
(1973) 09 CAL CK 0024
In the Calcutta High Court
Case No : C.R. No. 2752 (W) of 1966

Pran Jivan Jaitha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 13-09-1973

Acts Referred:

Constitution of India, 1950 — Article 14
Evidence Act, 1872 — Section 65
Land Acquisition Act, 1894 — Section 4(1), 55, 5A, 6

Citation : AIR 1974 Cal 210

Hon'ble Judges : Debi Prosad Pal, J

Bench : Single Bench

Advocate : A.K. Dutt Jr. and M.M. Mallick, for the Appellant; S.C. Bose and Suproakash Banerjee, (for Nos. 1, 3, 4 and 5), Archana Sengupta, (for No. 2), S.K. Roy Chowdhury and Anil Chandra Sen, (for No. 6), for the Respondent

Judgement

Debi Prosad Pal, J.—The petitioner in this application has challenged the notification issued u/s 4 and the declaration made u/s 6 of the Land Acquisition Act (hereinafter referred to as the Act) in respect of certain plots of land specified in the notification and situated in the village Ukhilapaikpara, within the jurisdiction List No. 56, P. S. Sonarpur, 24-Parganas. In the notification it is stated that the said land is likely to be needed for a public purpose, viz. for Hind Boys Academy, and the acquisition would be partly at the public expense and partly with the expense of Ramkrishna Mission. The petitioner's residence named as "Ananda Bhavan" covering C. S. Plots Nos. 317 to 329, 331, 338 to 346, 352 to 360, 1094 and 1095 and parts of C. S. Plot Nos. 312, 313, 316, 361 and 365 in Mouza Ukhilapaikpara within P. S. Sonarpore is included in the said notification dated 20th April, 1965, issued u/s 4 of the Act. The petitioner thereafter preferred an objection u/s 5-A of the Act contending inter alia that the purpose for which the acquisition is to be made is not a public purpose and that there are other suitable and convenient lands. The other grounds which relate to the needs and requirements of the petitioner for the said house need not be stated or dealt

with. It appears from the affidavit of Khirode Behari Gupta affirmed on 26th February, 1969 and filed on behalf of respondent Nos. 1 to 5 that the substance of the notification made u/s 4 of the Act was duly published at conspicuous places in the locality inviting objection, if any, from persons interested in the land against the said acquisition, in fact apart from the petitioner, one Sri Ajit Kumar Roy and Sri Sailendra Nath Biswas filed their objections before the Land Acquisition Collector, 24-Parganas, relating to their respective lands. Sri T. S. Mukherjee, the predecessor-in-office of the deponent held the enquiry u/s 5-A of the Act and after complying with all formalities under the Act, submitted his report u/s 5-A to the State Government containing his recommendations on the objections together with the records of the proceedings held by him for the decision of the Government. It is further stated in the said affidavit that after due consideration of the said report of the Collector, Sri T. S. Mukherjee the State Government having been satisfied that the disputed land along with other lands were needed for a public purpose made the declaration u/s 6 of the Act.

2. At the time of the hearing of the rule, the learned Counsel for the petitioner first contended that no public notice of the substance of the notification was caused to be given at convenient places in the locality and as such the entire acquisition proceedings are vitiated. To examine this contention it is necessary to consider some of the facts which appear from the supplementary affidavits filed by the parties pursuant to the directions of the Court and also the records made available before this Court. Sri T. S. Mukherjee who has considered the objection filed u/s 5-A of the Act and has sent the report u/s 5-A of the Act has filed an affidavit affirmed on 24th July, 1973. He states that after the notification u/s 4 of the Act was published in the Calcutta Gazette he got a copy of the said Gazette and caused publication of the substance of the said notification at various conspicuous places of the locality including mouza Ukhilapaikpara where the deputed lands are situated. He directed the then Nazir attached to the - office of the Land Acquisition Collector, 24-Parganas, to cause publication of the notices containing the substance of the notification issued under his signature in the capacity as Collector at the various conspicuous places mentioned in the said notices. He further states that as far as he remembered the said direction was duly complied with, and the Process Server submitted to him a report duly signed by him wherein it was stated that due publication of the substance of the notification u/s 4 of the Act had been made and official receipts granted by the offices, where such notices of the substance of the notification were published, were submitted, acknowledging such publication on the notice board of the respective offices. He further states that on perusal of the said report, he was satisfied that the substance of the said notification had been duly published at the conspicuous places of the locality. Three persons including the petitioner filed objection before him u/s 5-A of the Act and he heard the objection and their lawyers. After holding the enquiry and considering the objections of the said objectors he submitted his report u/s 5-A(2) of the Act, He further states that he recorded the said fact of the due publication of the substance of the notification

in his report u/s 5-A(2) of the Act. He further says that the petitioner was represented by his son and an advocate at the time of the hearing of the objection. It is further stated by him that the original case records of the land acquisition proceedings in L. A. Case No. 4/121 of 1964-65 have been lost and that even after thorough search the original case records could not be traced out. He states that all the papers were kept in the original case records which had been lost and having regard to the fact that more than eight years have already passed since the date of the notification he could not remember the exact date when the said substance of the notification u/s 4 of the Act was published. I have referred to the affidavit of Sri T. S. Mukherjee in details because of the peculiar circumstances of this case. It is admitted that the original files of the acquisition proceedings have been lost. In the affidavit of Nirendra Nath Ganauli affirmed on 18th June, 1473, it is stated that there was another Civil Rule No. 2163(W) of 1966 and while preparing the draft affidavit in the said matter the case records which were sent to the Government Advocate might have been lost in the transit. In the said affidavit it is further stated that in spite of all possible steps taken to trace out the said records, such records could not be recovered. The copy of the report u/s 5-A of the Act has been annexed to the said affidavit. In the said report u/s 5-A it is stated that public notice of the substance of the notification had been given at convenient places in the locality and individual notices were served on persons known or believed to be interested inviting objection to the acquisition. In the background of these facts I am to decide whether the substance of the notification has been caused to be published in accordance with the provision of Section 4(1) of the Act. It is now well settled that the substance of the notification is required to be published at convenient places in the locality. This is a mandatory provision and unless the notice is given in accordance with the provision of Section 4(1) of the Act the entire acquisition proceedings are vitiated. u/s 4 of the Act a notification not only is to be published in the Official Gazette but due publicity of the substance of the notification in the concerned locality is to be given in the manner laid down under the said section. The purpose behind such a notice is that interested persons should know that the land is being acquired so as to prefer any objection under. Section 5-A which confers a valuable right. (Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others,). In the present case the original records having been lost, Sri T. S. Mukherjee under whose direction the substance of the notification was caused to be published and who heard the objection u/s 5-A of the Act was allowed to file a supplementary affidavit. When the original records have been lost it is open to the respondent to offer evidence of the contents of such records u/s 65 of the Evidence Act. Such secondary evidence includes copies made from or compared with the original and also oral account of the contents of document given by some person who has seen it. Mr. T. S. Mukherjee in his affidavit has stated that he has seen the report duly signed by the process server who duly published the substance of the said notification at the places mentioned in the said notices. He also has seen the official receipts granted by the offices where such notices were published, acknowledging such publication on the notice board

of the respective offices. He further states that on perusal of the same he was satisfied that substance of the said notification had been duly published at the conspicuous places of the locality. I have no reason to disbelieve the affidavit of Sri T. S. Mukherjee. It should also be borne in mind that the petitioner and three other persons had filed objection u/s 5-A of the Act against the proposed acquisition. If the purpose of the due publication of the substance of the notification at the convenient places in the locality is to afford an opportunity to the persons interested to prefer an objection u/s 5-A of the Act. the petitioner cannot be said to have been aggrieved by the alleged failure of such publication. It is true that if the mandatory provision of the Act is not complied with the petitioner is entitled to question the validity of the proceedings. But whether such procedure has been complied with in this case or not is to be considered in the context of all the facts and circumstances of this case. On a due consideration of the affidavit of Sri T. S. Mukherjee and the records which were made available, particularly the report u/s 5-A of the Act and the objection filed by the petitioner and the other two persons I am satisfied that the substance of the notification has been caused to be published in the manner laid down u/s 4(1) of the Act and the acquisition proceedings cannot be challenged on that ground.

3. It is next contended that in view of the fact that the acquisition proceedings are at the instance of Ramkrishna Mission which is a company within the meaning of the Act, the provision of Part VII of the Act should have been complied with and the entire proceedings are invalid because of the failure to follow the provisions of Part VII of the Act. The learned Counsel for the respondent Nos. 1-5 submits that the acquisition has been made partly at the expense of the Government and for that purpose he has placed the records of the case for my consideration. On a perusal of the records I find that the State Government has sanctioned for the building and equipments a sum of Rs. 8.07 lacs, against an estimated cost of Rs. 18 lacs and for the balance the Government of India have been moved for assistance under PL 480 Scheme. In these circumstances this contention on behalf of the petitioner has hardly any substance. The essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part out of public fund. Hence an acquisition for a company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is made by public fund. In such a case it is not necessary to go through the procedure prescribed by Part VII of the Act (Pandit Jhandu Lal and Others Vs. The State of Punjab and Others,). In the case of Amerendra Nath Nath v. State of West Bengal (1963) 67 C WN 647, the Division Bench of this Court held that all that the provision of Section 6 of the Act requires is that payment of compensation has to be made either wholly or partly out of public fund. The Legislature did not think it necessary or proper to prescribe the proportion of the payment to be made out of public exchequer. In that case the sum advanced from the public fund was an amount of Rs. 10/-. It has been held that this

smallness of this amount of contribution out of public fund will not necessarily give rise to the inference that the acquisition proceedings are colourable. These principles stated above give a quietus to all such contentions challenging the bona fide of the acquisition in question for a public purpose. The next contention raised on behalf of the petitioner challenges the vires of Section 5-A of the Act on the ground that as no rule has been framed u/s 55 of the Act by the State Government, the said provision is violative of Article 14 of the Constitution. I find no merits in this contention excepting its novelty and ingenuity. Section 5-A gives the persons interested in the land proposed to be acquired a right to object to the proposed acquisition. Section 5-A(2) empowers the Collector to give the objector an opportunity of being heard and after hearing such objection submit the case for the decision of the appropriate Government. Section 55 of the Act gives the appropriate Government the power to make rules consistent with the provisions of the Act for the guidance of the officers in all matters connected with the enforcement of the Act. It is contended that as no rule has been framed for the guidance of the Collector in the matter of giving opportunity to the objector of being heard naked and arbitrary power has been given upon the Collector without laying down any norm or standard for the guidance of the exercise of such power. This proposition in my view can only be stated to be rejected. The Collector in hearing the objection is exercising a quasi-judicial power. Such power is to be exercised for the purpose of giving the objector an opportunity of being heard. The objector can prefer objection with regard to the proposed acquisition. The acquisition can be made only when land is needed for a public purpose. The object of the Act is acquisition of land for a public purpose. Its title, the preamble, the material provisions of the Act and the power conferred upon the Collector of hearing the objection in my view give a clear and sufficient guidance for the exercise of the power by him. The absence of any rule framed under the Act does not, as such give any naked or arbitrary power as contended for. In my view Section 5-A of the Act does not suffer from any such infirmity as alleged.

4. The only other contention raised was that there was no public purpose behind the acquisition. The acquisition of the plots for Blind Boys Academy to be run by the Ramkrishna Mission which is well known not only in this country but also in other countries for its philanthropic activities, is for a public purpose. The Academy requires as disclosed in the affidavit of Khirode Bihari Gupta affirmed on 26th February, 1969, suitable land for the construction of class-rooms, hostels, workshops, play grounds and other ancillaries essential for the smooth and efficient discharge of its duties and responsibilities. In my view, it cannot be doubted that such a purpose is a public purpose.

5. As none of the contentions raised on behalf of the petitioner succeeds this rule is discharged. Interim order, if any stands vacated. There will be no order as to costs.