
(1969) 09 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No. 357 of 1966

Ram Kumar Jhunjhunwala

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 25-09-1969

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Citation : AIR 1970 Ori 233 : (1970) 36 CLT 62

Hon'ble Judges : G.K. Misra, C.J.; R.N. Misra, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—This is an application under Articles 226 and 227 of the Constitution of India by the petitioner who is the recorded tenant of plot No. 78 of khata No. 107 in mouza Bisinabar, Cuttack Town. Plots Nos. 149, 150, 151 and 153 within the said mouza are homestead plots located in the neighbourhood of the petitioner's land, but plot No. 78 intercepts these plots from the Municipal road. A sketch map is on record which shows the location of these plots at the spot. Plot No. 153 located nearabout is a big tank whose embankment was providing a circuitous approach from another municipal road to these plots from a different side.

The owners of these homestead plots who are quite a number of people approached the municipal authorities of Cuttack for construction of a road to link up these plots with the nearby municipal road and thereby provide a convenient outlet to the inhabitants of this area. The Municipal authorities decided that such a road in the interests of the inhabitants of the area should be provided and requested the State Government to acquire a part of the intervening Plot No. 78 of the petitioner to accommodate this proposed link road. The State Government took action under the provisions of the Land Acquisition Act (hereinafter referred to as the Act) and issued a notice u/s 4 and invited objections u/s 5A of the Act.

The petitioner's case is that he did not know about the notice u/s 4 and that for the first time he came to know about this acquisition when a notice u/s 6 of the Act dated 15-5-1965 was published declaring the acquisition to be for a public purpose. The petitioner's further case is that the acquisition is not for a public purpose and only 3 or 4 persons are the direct beneficiaries of this acquisition. The petitioner cannot be deprived of his property by the process under the Land Acquisition Act in order to benefit some individuals, and the mere declaration u/s 6 of the Act that it is for a public purpose is not binding and cannot clothe the notification with the immunity that a valid notification u/s 6 of the Act is entitled to. Therefore, according to the petitioner, there is no public purpose and the acquisition must be quashed.

2. On behalf of the State of Orissa a counter-affidavit has been filed by the Additional District Magistrate of Cuttack. Therein it has been stated as follows :--

"From the materials on record it transpires that there was no connecting passage to plots Nos. 149, 150, 151 and 153. As a lot of inconvenience and difficulties were being faced for going into and coming from the said plots certain members of the public made an application to the Municipality for construction of a road at Dhobi Lane. The matter was in due course placed before the Municipal Council and the Municipal Council decided and passed a resolution that the construction of a road in that locality was in the interest of and for the benefit of the public. The resolution to that effect was passed by the Municipal Council and necessary steps were taken for the acquisition of required land for the construction of the road. That the purpose of acquisition of the land was for the benefit of a section of the community and it need not be necessarily for the benefit of the entire community."

3. Under the scheme of the Act, acquisitions are contemplated for the State, local bodies and companies. Part VII provides the procedure for acquisition of land for companies. Section 6 which deals with the declaration that the land is required for a public purpose provides as follows :--

"6(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 5A. Sub-section (2), that 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 :

Provided 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.

(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, after making such declaration, the appropriate Government may acquire the land in manner

hereinafter appearing."

4. If the provisions of Section 0 are analysed, it clearly follows that a distinction has been maintained between acquisitions for the purposes of the State and local bodies on one hand and for a company on the other. In Part VII the procedure to be followed for making acquisition for a company is indicated at length. The fact that there is no such procedure laid down in respect of an acquisition for the purposes of the State or for a local body clearly goes to show that for obvious reasons the Legislature has provided for a different machinery and proper safeguards when the power of acquisition provided under the Act is to be exercised for the benefit of the company. Sub-section (3) of Section 6 gives the declaration the status of conclusive evidence that the land is needed for a public purpose when it is for the State or a local body. But the conclusiveness that is given to the declaration under Sub-section (3) in relation to the need for a company is not for the public purpose, but that the acquisition is for a company.

5. The notification u/s 6 of the Act is as follows :--

"Revenue and Excise Department Declaration

The 15th May. 1965.

No. 32543-L.A.260/65-Ctc-R. Whereas it appears to the Government of Orissa that lands are required to be taken by Government at the public expense for a public purpose, viz., for a road at Dhobi Lane (Buxi Bazar) in mouza town Bisinahar, Thana Cuttack No. 204, paragona Bakhraabad, district Cuttack, it is hereby declared that a piece of land measuring, more or less, 0.018 acre, bounded on the North and East--By plot Nos. 77 p & 151 p South and West -- By plot Nos. 77 p & 69 is required within the aforesaid mouza town Bisinibar thana Cuttack, pargana Bakhara-bad, district Cuttack.

This declaration is made, under the provisions of Section 6 of Act I of 1894, to all whom it may concern.

A plan of the land may be inspected in the office of the Land Acquisition Deputy Collector, Civil Branch, Collector, Cuttuck.

By order of the Governor S. Barik. Assistant Secretary to Government."

6. Mr. R. Mohanty, appearing for the petitioner, contends that the beneficiaries under this acquisition are a few individuals and as such it cannot be considered to be for the benefit of the community, find therefore there is no public purpose. The notification u/s 6 is a colourable exercise of power and, therefore, the petitioner's homestead cannot be taken away and he cannot be deprived of his property against his volition under the cloak of a proceeding under the Land Acquisition Act. In support of his submission he relies upon two decisions in AIR 1960 J & K 78. Prem Narh v. State of J. and K. and State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others, . On examination we find that the case before the

Jammu and Kashmir High Court related to an acquisition proceeding which really regularised certain previous illegal acts of the Chairman of the town area committee of Anantanag. The Chairman had illegally permitted one Qadir Suthu to raise construction on the properties of the petitioners, and later on the acquisition proceedings were taken to acquire these lands of the petitioners on some pretext or other, but Qadir Suthu remained in actual possession and enjoyment of the land and he was never dispossessed from the land as a result of the land acquisition proceedings. On the aforesaid finding of fact the High Court held that the declaration u/s 6 was only an example of abuse of power and it would be one issue in fraud of the powers conferred by the provisions of the Land Acquisition Act. Therefore, the principles laid down in the said case have no bearing on the point under examination.

7. In *State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others*, referred to above their Lordships were considering the case of acquisition for the purpose of the Ram-krishna Mission. They held that the Ram-krishna Mission is equated with a company being a society registered under the Societies Registration Act of 1860, and, therefore, an acquisition in its favour was required to satisfy the requirements of Part VII of the Land Acquisition Act. They referred to an earlier decision of their Court in *R.L. Arora Vs. State of U.P.*, wherein the procedural requirements of Part VII were examined at length. Wanchoo, J. delivering the leading judgment in the said case said :

"Therefore, though the words "public purpose" in Sections 4 and 6 have the same meaning, they have to be read in the restricted sense in accordance with Section 40 when the acquisition is for a company u/s 6. In one case, the notification u/s 6 will say that the acquisition is for a public purpose, in the other case the notification will say that it is for a company. The proviso to Section 6(1) shows that where the acquisition is for a public purpose, the compensation has to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. Where however the acquisition is for a company, the compensation would be paid wholly by the company....."

In delivering the judgment in the 1965 case referred to above Wanchoo, J. reiterated the self-same view and the factual examination was confined to the requirements of Part VII in view of the fact that the acquisition was for the purposes of a company. Their Lordships of the Supreme Court ultimately came to hold that the acquisition for staff quarters cannot be said to be a public purpose as

"they are, meant for occupation of individual members of the staff. We cannot accept the argument that an individual member of the staff must also be held to be a section of the public and therefore staff-quarters would be useful to the public. That would in our opinion be reducing the idea of what is useful or can be used by a section of the public or can be used by a section of the public to absurdity. When we speak of a section of the public we must exclude from it an

individual and what can be used by an individual cannot be said to be used by a section of the public which must always be more than one."

8. This decision of the Supreme Court cannot be applied to the facts or the present case in view of the fact that the acquisition in question is not for a company. We find that u/s 235 of the Orissa Municipal Act the Municipal Council has been authorised to lay out and make new public roads and Sub-section (2) of that Section provides :

"Reasonable compensation shall be paid to the owners of any land or buildings or part of the building which are required for, or affected by, any such purposes."

The municipal authorities, in exercise of their powers u/s 235, requested the State of Orissa to make the acquisition in question and after acquisition the ownership of the road when laid is to vest in the municipality. The construction of the road does not bring in a benefit limited to any particular individual. The road would be the property of the municipality and would be available to be used by all the members of the public as of right and without any restriction. The persons living in the area are not a few individuals, but they are a section of the public at large and it is not only they but all persons who intend to come from and go to that area would have the advantage of the existence of the public way.

9. The learned Standing Counsel, appearing on behalf of the State, placed before us another decision of the Supreme Court in Smt. Somavanti and Others Vs. The State of Punjab and Others, . In that case the acquisition was one for an industry in which the State Government were interested and payment of compensation was also partly made by them. It was in fact a third class of acquisition {the first one being for the purpose of the State and the local bodies and the second one being for companies) where the acquisition was primarily for a company, but it was also at the same time for a public purpose and the whole or part of the compensation was to be paid out of public revenues. This aspect of the matter was also discussed in State of West Bengal and Others and Ramakrishna Mission, Howrah Vs. P.N. Talukdar and Others and Abdul Kadar Laskar and Others, referred to above, and in paragraph 9 of the judgment their Lordships upheld the contention that an acquisition of this type was also for a public purpose by stating as follows :--

"In such a case though the acquisition may look as if it is primarily for a company it will be covered by that part of Section 6 which lays down that acquisition may be made for a public purpose if the whole or part of the compensation is to be paid out of the public revenues or some fund controlled or managed by a local authority."

Mudholkar, J., speaking for the Court in Smt. Somavanti and Others Vs. The State of Punjab and Others, referred to above, said;

"The Government has to be satisfied about both the elements contained in the expression "needed for a public purpose or a company". Where it is so satisfied,

it is entitled to make a declaration. Once such a declaration is made Sub-section (3) invests it with conclusiveness. That conclusiveness is not merely regarding the fact that the Government is satisfied but also with regard to the question that the land is needed for a public purpose or is needed for a company, as the case may be. Then again, the conclusiveness must necessarily attach not merely to the need but also to the question whether the purpose is a public purpose or what is said to be a company is a company. There can be no "need" in the abstract. It must be a need for a "public purpose" or for a company. As we have already stated the law permits acquisition only when there is a public purpose or when the land is needed for a company for the purposes set out in Section 40 of the Act. Therefore, it would be unreasonable to say that the conclusiveness would attach only to a need and not to the fact that that need is for a public purpose or for a company. No land can be acquired under the Act unless the need is for one or the other purpose and, therefore, it will be futile to give conclusiveness merely to the question of need dissociated from the question of public purpose or the purpose of a company..... The Act has empowered the Government to determine the question of the need of land for a public purpose or for a company and the jurisdiction conferred upon it to do so is not made conditional upon the existence of a collateral or extraneous fact. It is the existence of the need for a public purpose which gives jurisdiction to the Government to make a declaration u/s 6(1) and makes it the sole Judge whether there is in fact a need and whether the purpose for which there is that need is a public purpose. The provisions of Sub-section (3) preclude a court from ascertaining whether either of these ingredients of the declaration exists."

10. As we have already said, the facts of this case clearly go to show that what is really contemplated is the laying of a public passage, the ownership whereof is meant to vest in the Cuttack Municipality. The beneficiaries are the public at large and not the 3 or 4 individual owners of the plots referred to above. Once this fact is accepted, it is difficult to see any force in the contentions of Mr. Mohanty that the beneficiaries are a few individuals and, therefore, the notification u/s 6 is not justified. We have already extracted the decision of the Supreme Court wherein it has been said that the notification u/s 6(3) about the existence of the public purpose and the particular land being required for the said purpose is conclusive and not open to question. In the circumstances, the contention raised by Mr. Mohanty must be negated and it must be held that the notification u/s 6 is for a public purpose as it purports to be and the writ application has no merit.

11. We, therefore, dismiss the writ application, but make no order as to costs.

G.K. Misra, C.J.

12. I agree.