
(1967) 01 BOM CK 0009
In the Bombay High Court
Case No : Spl. C. Application No. 160 of 1966

Smt. Sulochana	Vs	APPELLANT
Commissioner, Nagpur Division and others		RESPONDENT

Date of Decision : 25-01-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32
Land Acquisition Act, 1894 — Section 4, 5A, 5A(2), 6

Citation : AIR 1968 Bom 88 : (1967) 69 BOMLR 797 : (1967) MhLj 689

Hon'ble Judges : L.M. Paranjpe, J;B.D. Bal, J

Bench : Division Bench

Advocate : C.G. Madkholkar, for the Appellant; M.N. Chandurkar, Asstt. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

L.M. Paranjpe, J.—Upon hearing the learned advocates for the parties, it is clear to us that the impugned notification will have to be quashed. Field khasra No. 40, area 13.25 acres of village Takli, tahsil Warora, district Chandrapur, was held by the petitioner as its tenure-holder. Several persons in that village applied to the revenue authorities for plots for abadi purposes. On inquiring into these applications the Naib-Tahsildar reported to the authorities that the area of the abadi required to be extended and none of the unoccupied lands comprised in the 12 khasra numbers measuring 42.67 acres could be available for that purpose. Thereafter, the Commissioner, Nagpur Division, issued his notification, annexure B, dated 25-2-1965 u/s 4 of the Land Acquisition Act for acquiring 2.50 acres of land from khasra No. 40, area 13.25 acres, belonging to the present petitioner. Objections to the proposed acquisition were called and the petitioner was noticed to appear before the Land Acquisition Officer for putting forth her objections, if any. The petitioner filed her objections, annexure C, wherein she challenged the necessity of acquiring any land from her field. She stated, in the alternative, that in case any land were to be acquired from her field, the portion proposed in the plan, which was part of the notification u/s 4, should not be

acquired, but another portion in the centre of the field as shown by red colour in the map, annexure D, should be acquired. The Land Acquisition Officer rejected the contentions of the petitioner against the proposal to acquire land from her field but accepted her contention that the land from the centre of the field as shown by her in the map in red colour should be acquired instead. The Land Acquisition Officer forwarded his report to that effect to the Commissioner, presumably through the Collector. The Collector did not accept that report and the return of the respondents shows that the Collector rejected that report after a further inquiry into the matter through the Sub-Divisional Officer. The Collector recommended, instead, that the land as initially proposed in that notification u/s 4 should be acquired. Thereupon, the Commissioner issued the impugned notification dated 28-11-1965 u/s 6 of the Land Acquisition Act. The petitioner has moved this Court under Articles 226 and 227 of the Constitution for quashing that notification.

2. The first contention of Mr. Madkholkar, advocate for the petitioner, was that once the powers of the Collector u/s 5A were delegated to a subordinate officer by virtue of the provisions of section 52A which was added by the Bombay Act No. 35 of 1949, the report and recommendations by the Land Acquisition Officer were binding on the Collector. He further submitted that once the powers were so delegated, they were exhausted when the Land Acquisition Officer submitted his report and the Collector could not purport to act under that section by proceeding to make a further inquiry. His further contention was that the Collector could not also proceed to make any such inquiry or report de hors the provisions of the Land Acquisition Act. Therefore, the recommendation of the Collector to reject the report of the Land Acquisition Officer upon which the final notification u/s 6 was based was void and without jurisdiction. Mr. M. N. Chandurkar, Assistant Government Pleader, submitted, on the contrary, that in view of section 52A, which was subsequently added to the Land Acquisition Act, it was possible for the Collector to delegate only part of his powers u/s 5A, and in that view, the report of the Land Acquisition Officer in consequence of the inquiry made by him u/s 5A, would not be binding on the Collector who would still retain the powers to pass his final orders thereon. The second limb of his submission was that even apart from section 52A, the action taken by the Collector was an executive one and it could not be controlled or curtailed by limitations to judicial powers.

3. Under Sub-section (1) of section 5A of the Land Acquisition Act, any person interested in any land which has been notified u/s 4, sub-section (1), as being needed or likely to be needed for a public purpose, may, within thirty days after the issue of the notification, object to the acquisition of the land in question. Sub-section (2) of that section provides that such an objection shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the appropriate authority, namely, the

Commissioner or the State Government, with a report containing his recommendations on the objections. u/s 52A, which is now added by the Bombay Act No. 35 of 1949, these powers and functions of the Collector under the Land Acquisition Act may be delegated to an officer not below the rank of a Mamlatdar. Therefore, there can be no dispute that the powers can be delegated by the Collector to the Land Acquisition Officer who was his subordinate. It was also not disputed that the powers were in fact delegated to the Land Acquisition Officer who was also the Sub-Divisional Officer.

4. The real controversy however was with regard to the scope and extent of this delegation made by the Collector to his Land Acquisition Officer-cum Sub-Divisional Officer. Section 52A, to which we have made a reference above, would no doubt permit the Collector to delegate any of his powers or functions and that would postulate the possibility of his retaining some of his powers while delegating other powers. However, the mere fact that the Collector could pick and choose which of his powers he was going to delegate, would not lead to the conclusion sought to be drawn by Mr. Chandurkar that the Collector must have delegated only the powers to receive objections and to record evidence thereon, while reserving his own powers to make consequential recommendations. That was purely a question of fact, and if the State Government were serious in making that submission, they should have produced the particular order by which the powers u/s 5A were delegated to the Land Acquisition Officer under colour of section 52A. That was not done and the actual order of delegation was not produced before us. Without seeing the order, we are not prepared to make any assumption that the delegation was not or might not have been complete or that the Collector had reserved the power of making a recommendation. If the Collector had made any such reservation and had delegated the power of receiving objections and recording evidence only, the delegate, namely, the Land Acquisition Officer would not have exceeded his delegated powers by proceeding to make his own recommendations also as he had actually done. The fact that the Land Acquisition Officer had also proceeded to make his own recommendation on the basis of the evidence recorded by him would militate against the possibility of any reservations of powers in favour of the Collector to make his recommendations on the basis of the evidence recorded by the Land Acquisition Officer. In the absence of the requisite material in the shape of the order of delegation, we are not prepared to accept the submission that the delegation of the Collector's power u/s 5A was not complete or was limited to some functions only.

5. The next submission of Mr. Chandurkar was that even if the powers u/s 5A were wholly delegated, the action taken u/s 5A was only an executive one and therefore that should not be binding on the Collector who had delegated his powers. We are not prepared to accept the view that the proceedings u/s 5A were only executive. A perusal of sub-section (2) of that section which enjoins upon the Collector the duty of giving an opportunity of being heard to the objector and of making his recommendation after hearing all such objections and

the evidence thereon, would necessarily mean that the Land Acquisition Officer does not act only in his executive capacity but acts at least quasi- judicially, if not wholly judicially, in conducting such an inquiry. When the judicial powers of the Collector u/s 5A are delegated, it was obvious that they would come to an end as soon as the delegate has completed the inquiry and submitted his recommendation for decision to the appropriate authority, namely the Commissioner in this case.

6. The question of the result of delegation of judicial functions was considered by their Lordships of the Supreme Court in *Roop Chand Vs. State of Punjab*, .. u/s 21(4) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the State Government had powers to hear appeals against orders passed under that Act. These powers were delegated to a subordinate officer and the delegate made an order in exercise of his powers of hearing an appeal. Thereafter, the State Government purported to revise the order of the delegate under colour of the powers of revision of the orders of subordinate officers which vested in the State Government u/s 42 of that Act. The legality of the re-visional order of the State Government was questioned. The majority decision of the Supreme Court was in the following terms:

Where the State Government has, u/s 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its power given u/s 21(4) to hear appeals to an officer, an order passed by such officer is an order passed by the State Government itself and not "an order passed by any officer under this Act" within the meaning of section 42. The order contemplated by section 42 is an order passed by an officer in his own right and not as a delegate. The State Government, therefore, is not entitled u/s 42 to call for and examine the record of the case disposed of by the officer acting as delegate. An order passed by State Government u/s 42 in such a case is a nullity and deserves to be set aside under Article 32 of the Constitution of India.

The majority had also further observed:

The word "delegate" means little more than agent. An agent exercises no powers of his but only the powers of his principal. Therefore, an order passed by an officer on delegation to him u/s 41 (1) of the power of Government u/s 21(4) , is for the purposes of the Act, an order of the Government.

These observations will aptly apply to the facts of the present case. It will therefore have to be held that the recommendation made by the Land Acquisition Officer in pursuance of the inquiry made by him u/s 5A had completely exhausted the powers u/s 5A (2) and the Collector clearly acted without jurisdiction in proceeding to ignore those orders and to make his own recommendations or submissions to the Commissioner.

7. Sub-section (2) of section 5A also empowers the Collector to hear all objections (after giving an opportunity of being heard to the objector) and also enables him to make such further inquiry, if any, as he thinks necessary.

However, this power of making a further inquiry after giving a hearing to the objector is of the Collector under sub-section (2) of section 5A and that having been delegated to the Land Acquisition Officer it was not open to the Collector to purport to rely on that clause for supporting the so called further inquiry which he proceeded to make after the Land Acquisition Officer had made his recommendations under sub-section (2) of section 5A. The matter may have been different if the Land Acquisition Officer, who was the delegate of the Collector, had himself proceeded to make some further inquiry after recording the evidence and before submitting his report; but once the Land Acquisition Officer completed the inquiry under this sub-section and submitted his report, nothing remained to be done either by the Collector or by the delegate. Consequently, the so called further inquiry, which was held by the Collector, was entirely without jurisdiction and cannot be upheld.

8. It was being submitted by Mr. Chandurkar that it was open to the Commissioner who had issued the notification u/s 4 to disregard the recommendation of the Land Acquisition Officer and to pass orders of acquisition in the way he deemed proper and therefore the impugned notification should be treated as an act of the Commissioner by way of disregarding the recommendations of the Land Acquisition Officer and not as a result of the subsequent inquiry made by the Collector. It would no doubt have been open to the Commissioner to disregard the report of the Land Acquisition Officer u/s 5A and to proceed to pass his own orders, but there was nothing in the record to warrant the submission on behalf of the State that the Commissioner had acted on his own in disregarding the Land Acquisition Officer's recommendation or had passed the impugned order without considering or without being influenced by, the subsequent recommendation of the Collector which was entirely without jurisdiction. The return on behalf of the respondents shows that the recommendations made by the Land Acquisition Officer were rejected by the Collector who made his own contrary recommendations, and the eventual notification u/s 6 was in keeping with the recommendations of the Collector. Consequently, it was not possible to assume that the Commissioner was not influenced by this unauthorised inquiry made by the Collector or the report submitted by him. The impugned notification was obviously based on the recommendations of the Collector which was without jurisdiction. In the result, that notification will have to be quashed.

9. In the view that we are taking, it is not necessary to consider the other submissions made on behalf of the petitioner. We may however mention that admittedly the Collector proceeded to hold the so called further inquiry and caused an inspection to be made by the Sub-Divisional Officer behind the back of the petitioner and without giving any opportunity of being heard to the petitioner. Even if it were to be assumed that the Collector had powers or jurisdiction to intercede even after the report of the Land Acquisition Officer u/s 5A (2), the principles of natural justice would require that the petitioner, whose claims or submissions were being turned down, should have been given an opportunity of

being heard, so that she could adduce evidence or other material to support her contention that the proposed portion of the land should not be acquired. That was not done and therefore the recommendations of the Collector on which the impugned notification was based were ultra vires of his powers and were bad in law. The impugned notification based on those recommendations of the Collector will have to be quashed for that reason also,

10. In the result, the petition is allowed with costs and the notification dated 28-11-1965 u/s 6 of the Land Acquisition Act for acquiring 2-50 acres of land from the petitioner's khasra No. 40 of mouza Takli is quashed.