
(1961) 11 CAL CK 0015
In the Calcutta High Court
Case No : Civil Revision Case No. 1568 of 1959

Tirthalal De

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 28-11-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 16, 18, 25, 3, 3(c)

Citation : 66 CWN 115

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : B.C. Dutt and Sm. Manjusri Dutt, for the Appellant; Prodyut Kumar Banerjee, for the Respondent

Judgement

Banerjee, J.—This Rule is directed against acquisition of certain plots of land belonging to the petitioner under the provisions of the Land Acquisition Act, 1894. By a notification No. 16976 LA- dated September 4, 1957, c.s. plots Nos. 794, 889, 896, 898, 900, 901, 904, 946, 950, 951 and portions of c.s. plots Nos. 793, 895 and 942, in village Ballavpur, Police Station Serampore, in all measuring 5.669 acres, were notified as likely to be needed for a public purpose, namely, construction of hostel, playing ground and house for residence of lecturers of the West Bengal Textile Institute. The aforesaid notification was made u/s 4 of the Land Acquisition Act (hereinafter referred to as "the Act") and was published in Calcutta Gazette, dated October 18, 1957.

2. The petitioner objected to the acquisition of his land, included in the notified area, under the provision of Section 5A of the Act. The respondent No. 2, Land Acquisition Collector of Hooghly, acknowledged receipt of the objection, filed by the petitioner on December 12, 1957. There is no dispute that the objection was filed within time.

3. There was an inspection of the locality by an officer of the Land Acquisition Department, in connection with the objection made by the petitioner, on January

7, 1958. Before that officer the petitioner explained why his land should be exempted from acquisition. The petitioner also recorded the grounds of exemption in his letter to the Land Acquisition Collector, dated January 22, 1959.

4. Thereafter, there was a declaration made, u/s 6 of the Land Acquisition Act, being declaration No. 3946 L.A., dated February 20, 1950 (published in the Calcutta Gazette, dated March 5, 1959), the material portion of which is set out below:

Whereas the Governor is satisfied that land is needed for a public purpose, not being a purpose of the Union, namely, for construction of hostel, playing ground, residences of lecturers etc., of the West Bengal Textile Institute, Serampore, in the village of Ballavpur, jurisdiction list No. 14, Thana Serampore, District Hooghly, it is hereby declared that a piece of land comprising cadastral plot Nos. 794, 889, 896, 898, 904, 946, 950, 951 and portion of cadastral plot Nos. 793, 895 and 942 and measuring more or less, 5,315 acres, is needed for the aforesaid public purpose at the public expense within the aforesaid village of Ballavpur.

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

5. u/s 9 of the said Act, the petitioner was served with a notice (Annexure E to the petition) calling upon him to appear before the Land Acquisition Collector, on March 18, 1959, and to claim compensation for his interest in the acquired land. On receipt of the notice, the petitioner made another objection, dated March 17, 1959, asking for exemption of his land from acquisition but to no effect. The Land Acquisition Collector thereafter made an award whereby he awarded a sum of Rs. 25006.51 nP., in favour of the petitioner, in respect of his interest in the acquired land. The petitioner received notice of the award on March 27, 1959. Thereafter he made an application before the Land Acquisition Collector asking for a reference as to valuation, u/s 18 of the Land Acquisition Act. The aforesaid application for reference is said to be pending.

6. By a notice dated April 27, 1959, the Land Acquisition Collector called upon the petitioner to vacate the land on or before June 4, 1959, so that possession thereof might be taken by him. The aforesaid notice was apparently given u/s 16 of the Land Acquisition Act. It was at this stage that the petitioner moved this Court and obtained the present Rule.

7. Mr. Bankim Chandra Dutt, learned Advocate for the petitioner, contended that the acquisition was bad on a two-fold ground:

(a) No opportunity for personal hearing was given to the petitioner, u/s 5A(2) of the Act, as to the objections against acquisition made by him. In the absence of compliance with the provisions of section 5A(2) of the Act the entire subsequent proceeding was bad and contrary to statutory provisions.

(b) The petitioner was not given even fifteen days" time, as provided for in

section 9(2) of the Act, to make his claim as to compensation and his objections as to measurement under the notice Annexure E to the petition, and non-compliance with the provisions of section 9(2) made the acquisition bad.

8. In my opinion the acquisition did not become bad for the reasons urged by Mr. Dutt.

9. On the question as to whether acquisition of any particular land is needed for a public purpose, the satisfaction of the State Government; all that is relevant under the Land Acquisition Act and the consequence is that where the procedure prescribed by the Act has been followed, it is not open to courts to go behind the satisfaction of the Government.

10. Now, the satisfaction of the State Government, under the Land Acquisition Act, is dependent upon the opinion it forms after consideration of the report u/s 5A(2) of the Act and if the procedure prescribed by the Act, as a condition precedent to the formation of the opinion, was not followed, it might be contended that the opinion was not conclusive because it was either not honestly formed or that in forming it the State Government did not apply its mind to the relevant facts and that the satisfaction declared was no satisfaction according to law. This view has been emphasised in a recent case by the Judicial Committee of the Privy Council in *Ross-Clunis v. Papadopoulos* (1) [(1958) 2 All E.R. 23: (1958) 1 W.L.R. 546]: In that case, the order questioned before their Lordships was one made by the Commissioner of Limassol, Cyprus, imposing a collective fine on the Greek Cypriote inhabitants of a particular area u/s 3 of the Cyprus Emergency Powers (Collective Punishment) Regulations, 1955, which empowered the Commissioner to impose a collective fine, if he had "reason to believe" that all or any of the inhabitants had failed to take reasonable steps to prevent the commission of an offence. On this order being questioned, it was contended on behalf of the Commissioner that since the law had cast upon him the duty to satisfy himself of certain facts and to make an order only if he was satisfied, the matter rested entirely on his subjective satisfaction and since he was satisfied, that was a complete answer to any challenge. In dealing with the contention Lord Morton of Henryton observed:

Their Lordships feel the force of this argument but they think that if it could be shown that there are no grounds upon which the Commissioner could be so satisfied, a Court might either infer that he did not honestly form that view or that in forming it he could not have applied his mind to the relevant facts.

11. Therefore, if, in the instant case, there had been no enquiry made as prescribed by section 5A(2) of the Act, it might be argued that the declared satisfaction of the State Government was not the type of satisfaction as prescribed by law and without such satisfaction the acquisition was bad in law.

12. It appears, however, from paragraph 7 of the petition as follows:

Your petitioner states that after the objections were filed, your petitioner

received intimation from the Respondent No. 2 of an inspection to be made of the said land and your petitioner was present at the said inspection held on 7th January 1958 and explained to the officer concerned why the said land should be exempted. By his letter dated 22nd January, 1958 sent under registered post * * * * your petitioner recorded the fact of such inspection and requested the Respondent No. 2 to exempt the said land from acquisition.

13. From what appears in the above paragraph, there is no reason to hold that the provisions of section 5A(2) of the Act had not been complied with, in substance if not in form. A local inspection was made in connection with the objections made by the petitioner. The petitioner was invited to attend at the time of the local inspection. He was also heard as to his objection at the time of inspection. The grievance made by Mr. Dutt with regard to all that was two-fold, namely, (1) that the enquiry was not made by the Land Acquisition Collector himself and (ii) that the hearing of his objections, in course of the local enquiry, was of much too informal a nature to satisfy the requirements of section 5A(2) of the Act. From what appears from paragraph 7, quoted above, there is nothing to show that the enquiry was not made by a Land Acquisition Collector. Mr. Dutt, however, invited my attention to the following passage in the petitioner's letter, dated January 22, 1958 (Annexure C), referred to in paragraph 7 of the petition, in which it was stated as follows:

I beg respectfully to state that I have already filed an objection to the acquisition of my properties. You were pleased to send one gentleman to enquire into my objection. I have satisfied him as to exemption.

14. Relying on the above passage, Mr. Dutt contended that the person who had made the enquiry into the petitioner's objections was not a Land Acquisition Collector. I am unable to give effect to the contention. In the first place, the objection that the enquiry had not been made by the Collector himself and therefore the enquiry was bad was not taken at any time before and was not made a ground of attack even in the petition on which this Rule was issued. In the next place, I am not sure whether the "gentleman" referred to in the letter dated January 22, 1958, was not himself a Collector, within the definition of "Collector" as in section 3(c) of the Act, which runs as follows:

the expression "Collector" means the Collector of a district and includes a Deputy Commissioner and any officer especially appointed by the Local Government to perform the functions of a Collector under this Act.

15. Also, I am unable to give effect to the criticism concerning the informality of the enquiry. The enquiry envisaged u/s 5A need not assume the procedural formality of a judicial enquiry. Suffice it for the enquiry if the objector be given a personal hearing or his pleader be heard and the objections are considered before making the statutory report. This opportunity, in my opinion, was given to the petitioner. I, therefore, overrule the first branch of the contention made by Mr. Dutt.

16. The second branch of his contention may be shortly disposed of. The notice contemplated u/s 9(1) of the Act is to be published after the publication of the declaration u/s 6 of the Act. The declaration was published in the Calcutta Gazette on March 5, 1959. The notice u/s 9 fixed March 18, 1959 for the making of the claim by the petitioner. Between the two dates a period of fifteen days, as contemplated in the Act, did not elapse. But this irregularity does not make the acquisition itself bad.

17. In the case of *Mahanta Sri Sukdev Saran Dev v. Raja Nripendra Narayan* (2) (76 C.L.J., 431) Roxburgh and Akram, JJ. held:

Considering the scheme of the Act, the main question that can be agitated by a person to whom notice might be given was merely the amount of compensation, and that any such person still has reserved to him u/s 31 a right to claim from the person actually receiving compensation any amount to which he may consider himself entitled; considering further the difficulties likely to arise if every failure to comply with the details of the proceedings of acquisition is to render them null and void we can see no reason to think that the failure to give this notice must be given such importance that the provisions must be held to be of a highly mandatory character such as that the failure to follow it will render the whole proceedings null and void and inoperative.

18. The same view was followed by Bose, J. (as the Chief Justice then was) in *Naba Kumar Seal Vs. State of West Bengal and Others*, . I respectfully agree with the view expressed in the aforesaid two judgments.

19. Mr. Dutt, however, relied on a case reported in (4) 34 C.W.N. 323 (*Taraprosad Chaliha v. Secretary of State for India*) and *S. K. Ghosh* in which B. B. Ghosh, JJ. expressed the view that where the notice u/s 9 of the Act was served without giving the interested persons fifteen days" time within which to prefer claim as to compensation, the notice was bad and it was not possible to apply the penal provisions of section 25 of the Act against a claimant. That case is no authority for the proposition that the defect in the notice will render the entire acquisition bad. For the aforesaid reasons I hold that there is no substance also in the second contention of Mr. Dutt.

20. Moreover, the petitioner has already made an application for reference claiming increased compensation for his interest in the acquired land. He says he has done so without prejudice. I do not know how he can be permitted to challenge the acquisition itself and at the same time claim increased compensation. That is an additional reason why the petitioner is not entitled to relief under Article 226 of the Constitution. All the contentions advanced in support of this Rule fail and I discharge the Rule. There will be no order as to costs.