

(1951) 07 CAL CK 0033
In the Calcutta High Court
Case No : Matter No. 33 of 1951

Rajendra Kumar Ruia and Another

APPELLANT

Vs

Govt. of West Bengal and Another

RESPONDENT

Date of Decision : 27-07-1951

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 6, 6(1)

Citation : AIR 1952 Cal 573 : 56 CWN 156

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Anil Kumar Das Gupta, K.P. Khaitan and K. Basu, for the Appellant; S.M. Bose, General, S. Banerjee, Standing Counsel and A.K. Sen and, for the Respondent

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for a Rule upon the respondents to show cause why Writs in the nature of Mandamus, Certiorari and Prohibition should not issue for direction upon the respondents to recall a Notice issued under the Land Acquisition Act, 1894 and for quashing and prohibiting of certain proceedings started under the said Act.

2. The petitioners are two minor co-parceners of a joint Hindu Mitakshara family. The case of the petitioners is that premises No. 151/1, Baithakkhana Road and 98, Akhil Mistry Lane belong to the said joint family of the petitioners and the petitioners are separately entitled to one eighth share each in the said premises. By two indentures of leases dated the 4th June 1910 and 7th September 1929 the predecessors-in-interest of the petitioners granted leases in respect of the said properties in favour of the then trustees of an educational institution then known as Ripon College and now known as Surendra Nath College. The leases were for a period up to 31st March, 1981. It is alleged that for the first time on or about the 5-2-1951 a Notice issued u/s 10 of the Land Acquisition Act was served upon the mother and natural guardian of the petitioners requiring disclosure of the names of persons interested in the said premises, the extent

and nature of such interest and certain other particulars as mentioned in the said Notice. It is further stated in the petition that although the land acquisition proceedings appear to have been started in or about February 1949 when the declaration for acquisition was made, the petitioners were not made parties to such proceedings nor were they served with any notice in respect thereof nor did they ever receive any intimation of such proceedings. It is stated that the Surendra Nath College is a profit-making organisation and the acquisition is not for a public purpose but for benefiting the private organisation and as such is illegal and void. The petitioner's fundamental rights as to equality before the law and equal protection of the law are alleged to have been violated by the acquisition proceedings.

3. In the circumstances the petitioners have moved this Court for the reliefs stated above.

4. Two affidavits have been filed in opposition to this application—one by the Second Land Acquisition Collector, Calcutta and the other by Mr. Ranadeb Chaudhuri who is one of the present trustees of the Surendra Nath College. The trustees of the Surendra Nath College were not made parties to the present proceedings but upon their application I have given them leave to be represented in these proceedings for protection of their interest.

5. It appears from the affidavit of the Second Land Acquisition Collector that the father of the petitioners was served with the requisite notices under the Land Acquisition Act since about 19th April 1949. The petitioners' father Kanhaiyalal Ruia represented in the acquisition proceedings that he as karta of the joint family was the sole and absolute owner of the said premises No. 151/1, Baitakhana Road and 98 Akhil Mistry Lane. He was repeatedly called upon to file the relevant documents but he deliberately neglected to produce such documents with the object of delaying the acquisition as much as possible. Prosecution had to be started against him u/s 175, Penal Code, and under pressure of such prosecution Kanhaiyalal ultimately came out with the facts that the premises in question belonged jointly to him, his step-mother and his two minor sons (the petitioners herein). Immediately thereafter on or about the 5th February 1951 the notice complained of was served on Silawanti Ruia, the mother and natural guardian of the petitioners.

6. It appears from the affidavit in opposition of Mr. Chowdhury that the petitioners and their mother lived together and in joint mess with Kanhaiyalal Ruia at all material times and had notice of the land acquisition proceedings throughout. It is denied in this affidavit that the Surendra Nath College is a profit-making organisation. It is stated that the Institution is run for the benefit of the public for imparting education to a large number of students in the city.

7. It is further stated in the affidavit that the acquisition is for the purpose of extension and development of the Surendra Nath College and a sum of Rs. 9,75,000/- paid out of the trust funds and out of personal contributions of some

of the members of the Board of trustees was deposited for such acquisition and the Government has contributed a token grant of Rs. 10/- only for legalising the acquisition proceedings.

8. It may be noted that the petition in the present case is characterised by a lamentable lack of candour. The name and relationship with Kanhaiyalal Ruia is not mentioned and the petition gives no indication that the father had anything to do with the land acquisition proceedings or whether he was living with the petitioners or not. A partition suit is vaguely referred to in the petition but no detailed particulars are given. In the affidavit in reply of Silawanti Ruia, it is admitted that the petitioners have all along lived with their father and although it is alleged that Silawanti was never informed by Kanhaiyalal about the acquisition proceedings I am not inclined to believe that she was totally in the dark about the pendency or progress of the acquisition proceedings. I am disposed to accept the suggestion that the present proceedings have been instituted at the instigation of and in concert with Kanhaiyalal Ruia, and, in my view, the acquisition proceedings are not in the least vitiated by the belated service of notice on the petitioners.

9. It is contended by Mr. K. P. Khaitan, the learned counsel for the petitioners, that in initiating the present acquisition proceedings there has not been a valid exercise of the power as conferred on the Government under the Land Acquisition Act. According to Mr. Khaitan there has been only a colourable exercise of the power of acquisition as vested in the Government under the provisions of the Land Acquisition Act. It is submitted that the contribution of a sum of Rs. 10/- only by the Government is not a sufficient compliance with Section 6 of the Land Acquisition Act. This point however is not taken in the petition nor was it one of the grounds on which the Rule Nisi was issued in this case. It is clearly an after-thought and is the result of the disclosure of facts stated in paragraph 16 of the affidavit of Mr. Ranadeb Chowdhury.

10. It is pointed out by Mr. Khaitan that the Land Acquisition Act is an expropriator legislation and relying on the case of "RAGHUNATH DAS v. COLLECTOR OF DACCA" 11 CLJ 612 it is submitted that:

"When statutory rights of an exceptional character have been created, the conditions prescribed by the Statute for the exercise of such rights must be strictly fulfilled and if an attempt is made at merely nominal compliance with the provisions of the Statute in the exercise of such rights, the Courts are not powerless to afford relief to a person who is aggrieved by the adoption of such a course."

11. In this case reported in "RAGHUNATH DAS v. COLLECTOR OF DACCA" 11 CLJ 612, lands were purported to have been acquired under the provisions of the Land Acquisition Act for extension of the compound of St. Gregory's School in the town of Dacca and it was arranged that the Mission would pay the entire amount of the award for compensation and no part of the ,compensation was to

be paid out of public revenues. In the circumstances it was observed that there was no proper compliance with the provisions of Section 6, sub-section (1) of the Land Acquisition Act.

12. Mr. Khaitan also relies on "LUCHMESWAR SINGH v. CHAIRMAN OF THE DARBHANGA MUNICIPALITY", 18 Cal 99, which is referred to in the case reported in "RAGHU NATH DAS v. COLLECTOR OF DACCA" 11 C LJ 612. In this case lands were sought to be acquired out of the Darbhanga Raj estate when it was under the management of the Court of Wards, the Maharaja being a minor at the time. The land was required for the construction of a public ghat or landing place in the town of Darbhanga. The Government requested the Court of Wards to make a free gift of the land to the town for the public ghat. As it was found that the guardian of the minor Maharaja, the Court of Wards had no power to make a present of the land in question, the Government had recourse to the provisions of (the Land Acquisition Act and purported to acquire the land for the Darbhanga Municipality upon payment of a compensation of one rupee only. Sir Richard Couch in delivering the judgment of the Judicial Committee observed as follows: (p. 104)

"Their Lordships feel compelled to state their opinion that the direction or suggestion to offer one rupee compensation was a colourable way of doing indirectly what it was seen could not be done directly, viz., the guardian making a present to the town of the land of his ward."

The award of one rupee as compensation by the collector determined u/s 13 of the Act was held to be altogether wrong, and inadequate.

13. Mr. Khaitan relies also on the decision of the House of Lords in the case of "MARQUESS OF CLANRICARDS v. CONGESTED DISTRICTS BOARD OF IRELAND" 31 SLR 120, and submits that if the proceedings for compulsory acquisition are regular in form but ultra vires in substance such proceedings will be declared illegal and void by the Court. In this case, the acquisition was challenged on the ground that it was not for the statutory purpose for which acquisition was permissible namely for the relief of congestion but for reselling the lands to the existing tenants and to provide for the reinstatement of evicted tenants in their original holdings without regard to the relief of congestion. This fact was, however, not established and the acquisition was upheld.

14. The next case relied on by Mr. Khaitan is that reported in "MANICK CHAND v. CORPORATION OF CALCUTTA" 48 Cal 916.

15. In this case, the declaration for acquisition stated that the land was being acquired at the expenses of the Corporation of Calcutta for widening the Banstolla Street at No. 38 Banstolla Street and so the premises No. 38 Banstolla Street was being acquired for such purpose. It appeared however from the records that the land was being acquired at the expense of the Calcutta Improvement Trust and no part of the compensation money was payable out of the Municipal funds and there was no scheme sanctioned for widening the street.

Greaves J. observed: (p. 924)

"But on broad grounds I do not think that it was ever the policy of the Calcutta Municipal Act that the special powers given to Calcutta 57 & the Corporation for acquiring land for certain purposes named in the Act were to be used to enable another body to acquire land through the medium of the Corporation however estimable the purpose."

16. It will thus appear that the facts in each of the cases dealt with above are distinguishable from the facts of the present case. In the case before me, the declaration u/s 6 of the Act has been made and it is conclusive evidence on the question that the properties are needed for public purpose and the Court is debarred from enquiring whether the purpose for which the premises is acquired is a public purpose or not. The notice served on the petitioners also expressly mentions that the land is about to be taken by the Government partly at the public expense and partly at the expense of the Surendra Nath College for the extension of the said College. The affidavit of Ranadeb Chowdhury makes it clear that the College Trust fund and some of the trustees personally have made a contribution of Rs. 9,75,000/- towards compensation to be paid for the acquisition and the Government will contribute Rs. 10/- out of the public revenues. It is also clear from the affidavit filed on behalf of the respondents that the College is not run for benefiting private individuals out of the income of the Institution. The institution is a public charitable Trust run solely for the benefit of the members of the public. The trustees have no personal interest and have never derived any personal benefit therefrom.

17. In the case of "RAGHUNATH DAS v. COLLECTOR OF DACCA 11 CLJ 612, the land was acquired for extension of the compound of St. Gregory's School but it was never contended that this was not a "public purpose" and in fact it was not open to the owner in that case as it is also not open in the present case to contend that the purpose of acquisition is not a public purpose after the declaration has been made u/s (6) of the Act: Moreover, in that case nothing was contributed by the Government out of the public revenues. In the case before me a sum of Rs. 10/- though no doubt a very insignificant part of the total amount of compensation, is being paid by the Government. Section 6 does not state that a substantial part of the compensation is to be paid out of the public revenue in order that an acquisition may be a valid acquisition.

18. In cases where the facts were very similar to the case before me, the Madras High Court has held that the payment of one anna by the Government out of the public exchequer, towards compensation, the balance being paid by private persons, was a sufficient compliance with the requirements of Section 6 of the Land Acquisition Act. See (1) "SENGA NAICKEN v. SECRETARY OF STATE", (Odgers J. and Madhavan Nayar J.) 50 Mad 308, and (2) Vedlapatla Suryanarayana Vs. The Province of Madras, . These cases have dissented from the contrary view taken in the earlier case of "PONNAIA v. SECRETARY OF STATE" 51 MLJ 338 and in fact the Full Bench in "VEDLAPATLA'S CASE" has

expressly overruled the decision in "PONNAIA'S CASE".

19. It is not suggested that the Trustees of the Surendra Nath College have any spite or ill-will against the owners of the premises in question nor is there any suggestion in the petition that the Government has acted dishonestly in making the declaration or in initiating the acquisition proceedings. It is of course suggested that the Government has favoured one party at the expense of the other, and has thus made a discrimination. But this must happen in every case of acquisition and the individual interest must yield to the general good.

20. In my view, the Calcutta cases are distinguishable from the facts of the present case. The facts in the two Madras cases cited above and reported in "SENGA NAICKEN v. SECRETARY OF STATE" 50 Mad 308 and "SURYA NARAYANA v. PROVINCE OF MADRAS" ILR (1946) Mad 153 (FB) have closer resemblance to the facts of the case before me and the observations made by the learned Judges apply to this case & as I am in general agreement with those observations I follow the decisions of the Madras High Court.

21. The general observations made in the cases relied on by Mr. Khaitan, must be read as limited to the particular facts involved in those cases. It is no doubt true that if there are sufficient materials before the Court to show that a particular act of acquisition is not a bona fide exercise of the power but is a fraud on the Land Acquisition Act or is an evasion of the Act, the Courts will be astute to scan such act with disfavour and will set it aside if necessary. But to hold a particular act of acquisition as an evasion of the Statute merely because it has not drained the public exchequer to a substantial extent is to state the proposition too widely and is not a proper interpretation of Section 6(1) of the Land Acquisition Act. If public purpose is served by spending as little, as possible out of the public revenue I fail to see why the act of acquisition should not be held as good.

22. It, has been contended by Mr. Das Gupta on behalf of the trustees of the Surendra Nath College that the declaration u/s 6 of the Land Acquisition Act having been made on 14-2-1949 before the commencement of the Constitution the application under Article 226 of the Constitution is not maintainable. There are certain cases in which it has been held that acts or orders whether judicial or otherwise which had become final before the coming into force of the Constitution could not be interfered with or affected by Article 227 or 226 of the Constitution inasmuch as these Articles are not retrospective in operation. The principle underlying these decisions is that a vested or existing right cannot be affected by a statute not retrospective in its operation. The decisions referred to and relied on by Mr. Das Gupta which are reported in Mahamad Beary and Another Vs. T. Hassan Kutty and Another, , Rishindra Nath Sarkar Vs. Sakti Bhusan Ray, and Bimala Prosad Ray and Another Vs. State of West Bengal, , proceed on this basis. There was no question in those cases that the orders complained of were ultra vires. But where, as here, the complaint of the petitioners is that the declaration and the subsequent proceedings are ultra

vires and void and therefore no rights could be acquired under them, I fail to see why recourse to Article 226 cannot be had by the petitioners. {Admittedly the petitioners were not served with any formal notice of the acquisition before 5-2-1951. The acquisition proceedings are not yet complete. In my view the observations made by Dixit J. in the case of "HARENDRA NATH v. STATE OF MADHYA BHARAT" AIR 1950 MB 46 at p. 51 (paragraph 12) apply to this case. Moreover, before the Constitution came into force this Court had power as it has now under Clauses 4 and 21 of the Charter to issue the Writs asked for and interfere with the Declaration and the acquisition proceeding complained. Section 45 of the Specific Relief Act was also available in appropriate cases. It appears to me that the contention of Mr.Das Gupta has no force and it must be rejected.

23. In view, however, of my findings on other points this petition must fail. The Rule is discharged. The petitioners will pay one of costs to the respondents Nos. 1 and 2 joint The trustees of the Surendra Nath College with bear their own costs of the present proceedings. Certified for two counsel.