

(1953) 08 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 109 of 1952

Samiruddin Sheikh

APPELLANT

Vs

Sub-Divisional Officer and Others

RESPONDENT

Date of Decision : 20-08-1953

Acts Referred:

Constitution of India, 1950 — Article 226, 228

Land Acquisition Act, 1894 — Section 4, 4(1), 5A, 5A(2), 6(1)

Citation : (1953) 08 GAU CK 0007

Hon'ble Judges : Sarjoo Prosad, C.J.; Ram Labhaya, J

Bench : Division Bench

Advocate : F.A. Ahmed and Bhabes Chandra Barua, for the Appellant; R.K. Goswami, for the Respondent

Judgement

Sarjoo Prosad, C.J.—In this application under Article 228 of the Constitution of India, the Petitioner prays for a writ of mandamus or certiorari or any other appropriate writ directing the Respondents to cancel or recall certain notifications issued under the Land Acquisition Act (Act I of 1894).

2. The facts briefly are that some residents of village Kanaichua, Mauza Rangamati, in the District of Darrang, made an application to the Sub-Divisional Officer of Mangaldai sometime in 1950 to acquire some lands belonging to the Petitioner for the purpose of construction of a village pathway. On receipt of the petition, there appears to have been some inspection of the locality made by a Sub-Deputy Collector and a report submitted by him. The Sub-divisional Magistrate, on a consideration of the report passed an order on 15-2-51, holding that the path was essential to the villagers and that a draft notification should be prepared for the purpose of acquiring the land. Subsequently, on the basis of that draft on 30-5-51, a notification was published in the Assam Gazette. This notification was apparently u/s 4 of the Act. The Sub-divisional Magistrate thereafter directed local notices to issue as contemplated by Section 4(1) inviting claims and objections to the acquisition u/s 5A of the Act. The notification in the

Assam Gazette referred to 3 cottas 3 lessas of land, more or less, situated within the boundaries therein mentioned in village Kanaichua, and it further stated that the land was acquired for public purpose, namely, a village path.

The Petitioner filed an objection to the acquisition stating that there was no public purpose involved as no such pathway was needed by the villagers, and that in any event the culturable lands of the Petitioner should not be acquired for any such purpose. The Petitioner also alleged that the acquisition proceedings had been inspired by some of his enemies with a view to injure his interest in the agricultural lands. Some villagers also filed objections supporting the Petitioner. The Sub divisional Magistrate heard the parties on their objections and ordered that he should hold local enquiry in the matter. This order was on 24-7-1951. The local enquiry was evidently made in the presence of the parties, and the Sub-divisional Magistrate then submitted a report through the Deputy Commissioner, Dar-rang. As it appears from a subsequent order of the Sub-divisional Magistrate, in his report the officer recommended that the acquisition proceedings should be dropped.

The matter went up to the Provincial Government, as required by the law, for decision, through the normal official channels along with the records of the proceeding. On 22-2-52, an order purports to have been passed by the Government of Assam disallowing the objections of the Petitioner and the other villagers to the acquisition in question. This order shows, on the face of it, that all the various objections were taken into consideration and then rejected. On 5-4-52, the Sub-divisional Magistrate, Mangaldai, on receipt of the above order of Government, recorded an order in the proceeding which showed that he had recommended for abandoning the acquisition proceedings and felt somewhat dubious about the action to be taken, but subsequently the officer appears to have changed his mind and submitted to the orders of Government. Under order, dated 3-5-52, he observed that the Government order was clear that the objections filed by the Petitioner and some villagers had been rejected; he, therefore, directed, that a draft declaration and an estimate of the costs necessary be submitted to Government and ordered a Deputy Collector to submit the same.

3. There are two main objections raised by the learned Counsel on behalf of the Petitioner. His first contention is that the above notifications and Government order are ultra vires because there was no compliance, according to him, with Section 5A, Land Acquisition Act. If I understand him aright, he seeks to put the point thus. He says that the Sub-divisional Magistrate of Mangaldai who was the Collector for the purpose of the Land Acquisition proceedings had, after his local inspection, recommended to the Provincial Government that the proceeding should be dropped. It appears, according to him, that the Deputy Commissioner had some local enquiry made by himself or some other officer and then the Deputy Commissioner submitted a report to the Provincial Government, which presumably was to a contrary effect, without hearing the Petitioner. On this

basis, he argues that the provisions of Section 5A of the Act have not been complied with, and the provisions being mandatory, the proceeding was ultra vires.

This argument proceeds evidently upon a misconception of the real position. I have already stated above that the Sub-divisional Magistrate of Mangaldai who was the Collector dealing with the matter, did invite objections, as required by the law, and as the Order Sheet shows, he heard parties on those objections and then made a local inspection in their presence. That being so, Section 5A of the Act had been fully complied with.

The record of the proceeding, along with the report of the officer, had, of course, to be submitted to the Provincial Government through the regular official channels. The records must, therefore, have inevitably passed through the hands of the Deputy Commissioner, the immediate superior of the Sub-divisional Magistrate. What the Deputy Commissioner did or did not state to the Provincial Government in submitting the file, is not the concern of the Petitioner and it would be too much to say that at every stage that the record passed through the hands of certain officers, the Petitioner should have been heard in regard to any report or notes which the officers made in those proceedings. It is enough that the Collector, meaning the Sub-divisional Magistrate, Mangaldai, gave, the Petitioner an opportunity of being heard in person, and after hearing such objections, he made further enquiry and then submitted the case for the decision of the local Government. This is what is contemplated by Sub-section (2) of Section 5A and this requirement having been fulfilled, I do not think it can be urged that there has been non-compliance with this mandatory provision of the law. There is, therefore, no substance in this contention of the Petitioner. It is true that the Sub-divisional Magistrate recommended that the proceedings should be dropped, but that recommendation was not final, and the ultimate decision rested with the Provincial Government under the law. After consideration of the recommendation of the Sub-divisional Magistrate, that is to say, the Collector, under the Act, and the objections filed by the Petitioner and his co-villagers, if Government saw no reason to alter their decision and rejected the objections, this Court cannot possibly interfere with the order.

4. The next contention of the learned Counsel for the Petitioner is that the acquisition proceeding should be held to be null and void because there is no public purpose underlying the acquisition. It is not very clear from the petition as to whether the declaration contemplated by Section 6(1) of the Act has yet been made by the Provincial Government. Probably it has not been made so far; but even if it were, a declaration by Government u/s 6(1) of the Act that the acquisition is for a public purpose would be final and it would not be open to this Court to go into that question. It is primarily the satisfaction of the Provincial Government in the matter which counts. This is absolutely clear from Sub-section (3) of Section 6, which says that the said declaration shall be conclusive evidence that the land is needed for a public purpose. On this point, the decisions are

unanimous, as they could not be otherwise. See-- Vedlapatla Suryanarayana Vs. The Province of Madras, &-- Brij Nath Sarin Vs. Uttar Pradesh Government and Another, The notification u/s 4(1) shows that the land was needed for a village pathway, and we cannot hold to the contrary on the allegations made by the Petitioner, even If we intended to do so.

5. It has been lastly urged on behalf of the Petitioner that from the record it appears that the costs of acquisition were deposited by the villagers. This, he contends, showed that there was no public purpose for the acquisition, because acquisition in such a case must be from the public coffers or from some fund controlled or managed by the local authorities.

The proviso to Sub-section (1) of Section 6 of the Act clearly lays down that a declaration under the section shall not 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 local authority. Now, it is true that the costs, as tentatively estimated, have been deposited by the villagers. But the costs have been deposited in Government Treasury and presumably the purpose of the deposit is that the costs would be controlled and managed by that local authority. It is not that the villagers themselves would be managing and financing the acquisition proceedings. So, the mere fact that the estimated costs have been for the present raised by the villagers, will not necessarily invalidate the proceeding. It is also to be remembered that the actual costs of acquisition may be more than the amount deposited by the villagers, and it may be that the costs in excess of the deposit may have to be contributed from the public revenues, and even if a small amount of the costs is so contributed, that would be sufficient compliance with the proviso. This is what was held by the Full Bench decision in Vedlapatla Suryanarayana Vs. The Province of Madras, referred to above. It was observed there that it is sufficient compliance with the proviso to Section 6(1) of the Act if any part of the compensation is paid out of public funds; the contribution of one anna by the Government towards compensation is sufficient compliance with the provision.

On a careful consideration of the materials, I am unable to find any room for interference with the orders and notifications in this land acquisition proceeding, specially in the exercise of our extraordinary jurisdiction relating to prerogative writs under Article 226 of the Constitution. Whatever my own impressions or misgivings on the facts may be, I find that it is not a fit case in which a writ can be issued.

6. For the above reasons, the application fails and must be dismissed with costs. Hearing fee Rs. 100/-.

Ram Labhaya, J.

7. I agree.