as the period of limitation, provided for in Cl. (b) of the proviso to S. 18, goes, it is made to run from the date of the receipt of the notice from the Collector, in which case it is six weeks, or from the date of the Collector's award in which case it is six months, whichever period shall first expire. That means that in any case the proceedings shall be final after six months from the date of the award. This evidently contemplates that a party interested should not sit quiet, waiting for the Collector's notice or plead want of it, but should in any case himself be vigilant. The longer period of six months from the date of the award is given him as an alternative, where the Collector has not been himself prompt.

In the present case, the period of six months has not expired. & for reasons stated above, the alternative period of six weeks has not also started to run. The petitioner need not even wait for the notice to be served, since this is not a "condition precedent" for the filing of an objection & asking for the matter to be

referred to Court.

19. We then come to the question of possession under S. 16. That section lays down that when the Collector has made an award under S. 11, he may take possession of the land which shall there upon vest absolutely in the Crown (now the State) free from all encumbrances. It is argued, that no possession can be taken unless the notice under S. 12 (2) has been served. I cannot agree. That construction really means adding to the wordings of the section & is not permissible. As I have already said, the question of acquiring the land has now become final. The land has been measured & the question of compensation determined by the Collector. Why then should the possession of the Govt. be postponed? The only thing that can happen now is to refer the objection to Court (if the petitioner so requires). The taking of possession has not been made conditional upon payment of the compensation. In an ordinary contract of sale, possession comes after the payment of the consideration. In the case of acquisition by the State, there is no apprehension that the consideration will not be paid. Hence, immediately the Collector makes his award, he might take steps for taking possession of the land. Any objection as to compensation or measurement (for the purpose of ascertaining that compensation) can be fought out in the manner prescribed by the Act but that need not hold up the taking of possession by the acquiring authority.

20. The real point of attack in this application is this attempt by the Collector to take possession under S. 16. In any view of the matter, I do not see anything contrary to law in his doing so. The Govt. in the present case has agreed not to take possession until service of the notice under S. 12 (2), but that is only as a matter of grace & "exabundante cautela."

21. This rule accordingly should be discharged. Upon a consideration of all the facts I do not make any order as to costs. The interim stay is vacated.