
(1975) 11 CAL CK 0012

In the Calcutta High Court

Case No : Civil Revision Case No. 6171 (w) of 1972

Purusattam Das Pashari

APPELLANT

Vs

First Land Acquisition Collector, Calcutta and Others

RESPONDENT

Date of Decision : 24-11-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 6

Citation : AIR 1976 Cal 83

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : R.L. Bajoria, Bhaskar Gupta, P.L. Khaitan, for the Appellant; K.M. Ganguly, Tapan Kumar Sen Gupta, (for No. 2), S.D. Banerjee, D.N. Das, Prasant Kumar Ghosh, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—The petitioner is the owner of premises Nos. 12-A and 12-B, Russel Street, Calcutta. Both these premises were formerly numbered as 12, Russel Street. The said premises were purchased by the petitioner in the year 1960. The total area was 9 Bighas 1 Cottah 4 Chittaks and 40 Square feet, of which more or less approximately 24 Cottahs fell in what is now premises No. 12-A, Russel Street, and the balance area measuring approximately 7 Bighas 17 Cottahs 4 Chittaks and 40 Square feet fell in the premises what is now known as 12-B, Russel Street, Calcutta. On the 11th of November, 1968 a notification was issued u/s 4 of the Land Acquisition Act, 1894 in respect of a portion of premises No. 12-B, Russel Street, Calcutta, and a portion of premises No. 3, Russel Street, Calcutta, which is across the road. The said notification was published on the 5-12-1968 in the Calcutta Gazette. It was stated that 0.2250 hectare of premises No. 12-B, Russel Street were intended to be acquired and an area of a portion of 3, Russel Street measuring about 0.0911 hectare was also similarly intended, to be acquired. The said notification, further, provided that a plan of the land might be inspected in the office of the 1st Land Acquisition Collector at 5, Bankshall

Street, Calcutta, and objections were invited within 30 days. The purpose of the acquisition was the construction of a multistoried Telephone Exchange Building in Ward No. 53 (old) of Calcutta Municipality. The total area intended to be acquired was 0.3166 hectare. On the 12th of June, 1969 the petitioner filed objection to the intended acquisition of a portion of premises No. 12-B, Russel Street. The said objection was beyond time but the same was entertained by the 1st Land Acquisition Collector being respondent No. 1 herein. Respondent No. 1 heard the petitioner and on the 2nd of December, 1970 an enquiry report was made by the 1st Land Acquisition Collector. On the 3rd of December. 1971 the declaration u/s 6 of the Land Acquisition Act, 1894 was published. Inasmuch as the only contention urged in this application relates to the validity of the said declaration, it would be necessary to set out the said declaration:--

Calcutta -- No. 15469 -- L. A. (II)/4B-23/67. 3rd December, 1971.

Whereas the functions of the Central Government under the Land Acquisition Act, 1894 (1 of 1894), in relation to the acquisition of land for the purpose of the Union, have been entrusted to the State Government by Notification No. 20-1-1955 (Judi-- 1) of the Calcutta Municipality in the City of Calcutta it is hereby declared that two pieces of land as described below in Block A and B and altogether measuring, more or less, 2682 hectare (.6628 of an acre), are needed for the aforesaid public purpose at the public expense within the aforesaid Ward No. (Old) of the Calcutta Municipality.

Block A

A piece of land comprising portion of premises No. 12B, Russel Street, measuring, more or less, 0.4376 of acre (equivalent to 0.1771 hectare), bounded on the

North -- By remaining portion of premises No. 12B, Russel Street,

East -- By remaining portion of premises No. 12B, Russel Street,

South -- By the passage of premises No. 12-A, Russel St. and

West -- By premises No. 12B, Russel Street (portion) and Russel Street.

Block B

A piece of land comprising portion of premises No. 3, Russel Street, measuring, more or less, 0.2252 of acre (equivalent to 0.0911 hectare), bounded on the

North -- by premises No. 3, Russel Street (portion).

East -- by Russel Street.

South -- by premises No. 37, Chowringhee Road,

West -- by remaining portion of premises No. 3, Russel Street.

This declaration is made, under the provisions of Section 6 of Act L of 1894, to all

whom it may concern.

A plan of the land may be inspected in the office of the First Land Acquisition Collector, Calcutta, at No. 5, Bankshall Street, Calcutta."

The petitioner alleges that no copy of the declaration was served upon the petitioner.

The petitioner received two notices in form No. 9 and form No. 10, dated about the 24th of May, 1972 under Sections 9 and 10 of the Land Acquisition Act, 1894 respectively. Thereafter the petitioner applied for extension of time for filing claims. On the 16th of June, 1971 the First Land Acquisition Collector granted time to the petitioner till the 27th of June, 1972. On the 29th of June, 1972 the petitioner moved this application under Article 226 of the Constitution and obtained a rule nisi.

2. The only ground in support of this application which was urged before me was that the declaration u/s 6 of the Land Acquisition Act, 1894 was vague and as such void. Section 6 of the Act provides as follows :

"6. Declaration that land is required for a public purpose.--

(1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5-A, Sub-section (2), 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 a Secretary to such Government or of some officer duly authorised to certify its orders, and different parcels of any land covered by the same notification u/s 4, Sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required u/s 5-A, Sub-section (2)) :

Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967) shall be made after the expiry of three years from the date of such publication :

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) Every declaration shall be published in the official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, making such declaration the appropriate Government may acquire the land in manner hereinafter appearing." Section 6 therefore clearly enjoins that the particulars of the land must be mentioned in the notification. Particularisation of the land is,

therefore, mandatory statutory requirement. Sub-section (2) further enjoins that the declaration should state the district and the other territorial division in which the land is situated, the purpose for which the land is required, the approximate area and in case where a plan has been made the place where such plan might be inspected. It is clear that making of a plan is not mandatory but in case where plan has been made indication of the place where such plan might be inspected is statutorily required to be given by virtue of Sub-section (2) of Section 6 of the Act. In this case, the question, is, whether the particulars of the land had been given. In aid of his submission that particulars of the land had not been given in the instant case, Counsel for the petitioner drew my attention to the decision of this Court in the case of *Pramatha Nath Mukherjee and Others Vs. St. of W.B. and Others*, , where D. Basu, J. found that the impugned order did not specify the portion of C. S. Plot No. 3 which was sought to be requisitioned, in that case. The learned Judge found that it was evident from the impugned order that only an area of .64 out of that Plot was requisitioned though the entire area of that Plot was 2.58. The learned Judge observed that in the order u/s. 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948, which used more or less similar language to the provisions of the Act in the instant case before me, must give sufficient particulars so as to identify the land to which the order relates. If the impugned order did not do so, the same was invalid. Similar view was more or less reiterated by the said learned Judge in the case of *Abdul Jabbar v. State of West Bengal*, (1967) 71 C WN 129. There the learned Judge was dealing with Land Acquisition Act, 1894. The learned Judge observed that the notification u/s. 4 of the Land Acquisition Act was merely exploratory or preliminary in nature and the exact area to be acquired need not be particularised at that stage. But it was otherwise with the declaration u/s 6 which was issued after the Government had applied its mind to the exact area and location of the lands which were needed for the purpose and were, therefore, to be acquired. The lands must, therefore, be particularised in the declaration u/s 6. It was, further, observed that though Section 6(2) provided for an inspection of the plan of the land to be acquired "when made", it did not exonerate the authority to specify the "approximate area" of the land to be acquired. This was a requirement separate from the requirement to give the description, and. in the absence of the area, the declaration became ultra vires of Section 6(2) as regards those plots whose area was not given. It was observed, further, by the learned Judge that to say that the person affected might himself refer to the plan to ascertain the particulars was not enough inasmuch as the preparation of a plan was not obligatory before making of the declaration u/s 6, and this was clear from the words of the section. In the case before the learned Judge it was found that the declaration did not specify the area and the other particulars of some of the plots, whose parts thereof were sought to be acquired. The declaration became conclusive against the deprived owner u/s 6(3) and the order made u/s 7 which would simply reproduce such description as was given in the declaration already made would give a blank cheque to the administrative authorities thereafter to oust the owner from the possession of any portion and from any quantity of partial plots

specified in the declaration u/s 6 according to their pleasure. This, according to the learned Judge, would be a deprivation not according to Jaw but according to executive fiat. Where a plot was simply mentioned as required in part and at the same time Government sought to dispense with the enquiry u/s 5-A, it was all the more incumbent upon the Government to specify in the notification which particular portion of the plot was considered to be waste or arable so as to attract the provisions of Sub-sections (1) and (4) of Section 17 of the Act. Reliance was also placed on the Full Bench decision of the Allahabad High Court in the case of Bahori Lal Vs. Land Acquisition Officer and Others, . There it was held that a note in the notification u/s 4(1) and the declaration u/s 6(1) of the Land Acquisition Act, 1894 to the effect that the site plan of the land proposed to be acquired was available for inspection at the office of the Land Acquisition Officer was of no consequence and could not be accepted as valid substitute for sufficient description of the land and the locality in which it was situate, required to be given under those provisions. If, independently of such a note, the description of the land and the locality in which the land was situate could be held to be sufficient in a particular case, the notification would be valid. If however independently of such note, the description of the land and the locality was vague or indefinite, the notification would not be held valid. Mention of plot numbers might not be indispensably necessary in a notification u/s 4 of the Act. But the notification itself must contain particulars adequately revealing the locality and the land proposed to be acquired. Ordinarily that could be done effectively by a proper declaration of the locality and the mention of the plot numbers or such other material data as might be sufficiently indicative of the land and its location.

3. In my opinion the statutory requirement is that the particulars of the land must be given so as to identify the land intended to be acquired. What are the sufficient particulars in a particular case must depend on the facts and circumstances of each case. Mere mention of the fact that a site plan of the land proposed to be acquired can be inspected at the office of the acquiring authorities does not exonerate the obligation to give the particulars of the land. Furthermore making of a plan for acquisition is not a statutory requirement as I have noticed. What is statutorily required, however, is that where a plan has been made the place where such plan could be inspected must be indicated. But in case where the area has been indicated and given certain particulars and a plan has been prepared and the place where the plan can be inspected has been indicated in the declaration u/s 6, in my opinion it cannot be said that sufficient particulars has not been given. In the instant case the boundaries have been indicated though perhaps not as precisely as could have been possibly by making the plan a part of the declaration, the premises number has been indicated and in this case site plan has been prepared and the place where the plan was to be inspected has been indicated. Taking at these factors and the nature of the boundaries given, as I have noted, in the declaration itself. I am of the opinion that in this particular case, it cannot be said that the declaration is vague as no

particulars were given so as to identify the land in question. In the premises, this contention urged in support of this application must fail.

4. Counsel for the respondent urged that the application in any event was belated. I am unable to accept this contention. The petitioner challenged the notification u/s 6 of the Land Acquisition Act, 1894 which was issued on the 3rd of December, 1971 and it is the case of the petitioner that the petitioner was not served with the said notification. No cogent evidence to contradict this averment of the petitioner has been adduced. In any event, there has not been such a delay as to merit dismissal on the ground of belatedness. It was also urged on behalf of the respondent that the petitioner having preferred claim was not entitled to contend that the declaration was bad. This point also in my opinion is not open to the respondents. If the declaration is bad on the ground of vagueness, the fact that the petitioner had preferred the claim would not cure the defect. In any event in the view I have taken, this application must fail and it is accordingly dismissed. The Rule nisi is discharged. Interim order, if any, is vacated. There will be no order as to costs.

5. Let operation of this order be stayed for six weeks from date.