

(1966) 04 CAL CK 0003
In the Calcutta High Court

Case No : Appeal from Original Order No. 526 of 1965 (Mandamus Appeal)

Tincori Das

APPELLANT

Vs

L.A. Collector, Alipore and Others

RESPONDENT

Date of Decision : 26-04-1966

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 40, 40(1), 5A

Citation : 70 CWN 1100

Hon'ble Judges : Sinha, C.J.;A.K. Mukherjea, J

Bench : Division Bench

Advocate : Kalijiban Mukherjee, for the Appellant;Somendra Chandra Bose, Bhagabati Prosad Banerjee and Nepal Chandra Sen, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, C.J.—This is an appeal against an order passed by Banerjee, J on the 18th August, 1965 whereby he summarily rejected the application for the issue of a Rule. The facts in this case are shortly as follows :--

The appellant states that he is an adopted son of Rajmohini Dassi (deceased), who was the sole owner of a plot of land bearing Dag No. 683 with a tank and a structure thereon in c.s. Khatian No. 830, Mouza Gopalpur, P.S. Behala in the district of 24 Parganas. On or about the 6th February, 1960 a notification was issued u/s 4 of the Land Acquisition Act (hereinafter referred to as the "said Act"), a copy whereof is Annexure "B" to the petition and is set out at pages 22 and 23 of the paper-book. By that notification, it was stated that it appeared to the Governor that the land is likely to be needed for a public purpose, namely, for construction of a paint and allied factory and quarters of workers of Messrs. P. C. Chanda and Company Limited in the village of Gopalpur, P.S. Behala in the district of 24 Parganas. Several plots including the plot above mentioned measuring more or less 11.97 acres were likely to be needed for the aforesaid public purpose at the expense of M/s. P. C. Chanda & Co. Limited. Shortly after the publication of this notification in the Calcutta Gazette on 25th February 1960

the lady, Rajmohini Dassi, preferred objections and started a Land Acquisition Case No. 4/35 of 1959-60. A notification dated the 12th April 1961 was issued and published in the Calcutta Gazette on the 27th April 1961 a copy of which is Annexure "C" to the petition and is set out at page 24 of the paper-book by which the notifications dated 6th February 1960 u/s 4 of the said Act was cancelled. On the 11th May 1961 a notification u/s 4 of the said Act dated 1st May 1961 was published whereby it was notified that the land was likely to be needed for a public purpose, not being a purpose of the Union, namely for industrial development in the village of Gopalpur. For this purpose several plots including the plot above mentioned of the area more or less 16.90 acres were stated as likely to be needed for a public purpose as aforesaid, at public expense, within the village of Gopalpur. Two points must be noted here. Firstly that the object was not acquisition for purposes of the Company but for industrial development in the village of Gopalpur and secondly that it was not to be done at the expense of the Company but at public expense. On 6th September 1962 a declaration was published u/s 6 of the said Act dated 17th August 1962 a copy whereof is Annexure "E" to the petition and is set out at page 27 of the paper-book. By the said declaration, it was declared that the Governor was satisfied that certain plots of land measuring more or less 12.58 acres were needed for a public purpose, namely, for industrial development of the village of Gopalpur. In the meanwhile, the lady Rajmohini Dassi had died and the petitioner applied and got himself substituted in the records of the Land Acquisition case. On the 28th January 1963 the appellant put in a claim for compensation in respect of the plot acquired and thereupon there was an award made, awarding him compensation. This award exists and has not been challenged by any competent legal proceeding. On the other hand, what the appellant did was to make an application u/s 18 of the said Act for reference to a Civil Court, regarding the quantum of compensation. Thereafter, sometime in July 1964 possession was delivered and disputes arose about the possession. But the ultimate result is that the appellant seems to be in possession of one room in the structure and the rest are in possession of the Company, because after the Government took possession of land, possession thereof was delivered to the Company, Messrs. P. C. Chanda and Company Limited, which is a public limited company. The case made out in the petition, as will be seen from the grounds in paragraph 27 of the petition, is that the land was needed for a Company but the provisions of Chapter VII of the Land Acquisition Act has not been complied with. Before us also, this argument was repeated but in addition an argument has been made as follows : It is argued that the acquisition is fraudulent and is a colourable device to get over the provisions of law. To start with, there is not a single mention of fraud or colourable transaction in the petition, and there is not a single ground relating thereto. All that has been pointed out to us is that in paragraph 18 of the petition it has been said that the requisition has been made at the instance of the Company and was "collusive and mala fide." This paragraph has been verified as "true to submission" and no particulars whatever of either collusion or mala fides have been given. So far as this general charge is concerned of collusion and

mala fides, there has been a general denial. In the affidavit-in-reply for the first time it came to be stated that the acquisition was "Colourable" (vide the affidavit of Shri Tincori Das affirmed on 17.1.1966, paragraph 5, and an affidavit of Shri Tincori Das affirmed on the same date, paragraph 3, pages 79--81 of the paper-book). Firstly, the allegation is made for the first time in the affidavit-in-reply to which of course the other side has no opportunity of giving a rejoinder, and secondly, no particulars whatever have been given in the affidavit-in-reply. Even in the affidavit-in-reply, the word "fraud" has not been mentioned.

2. I shall now proceed to consider these grounds and as to whether a prima, facie case has been made out. The position in law is quite clear on the proposition that under the provisions of the said Act, an acquisition can be made for a public purpose and also for a Company. Where the acquisition is for a public purpose at the expense of the State or even where it is an acquisition for a Company but at the expense of the State or partly at the expense of the State, then the provisions of section 6(3) come into operation. The relevant provisions of section 6 are 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 any 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.

3. Where the land is to be acquired for a Company at its own expense, then the provisions of Part VII of the said Act come into operation and is headed "Acquisition of land for Companies". It has been held that after the Constitution, companies also must acquire land for public purpose, but such public purposes are conditioned by the provisions of section 40 appearing in Part VII. Section 40(1) lays down the purpose for which a Company can acquire land. If the appropriate Government was satisfied after considering the report of the Collector u/s 5A(2) etc. that the proposed acquisition was for any of the purposes referred to in section 40(1), then it shall require the Company to enter into an agreement on matters which are stated therein. This agreement has to be entered into and published and objections thereto have to be entertained. A clear distinction is to be maintained between a case where there is a public purpose

and land was being acquired at the expense of the State, that is to say, out of public revenue, or partly out of public revenues, in which case the satisfaction of Government that a public purpose existed is conclusive u/s 6(3) of the said Act. If it is an acquisition for a Company at the expense of the Company, then the satisfaction of the Government is only conclusive on the point that it is needed for a Company. In such a case all the paraphernalia required to be followed under Part VII of the said Act will have to be followed, otherwise the acquisition will be defective. The position in law has been clearly laid down in certain decisions of the Supreme Court which I shall now mention. The first case is that of Babu Barkya Thakur Vs. The State of Bombay and Others, . It was pointed out there that the said Act deals with two kinds of acquisition, (1) for a public purpose at the cost of the Government, and (2) for a purpose akin to such a purpose at the cost of the Company, and it was to the latter class of acquisition that the provisions of Part VII are attracted. In another Supreme Court decision, in Pandit Jhandu Lal and Others Vs. The State of Punjab and Others, at page 347 the position has been summarised as follows:

Section 6 is, in terms, made subject to the provisions of Part VII of the Act. The provisions of Part VII, read with sec. 6 of the Act, lead to this result that the declaration for the acquisition for a Company shall not be made unless the compensation to be awarded for the property is to be paid by a Company. The declaration for the acquisition for a public purpose, similarly, cannot be made unless the compensation, wholly or partly, is to be paid out of public funds. Therefore, in the case of an acquisition for a Company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But, that does not necessarily mean that an acquisition for a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a Company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition for a Company, is to be made at the cost entirely of the Company itself, such an acquisition comes under the provisions of Part VII. As in the present instance, it appears that part at any rate of the compensation to be awarded for the acquisition is to come eventually from out of public revenues, it must be held that the acquisition is not for a Company simpliciter. It was not, therefore, necessary to go through the procedure prescribed by Part VII. We, therefore, agree with the conclusion of the High Court ** **.

4. The only other decision on this point to be considered is of Smt. Somavanti and Others Vs. The State of Punjab and Others, . It was held there that so far as section 6(3) was concerned, the satisfaction of Government in the case of an acquisition for a public purpose wholly or partly out of public funds is conclusive, whereas in the case of acquisition for Companies at their own expense, what was

conclusive u/s 6(3) was that it was needed for a Company. The only reservation that was pointed out was that although it was conclusive, the matter would be different if there was a colourable exercise of power. Mudholkar, J. said as follows :--

Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competency of the State the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a Company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final.

5. Coming now to the facts of the instant case, we find that the land is now required for a public purpose, namely, the industrial development of the village Gopalpur and it has to be done wholly at the public expense. Therefore, there is no question of the application of Part VII and the declaration u/s 6 is final and conclusive u/s 6(3), subject, of course to the exception mentioned above. The first point, therefore, taken namely that Part VII has not been complied with, and there is no agreement, is entirely misconceived.

6. I now come to the argument made before us that it was a fraudulent and colourable transaction. So far as fraud is concerned, it is now well-established that a mere allegation of fraud is not sufficient. Starting from the Privy Council decision in Gunga Narain Gupta v. Tiluckram Chowdhury and others, 15 I.A. 119 and the Supreme Court decision in Bishnudeo Narain and another v. Seogeni Rai & Jagernath Rai and others, 1952 S.C.A. 388, it has been consistently held that where fraud is the ground of action it must be specifically alleged and particulars thereof must be set out in the pleadings. The mere use of general words like "fraud" or "collusion" are ineffectual and may, in fact, be ignored in the absence of particulars. In the abovementioned Supreme Court decision, Bose, J. said as follows :

Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however, strong the language in which they are couched may be * * * *.

As I have pointed out above, even the words "fraud" and "colourable transaction" have neither been mentioned in the body of the petition nor in the grounds. Only the word "colourable transaction" has been mentioned in the affidavit-in-reply for the first time without any, particulars, and what is even more significant is that no ground has been taken in the memorandum of appeal upon this point. Under the circumstances, the respondents are not called upon to meet the question of fraud or colourable transaction. What has been strenuously argued before us is that even in the absence of such pleadings we should gather from the materials placed before us the facts which constitute "fraud" and "colourable transaction". This argument must at once be rejected. But even assuming that we entertain it, let us see where it leads us. It is alleged that the transaction is colourable, because in the first instance land was being acquired for the purposes of Messrs. P. C. Chanda and Company Limited and in the end the very same object has been achieved. These facts by themselves do not amount to fraud and are not necessarily in the nature of a colourable transaction. In the original notification it was said that land was necessary for purposes of the extension of Paint factory of Messrs. P. C. Chanda and Company Limited and it was being acquired at their expense. In the penultimate notification it has been stated that the acquisition was for the purpose of industrial development in the village of Gopalpur. What does this expression signify ? Does it mean that the Government must effectuate the industrial development only in the public sector and not employ the services of the private sector or that after having acquired land it should not be made over to Companies in the private sector ? Light is thrown upon this by a recent decision of the Supreme Court as yet unreported. *Arnold Redricks and another v. State of Maharashtra and others*, (writ petitions Nos. 86 of 1965 and 146 of 1965, judgment dated 14th March, 1966). In that case, the Maharashtra Government issued a notification u/s 4 of the said Act that the land belonging to the petitioners was likely to be needed for a public purpose, namely, "for development and utilisation of the said lands as an industrial and residential area." This acquisition was challenged. Sikri, J. delivering the majority judgment of the Court said as follows :

In *Smt. Somawanti v. The State of Punjab*, (supra), it was observed :

Broadly speaking, the expression "public purpose" would, however, include a purpose in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned.

It was further observed at page 163:

Public purpose is bound to vary with the times and the prevailing condition in given locality and therefore it would not be a practical proposition even to attempt a comprehensive definition.

It Was urged before us that the State Government was not entitled to acquire property from A and give it to B. Reliance was placed on the decision of the Supreme Judicial Court of Massachusetts (294 Mass. 607). But as pointed out by

this Court, public purpose varies with the times and the prevailing conditions in the localities, and in some towns like Bombay the conditions are such that it is imperative that the State should do all it can to increase the availability of residential and industrial sites. It is true that these residential and industrial sites will be ultimately allotted to members of the public and they would get individual benefit, but it is the interest of the general community that these members of the public should be able to have sites to put up residential houses and sites to put up factories. The main idea in issuing the impugned notifications was not to think of the private comfort or advantage of the members of the public but the general public good.

7. In this particular case, Government proposes to acquire land for industrial development in the village of Gopalpur. If it acquires land and allows individuals or Companies to obtain sites for building industrial units, that would be for a public purpose within the meaning of the principles laid down above in *Arnold Redrick's* case, (supra). On the facts of the instant case, it may well be that Government proposes to acquire lands in the village of Gopalpur and let it out, as it has done in the case of the respondent No. 4, for building industrial units. This would not render the acquisition bad or even colourable. It would be another matter if the allegation was that the Government had in reality no such intention but the only intention was to get round the law and by some means or other to acquire land and give it to a particular Company and to no others. This would render the notification deceptive and untrue. But there is absolutely no mention of any such facts in the pleadings including the memorandum of appeal. Under the circumstances, to hold that we can go into the question of "fraud and colourable transaction" is to violate the beneficial principles adumbrated above both by the Privy Council as well as by the Supreme Court that general allegations of fraud etc. will not do and should be ignored. In our opinion, upon this point even a prima facie case has not been made out. Apart from this, there are some insuperable barriers in front of the appellant. The first difficulty is that in January, 1963 the appellant made an application claiming compensation and an award has been made which is still in existence and has not been set aside. It is in respect of this award that the appellant has made an application for a reference to the Civil Court and that proceeding has also not terminated. Under the circumstances, we fail to see how he can maintain this application, at least, in the writ jurisdiction. Having adopted the acquisition and asked for compensation, a person cannot be allowed to object to the acquisition itself and try to obtain relief in this equitable jurisdiction. It was very faintly argued that this state of things is due to the fact that the appellant did not know until possession was sought to be taken that the acquisition has been made for the purpose of letting out the land to the respondent No. 4. If that was his case, namely, that he came to know for the first time at a recent date, the particulars have not been given except that at some points of time the appellant was "surprised" to see that the Company was erecting structures. There is no explanation as to why the appellant had claimed compensation and is pursuing

the quantum of it and has not ceased to do so.

8. The last point, which is also a very formidable point, so far as the application in the writ jurisdiction is concerned, is the question of delay. The declaration under, section 6 was published some time in September 1962 and this application was taken out only in 1965. The mere fact that in the interval, proceedings were taken before the Land Acquisition authorities is no explanation of the delay, because the appellant there was proceeding to establish his case for compensation. For the reasons above mentioned, we are of the opinion that no prima facie case has been made out for the issue of a Rule and the learned Judge in the Court below has rightly rejected the application. The appeal is, therefore, dismissed. There will be no order as to costs.

Interim orders are vacated.

Arun K. Mukherjea, J.

I agree.