

(1999) 12 CAL CK 0044
In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 1362 of 1999 with C.A.N. No. 3825 of 1999

Pranab Chatterjee and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

National Highways Act, 1956 — Section 2, 2D(1), 3(A), 3C, 3D(1)

Citation : (2000) 2 CALLT 47 : (2000) 1 CHN 315 : 105 CWN 186

Hon'ble Judges : Satyabrata Sinha, J;Mahemmad Habeeb Shams Ansari, J

Bench : Division Bench

Advocate : Mr. Supradip Roy, Mr. D.N. Bose and Mr. Aniruddha Sen, for the Appellant; Mr. Debasis Kundu, Mr. S.C. Ukil, Mrs. Chhabi Roy, Mr. Subal Maitra and Mrs. Soma Roy Choudhuri, for the Respondent

Judgement

M.H.S. Ansari, J.—The Instant appeal is directed against an order dated 19.3.99 passed by a learned single Judge of this Court, whereby and whereunder the writ application filed by the appellants herein was dismissed in limine.

2. The case in brief of the writ-petitioners-appellants is that the notification dated 11th June. 1998 issued in exercise of the power u/s 3A of the National High Ways Act, 1956 proposing to acquire lands Indicated therein is bad in law and for declaration that the notification dated 7th January, 1999 which has been issued u/s 3D(1) of said Act is illegal.

3. The main thrust of challenge of the appellants before the learned trial Judge as also before this Court was that the objections filed by the appellants-writ-petitioners were not heard and the appellants-writ-petitioners were denied an opportunity of hearing before the notification u/s 3C was published. It was further been contended, that the object of the acquisition is not bona fide and that it is in fact a mala fide exercise of power to evict the appellants-writ-petitioners. Further contention of the appellants-writ-petitioners before this Court was that no return has been submitted to the Government pursuant to the

objections filed by the appellants-writ-petitioners as required u/s 3C(2) and therefore, the declaration u/s 3D(1) of the said Act is contrary to law.

4. On behalf of the respondents, oral submissions were made and record has also been placed before this Court, wherefrom it appears that a declaration had been made u/s 2 of the Act, whereby change in alignment of National Highway-2, was notified. The said notification was published in the Gazette dated 16th January, 1998. The said notification it must be noticed, has not been questioned by the appellants-writ-petitioners. Consequent upon re-alignment of the said National High-Way, it became necessary to acquire the lands which the Central Government is so empowered to acquired u/s 3A of the said Act and whereupon a notice was published on 16th June, 1998 declaring the intention of the Government to acquire such lands. It was also specifically stated in the said notification that In terms of section 3C of the Act any person Interested in the lands may within 21 days from the date of publication of the notification, raise objections in use of the lands for the purposes mentioned in the said notification.

5. There is no dispute that the substance of the notification had been published in the locality as also In the news papers. It appears that a mass objection was filed by certain persons. The writ-petitioners were given personal hearing on the objections. The respondents further admit that three of the persons were not afforded any opportunity of being heard. However, the said three persons do not feature as appellants before us. It must also be stated here that out of 20 writ-petitioners only 15 have chosen to file the instant appeal. According to the respondents, necessary clearances have been obtained from the Ministry of Environment, report has been submitted to the Central Government in respect of the owners/occupiers who are said to be 98 plots owners who did not make any objection to the said notification and with respect to the 82 plots holders also a report has been submitted based upon hearing of the objections filed by them. That upon consideration of the said report, notification has been passed u/s 3D(1) on 24th November, 1998 and that the hearing for payment of compensation has also commenced since 22nd October, 1999 and that the Award would be passed shortly and compensation paid in terms thereof.

6. The learned single Judge vide his order under appeal considered the various contentions urged on-behalf of the writ-petitioners-appellants and held, based upon the records which had been produced by the respondents and which had also been produced before this Court, that the objections filed by the objectors were heard and were duly disposed of and on submissions of the report declaration u/s 3D(1) of the said Act was made. In view of the said finding based upon the record to which reference had been made, we find no legal infirmity on the said order and hereby reject the contention of the appellants that they had not been so afforded an opportunity of hearing.

7. The further submission of the appellants-writ-petitioners was that they had not been served with a copy of the order rejecting the objection, and the learned trial Judge held that the same would not vitiate the acquisition proceedings and

we respectfully are In agreement with the said view.

8. As regards the contentions of the appellants-writ-petitioners that the acquisition proceedings are mala fide, it must be stated that no particulars have been furnished in the writ application as to the mala fides attributed to the respondents authorities. In our view, the said contention is untenable. This we say because acquisition of the lands in question has been made pursuant to the declaration of realignment of the said National High Way No.2. The realignment as noticed supra was notified in pursuance of section 2 of the Act as far back as on 16th January, 1998 and the same was neither questioned then nor in the writ application. The instant acquisition of land is only in pursuance or as a consequence of the said realignment and therefore, we are not Inclined to hold that there is any mala fide object in the acquisition of the lands in question.

9. As regards the contention of the appellants-writ-petitioners that there is certain other vacant lands of the railways which could have been acquired for the aforesaid purpose, the learned trial Judge has refused to consider the said contention and we agree rightly so as the alignment of the road is the matter for the expert to decide and not for this Court to consider the same in the absence of any mala fides.

10. Keeping In view the fact that the appellants-writ-petitioners have in their" objections as also in the Instant writ application not questioned the project Itself, but thrown objections with regard to certain approach roads, we are of the view that the acquisition proceedings which have been Initiated by the competent authority in accordance with law cannot be said to be vitiated or in contravention of any statutory provisions. The learned single Judge in his order has made certain observations which go to show that out of 20 writ-petitioners some of them did not even file objection to the notification Issued by the appropriate authorities proposing to acquire the land. Some of the writ-petitioners though have filed objections, had claimed compensation. Such of those petitioners, the learned single Judge held, cannot maintain writ application after filing the claim respect of the concerned land. It was further noticed that some of the writ-petitioners are not even the owners of the land. They are writ-petitioners No. 6, 10. 13, 14, and 20. The learned trial Judge has further noticed that from the records produced before His Lordship it appeared that their mother or father who were the owners of such lands have filed claim-petition for compensation and the sons have come before the court challenging the acquisition.

11. For all the aforesaid reasons, we are of the view that no ground has been made out to warrant interference with the order under appeal. There is no merit in the appeal and the applications and the same are, accordingly, dismissed without any order as to costs. It must further be observed that as by virtue of the acquisition people would be evicted from their homes, the respondents are directed to expedite the disposal of the case and passing of the Award and consequent payment of compensation in accordance with law.

Let the records produced before this Court by the learned counsel for the respondents be returned forthwith.

Urgent xerox certified copy of this order, if applied for, may be given on priority basis.

S. B. Sinha, J.

12. I agree.

13. Appeal dismissed