

(1957) 04 CAL CK 0005

In the Calcutta High Court

Case No : Appeal from Original Decree No. 57 of 1951

Ranibala Bhars and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 12-04-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 16, 17(1), 18, 23

Citation : 62 CWN 73

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : A.C. Gupta, Manindra Nath Ghosh and Anil Kumar Sen, for the Appellant; J. Majumdar, Smriti Kr. Ray Choudhury, Prodyot Kr. Banerjee for Respondents Nos. 1 to 3, Purnendu Sekhar Basu for Respondent No. 4 and Amiya Kumar Mukherjee for Arun Kumar Dutta (Sr.) to 10, for the Respondent

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for a writ in the nature of Mandamus directing the opposite parties to forbear from giving effect to a declaration made under the provisions of section 6 of the Land Acquisition Act of 1394 and directing the opposite parties Nos. 1 to 3 to cancel the said declaration and the notices for giving delivery of possession, which were served on the petitioners. The petitioners are lessees under the respondents Nos. 5 to 10 and they carry on business of brick manufacturing, in the village of Mahesh at Serampore in the district of Hooghly. It is alleged that the said business is being carried on by the petitioners and their predecessors-in-interest for over 50 years On the 30th of October, 1948 respondent No. 4, The Bengal Luxmi Cotton Mills Ltd., sent a requisition to the opposite party No. 1, The State of West Bengal for acquiring the lands in which the petitioners' business was being carried on, for the purpose of the said company under the provisions of the Land Acquisition Act. Upon such requisition Land Acquisition Case No. 19 of 1948-49 was started. On the 19th of December. 1949 the opposite party No. 1, the Government, issued a declaration u/s 4 of the Land Acquisition Act and the

same was published in the Calcutta Gazette on the 22nd of December, 1949. It is alleged that the petitioners; were not made parties to the Land Acquisition proceedings nor was any notice issued to them and nor were the petitioners ever made aware of the existence of such proceedings. It is alleged that respondent No. 4 had surreptitiously and mala fide induced the Government to put in force the provisions of the Land Acquisition Act without disclosing the fact that the petitioners were carrying on the business of manufacturers of bricks on the lands in question. As the fact of the existence of the brick field was suppressed from, the Government the estimate of valuation of the said lands was made on the basis that the lands were Doba lands. On the 17th of February, 1953 the opposite party No. 1, that is the Government, and the respondent No. 4 executed an agreement as is contemplated by section 41 of the Land Acquisition Act and on the very same day a declaration u/s 6 of the Land Acquisition Act was published in the Gazette. The said declaration u/s 6 may be set out hereunder:

Hooghly-No. 3270 L.A.=17th February, 1953-Whereas it appears to the Governor that land is required to be taken by Government at the expense of the Bengal Luxmi Cotton Mill Ltd.. for extension of the Mill, in the village of Mahesh, Jurisdiction list No. 15, thana Serampore Pargana Boro District Hooghly, it is hereby declared that for the above purpose a piece of land comprising cadestral Survey plots Nos. 4308 and 4319 and measuring more or less 4.938 acres is required within the aforesaid village of Mahesh.

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 Collector, Serampore.

2. It is alleged in the petition that before the said declaration u/s 7 was published no enquiry as contemplated by section 40 of the Land Acquisition Act was made nor was any specific consent given by the Government. In November, 1953 the petitioners were served with notice u/s 9 of the Land Acquisition Act calling for claims for compensation, if any. On the 16th of November, 1953 the petitioners preferred claims for compensation under sections 9 and 23 of the Land Acquisition Act but at the same time they registered their objections as to the legality of the acquisition and reserved their rights to impugn the legality and the validity of the acquisition in proper forum. Upon the petitioners preferring claim for compensation the opposite party No. 3 the Land Acquisition Officer, Hooghly made a fresh inspection and enquiry on the 25th of June, 1954 and it was at such enquiry that the existence of the brick field came to be known to the Government and the officers concerned. The Land Acquisition Officer thereupon directed a revised valuation. It is further alleged in the petition that as the sanction for acquisition as contemplated u/s 40 of the Land Acquisition Act was obtained upon misrepresentation as to the Doba character of the lands and without making the Government and the officers concerned aware of the existence of the brick field, the land acquisition proceedings initiated on the basis

of such sanction and the declaration u/s 6 of the Land Acquisition Act were illegal and void. On the 11th of January, 1955 the Land Acquisition Officer, however, made an award in respect of the acquisition and on the 17th of January, 1955 issued a notice of preparation of such award to the petitioners, which was received by the petitioners on the 20th of January, 1955. On the same day the petitioners also received another notice u/s 16 of the Land Acquisition Act asking the petitioners to remove themselves and give possession of the lands by the 22nd of February, 1955. The petitioners thereafter made representation against such notice but as no heed was paid to such representations the petitioners moved this Court and obtained the present Rule on the 9th of March, 1955 from Sinha, J.

3. One Ashutosh Chatterjee, the Land Acquisition Collector, Hooghly and respondent No. 3 in this application, has affirmed the affidavit-in-opposition filed on behalf of respondents Nos. 1 to 3. It is stated in this affidavit that after the notification u/s 4 of the Act was published in the Gazette the substance of the said notification was also published at convenient places in the locality, that is at village Mahesh, at the office of the Land Acquisition Collector, Serampore, at the office of the Sub-Registrar at Serampore and at the Police Station of Serampore. But in spite of the publication of the substance of the notification u/s 4 the petitioners did not file any objection u/s 5A of the Land Acquisition Act. In paragraph 16 of the said affidavit it is further stated that upon proper enquiry being held u/s 40 of the said Act the State Government was satisfied that the proposed acquisition was needed for the purpose of the extension of the Mill of respondent No. 4 above named and that the said work was likely to prove useful to the public. It is further stated that the Land Acquisition Collector of Serampore was appointed for the purpose of holding the said enquiry and a copy of the report submitted by the enquiring officer dated the 28th of December, 1950 is set out in annexure A to this affidavit. The relevant portion of the said report may be set out hereunder.

I inspected the land locally. The Bengal Luxmi Cotton Mills Ltd., proposes to acquire 4.938 acres of waste land lying contiguous to their existing factory for its extension,

I am satisfied that the acquisition is needed for the construction of some work and that such work is likely to prove useful to the public.

No objection petition was filed to this respect by any body nor there is any objection to the proposed acquisition either on religious or any other public ground.

During my local inspection the Mill authorities impressed on me that the land (proposed) is required by them very expeditiously (although they did not mention it in their original petition to this respect due to ignorance) as the materials ordered abroad are likely to reach soon and that they have got no additional space to keep them within their existing mill compound.

In the circumstances, I recommend that the possession of the land may be delivered to the R.A. u/s 17(1) of the Land Acquisition Act although all the formalities u/s 5A of the Act have been gone through before. Necessary Government orders to this respect are accordingly solicited.

Sd. Land Acquisition Collector, Serampore, 28-12-50.

4. It is further stated in the affidavit-in-opposition that the petitioners' interest as lessees has come to an end upon the expiry of the registered lease in Kartick, 1353 B.S. corresponding to 1948 but as the petitioners continued their business of manufacturers of bricks with the permission of the owners they were granted a sum of Rs. 17,500/- on account of compensation for loss of business and removal costs. Thereafter on the 25th of February, 1955 the petitioners submitted an application for reference u/s 18 of the Land Acquisition Act stating that the compensation for the loss of business and removal costs had not been properly assessed.

5. The principal and in fact the only point argued by Dr. Atul Chandra Gupta is that the declaration dated the 17th of February, 1953 made u/s 6 of the Land Acquisition Act of 1894 is bad inasmuch as the provisions of section 40 of the said Act have not been complied with. Dr. Gupta has contended that whatever might have been the law before the Land Acquisition Act was amended in 1923 and 1933 by Act XXXVIII of 1923 and Act XVI of 1933 the amendments made by those Acts have altered the law. It is pointed out that section 38A of the Land Acquisition Act and clause (a) of sub-section (1) of section 40 of the Land Acquisition Act, which were introduced for the first time by the amending Act XVI of 1933 have given a totally different complexion to section 40 of the Act and have considerably restricted the scope of the purposes for which lands may be acquired for a company or an industrial concern. It is submitted that under the sections as amended lands can be acquired for (a) construction of dwelling houses for workmen employed by the Company or for making provision for amenities directly connected therewith or (b) the acquisition may be made for the purpose of construction of some work which is directly useful to the public. Dr. Gupta has also drawn the attention of the court to the words "the public shall be entitled to use the work" as used in section 41(5) and section 42 of the Land Acquisition Act in support of the argument that in clause (b) of section 40 of the Act the words "work likely to prove useful to the public" must mean work which is of direct use and benefit to the public and not work in which the public has only an indirect interest. Dr. Gupta has quoted the following speech made by the Hon'ble Mr. Bliss introducing the amending Bill as part of his argument:

It is not intended that the Act shall be used for the acquisition of land for any Company in which the public have a mere indirect interest, and of the works carried out by which the public can make no direct use. The Act cannot therefore be put in motion for the benefit of such a company as a spinning or weaving company or an iron foundry, for although the works of such companies are distinctly likely to prove useful to the public it is not possible to predicate of them

the terms on which the public shall be entitled to use them-a condition precedent to the acquisition of land. It is important both that the public should understand that the Act will not be used in furtherance of private speculations and that the Local Government should not be subject to pressure which might sometimes be difficult to resist on behalf of enterprises in which the public have no interests.

6. But in this connection it may be useful also to refer to the statement of objects and reasons for introducing section 38A in Part VII of Land Acquisition Act. The said statement of objects and reasons is as follows:

The Land Acquisition Act, 1894 makes it possible where the previous consent of the Local Government has been obtained, to acquire land compulsorily on behalf of companies, provided that the land is needed for a work likely to prove useful to the public. The Royal Commission on Labour have recommended that the Act be so amended as to enable land to be thus acquired when it is needed for the housing of labour, either by company or by other employers. They stated that, in a number of instances brought to their notice, land eminently suitable for the development of housing schemes had been held at random by the owners, fantastic values being placed upon it as a result of the construction of factories and other industrial concerns in the neighborhood. The provision of adequate housing for workmen is one of the urgent needs of Indian Industry, and the Bill seeks to give effect to the Commission's recommendation.

7. Now, although the statement of objects and reasons is not admissible in aid of construction of a Statute it has been held that it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the enacting authorities to pass the law and the urgency of the evil is sought to remedy (See *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, and State of West Bengal v. Subodh Gopal Bose*, (2). AIR 1054 SC 92 at page 100 per Das. J.). So it appears to me that the effect of the amendment of section 40 of the Land Acquisition Act by introducing clause (a) in that section was not to abridge the scope of the section but to enlarge it. It is doubtful whether the purpose which is specified in clause (a) of section 40 could by itself be considered as work, which was useful to the public and consequently this clause (a) was added to confer express powers on the Government to acquire lands for a company or industrial concern for the specific purposes mentioned in clause (a) of section 40(1) of the Act. The view I have expressed is supported by the decision of the Madras High Court reported in AIR 1954 Mad. 481 (*A. Natcsa Asari v. The State of Madras* (3) which is a decision of a Division Bench presided over by Rajamannar, C. J. and Venktarama Aiyar, J.- paragraph 5 of the judgment at page 482).

8. Dr. Gupta's argument is that the avowed object and purpose for which the present acquisition is made is that such acquisition is necessary for extension of the factory of respondent No. 4, but a purpose does not come within the purview of either clause (a) or clause (b) of sub-section (1) of section 40 of the Act. The work of extension of the factory, according to Dr. Gupta, may benefit the

company itself and its business but it is of no direct use or benefit to the public. The fact that as a result of the extension of the factory the production of the factory may increase or more labourers may be employed, is not direct use or benefit to the public. Moreover, the effect of the acquisition in the present case is to acquire land for an industrial concern by putting an end to the existence of another industrial concern, which was engaged in the business of manufacturers of bricks. This according to Dr. Gupta was never the intention of the legislature which enacted the provisions of Part VII of the Land Acquisition Act.

9. It is to be noted, however, that in the case of *Ezra v. The Secretary of State* (4) (I.L.R. 30 Cal. 36), which was affirmed by the Privy Council in 32 I.A. 93, the acquisition of land for the purpose of extension of Bank of Bengal's premises was upheld as a good acquisition, but it should also be noted that at the time this case was decided there was no clause like clause (a) in sub-section (1) of section 40 of the Act. It is only clause (b) that found place in the section as it stood at the time, it was argued before the Bench, which decided this case that the agreement, which was executed in terms of section 41 of the Act did not make sufficient provisions for user by the public as required under clause (5) of section- 41. In repelling this argument this Court made the following observations:

In the first place, the Local Government, which is vested with absolute discretion in this matter and which is the sole custodian of the public interest in this country, made that provision in relation to the transaction of the Government business by the Bank in the proposed new Buildings. The acquisition was needed for the purpose of constructing new buildings to afford better accommodation for the transaction of the public business. The rights of the public generally are dependent upon the Government business, and the Government has considered the conditions therein inserted as sufficiently safe-guarding its interests this Court, in our opinion has no power to enter upon a consideration of the question how far that provision sufficiently safe-guards the interests of the Government or of the public of which it is the custodian (pages 79-80)

10. In an unreported case of this Court being Appeal from Original Decree No. 57 of 1951 (*Mahmudabad Properties Limited v. State of West Bengal* (5) judgment dated the 4th June. 1956) P. N. Mookerjee, J. and Renupada Mukherjee, J. have held that acquisition for extension of the factory of National Tannery Co.. Ltd was a valid purpose for which the lands could be acquired for a company. It is to be noted, however, that this tannery company was at the time of the acquisition engaged in essential war works for defence services and was a fully controlled tannery under the Defence of India Act. So, it was held that the public was benefitted. Moreover, the acquisition in that case was also for construction of workmen's quarters and this purpose came within the clause (a) of section 40 of the Act. So in this case the facts were not quite the same as in the case before me and in the Bank of Bengal's case also the court proceeded on the footing that the Bank was transacting public business.

11. It may be noted, however, that in the present case, which is before me now, there is a provision in the agreement dated the 17th of February, 1953, which was produced at the hearing and which was also published in the Gazette, for training of four apprentices in the mill. It is doubtful, however, whether such a provision can be considered as adequate compliance of the provisions of clause (b) of section 40 or clause (5) of section 41 or of the provisions of section 42 of the Act.

12. It has been held in several English cases that the mere fact that the public was likely to be remotely benefitted could not make the purpose a public purpose. Where primary object is personal gain whether that be of private individual or of a company, the public benefit resulting from the act of such a person or company is too remote and the purpose cannot be said to be a public purpose. Every merchant and every dealer can say that he benefits the public because he is catering or providing to the wants of the public. The merchant's first object is to make a gain for himself. The benefit that he may confer upon his constituents or patrons is very remote. Such purposes are not public purposes.

13. But it has been repeatedly held by this Court and other courts that in cases like section 40 of the Land Acquisition Act and similar provisions in other enactments, which leave the consideration of any matter to the subjective satisfaction of the Government, it is not open to the court to scrutinise the satisfaction or to examine whether there were sufficient materials to form the basis of or to justify such satisfaction. In the very case of *Ezra v. The Secretary of State* (4) which has been referred to in an earlier part of the judgment (I.L.R. 30 Cal. 36 at page 77), it was observed by this Court as follows:

In our opinion sec. 40 constitutes the Government, as the custodian of the public interests, the sole judge of the two facts mentioned therein, namely, whether the land is required for the construction of some work, and, secondly whether that work is "likely to prove useful to the public."

14. At page 78 it was further observed as follows:

In our opinion the Local Government is the sole judge of those matters. So long as it is satisfied upon the two matters which are made conditions precedent to its according its consent to the acquisition of the land, this Court, in our judgment, is not competent to question the validity of the proceeding u/s 40.

15. In the unreported case of the Division Bench of this Court in Appeal from Original Decree No. 57 of 1951 (5) P.N. Mookerjee, J. in dealing with this very question made the following observations:

The next, challenge was to the Government's consent u/s 39, Section 40 lays down the condition, under which such consent can be given namely, that the Government must be satisfied about the necessity and purpose of the acquisition as prescribed in one or other of the clauses to the said section before according consent or sanction to the particular acquisition on behalf of the particular

company. It is urged by Mr. Sinha that there was no such satisfaction in the present case and, at any rate, no materials, upon which such satisfaction could have been based. The record before us furnishes an effective answer to this challenge of the appellant Ex E sufficiently proves such satisfaction and the annexure report which is part of it contains enough materials for the purpose. We may add further that, under the statute, the satisfaction is to be of the Government and, once we rule out the question of mala fides, as we have done in this case, such satisfaction cannot be questioned and the sufficiency of the materials, on which it purports to be based, cannot be examined by the Civil Court. That was what was decided in Ezra's case (Vide ILR 30 Cal., 36 at pp. 75 and 77) and we do not think that the law has altered since.

16. In the Madras case to which I have made reference A. Natesa Asari Vs. State of Madras and Another, (3) the Division Bench of the Madras High Court also refused to go into the question whether the Government's satisfaction was justified where the acquisition was made for the purpose of extension of a rice mill (See paragraph 7 of the judgment).

17. The same principle has been affirmed in construing other enactments where the words were in the opinion of" and similar expressions (See Hubly Electricity Co., Ltd, v. Province of Bombay (6) 76 LA. 57 at page 65). In construing section 4, sub-section 1(a) of the Indian Electricity Act the Judicial Committee observed as follows:

Their Lordships are unable to see that there is anything in the language of the sub-section or in the subject matter to which it relates on which to found the suggestion that the opinion of the Government is to be subject to objective tests. In terms of the relevant matter the opinion of the Government is not the grounds on which the opinion is based. The language leaves no room for the relevance of a judicial examination as to the sufficiency of the grounds on which the Government acted in forming an opinion.

18. The same principle has been followed by this Court in ILR 1954 (1) Cal. 350 (Promode Kumar Bhattacharjee v. A. Jaman, Jt. Secretary to the Govt, of West Bengal) (7) and in ILR 49 Mad. 237 at pp. 245-246 (Veerara-ghavachariar v. The Secretary of State for India) (8).

19. The provision that the Government is to be the sole judge of what is likely to prove useful to the public is both expedient and reasonable. What factors or materials weighed with the Government in forming the conclusion that the extension of the factory will prove useful to the public is not known. The Government has made the enquiry u/s 40 and from the materials obtained at such enquiry it is satisfied that the extension of the factory of respondent No. 4 is likely to prove useful to the public. It may be that this Court may think that the extension of a factory by itself is not a purpose which can be considered as likely to be of any direct use to the public but that will be substituting the opinion of this Court in the place of the opinion of the Government, who is, by the

provisions of section 40. constituted the sole judge in respect of such matters. If such satisfaction on the part of the Government is made open to challenge that will have the effect of considerably hampering the proper enforcement of the provisions of the Land Acquisition Act. So. it appears to me that it is not open to this Court to go into the question whether the satisfaction of the Government is justified or not, If it had been established that the Government had acted mala fide or arbitrarily in the matter, then of course it would be open to the Court to interfere with the decision of the Government as an arbitrary exercise of discretion is no exercise at all.

20. It may be noted that section 6 of the Land Acquisition Act is made subject to the provisions of Part VII of the Act and section 39 of the Act also makes it clear that sections 6 to 37 of the Act cannot be put into force unless consent is given by the Government to the acquisition and an agreement, as contemplated in section 41 of the Act, is executed by the Government and the company or the concern on; whose behalf the acquisition is sought to be made. I have already referred to the report which was made u/s 40 of the Act and the agreement, which was produced before the Court at the time of hearing and which was published in the relevant gazette. There is no dispute that the Government has given its consent and that the requisite agreement has been executed. These are the requirements of section 39 of the Act. There is nothing to stand in the way of the provisions of sections 6 to 37 of the Act being put into force. In the circumstances, it appears to me that the declaration u/s 6 of the Act cannot be impugned and it is a valid declaration.

21. Mr. Majumdar has argued that this application should fail on the ground that there has been unreasonable delay in moving this Court under Article 226 of the Constitution and that the petitioners have, by taking steps and participating in the proceedings which have been initiated under the provisions of the Land Acquisition Act, precluded themselves from asking for any relief under Article 226 of the Constitution. It is pointed out that on the 30th of October, 1948 the respondent No. 4 sent a requisition to the Government for acquisition of the lands in question. On the 22nd of December, 1949 the notification u/s 4 was published and the substance of the notification was also published at conspicuous places inviting objections u/s 5(A) but the petitioners did not prefer any objection. On the 27th of February, 1950 the Land Acquisition Collector, Serampore, was appointed for the purpose of making the enquiry u/s 40 and on the 28th of December, 1950 the said Officer made his report On the 17th of February, 1953 the agreement was entered into between the respondent No. 4 and the Government and it was published in the Gazette on that day and the declaration u/s 6 was published in the Gazette on the 17th of February, 1953. In November, 1953 the notice u/s 9 was served upon the petitioners for preferring claims and on the 16th of November, 1953 the petitioners had submitted their claims, but as I have pointed out already, they did so, without prejudice to their rights to challenge the legality of the proceedings in the proper forum. On the 25th of June, 1954 the second enquiry was held as regards valuation after the

fact of the existence of the brick-field was brought to the notice of the Government and the officers concerned and on the 11th of January, 1955 the award was made and the notice of the award was given u/s 11 of the Act. On the 25th of February, 1955 the petitioners made application for reference u/s 18 of the Act. Upon these facts it is contended that the petitioners are precluded from obtaining any relief in this application As I have already pointed out the petitioners took whatever steps they could in connection with the Land Acquisition proceedings, after expressly reserving their rights to challenge the legality of the acquisition in appropriate proceedings before the appropriate court. Therefore the conduct on the part of the petitioner in taking part in the proceedings in the matter that they have done is not such, which, in my view, disentitles them from obtaining any relief in this application and the question of delay is not of such a nature which merits dismissal Of the application that has been made under Article 226 of the Constitution.

22. In view, however, of my finding on the main question, this application must fail and accordingly this Rule is discharged. In the circumstances of the case, I do not propose to make any order for costs. The operation of this order will remain stayed for six weeks from this day.