
(1973) 05 CAL CK 0009
In the Calcutta High Court
Case No : Appeal No. 167 of 1970

Ujjal Chandra Ghose

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 25-05-1973

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : AIR 1974 Cal 124

Hon'ble Judges : Janah, J;B.C. Mitra, J

Bench : Division Bench

Advocate : S.D. Banerjee and A.N. Gupta, for the Appellant; Monotosh Mukherjee and Archana Sengupta, for the Respondent

Final Decision : Allowed

Judgement

B. C. Mitra, J.—This appeal is directed against a judgment and order dated May 8, 1970. The appellant is the owner of premises Nos. 34/1/1A and 36C, Lake Road. The two premises formed one unit measuring about 9 kottahs 5 chhattacks and 34 square feet of land on which the appellant had constructed a three-storeyed building. He has kept open and vacant 4 kottahs and 8 chhattacks of land on the eastern part of the property, for better enjoyment of the building and on this vacant land a lawn has been laid. To the east of the appellant's property is a school known as Kamala Balika Vidyalaya.

2. On March 27, 1965 the respondent No. 1 issued a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). By this notification the respondent No. 1 proposed to acquire the entire property including the two premises mentioned above for the purpose of expansion of the Kamala Balika Vidyalaya.

3. The appellant filed his objection u/s 5-A of the Act to the notification u/s 4 of the Act. In this objection he said that he got a plan prepared for a three-storeyed building on the land and submitted an application for sanction to the Corporation

of Calcutta. He also said that the construction of the ground and the first floors of the building, and also of the second floor up to the roof level, had been almost completed and all necessary building materials had been purchased and kept ready, and that he was awaiting further supplies of cement for completion of the building. He also said that while the construction of the premises had made substantial progress, he was served with a copy of the substance of the notification u/s 4 on August 3, 1965

4. The respondent No. 2 heard the appellant's objections and thereafter the appellant was served with a notice u/s 9 of the Act requiring him to file claims for compensation for 3 kottahs 14 chhattacks 15 square feet of land. According to the appellant, on receipt of the notice, he made enquiries and came to know that by notification dated June 23, 1966, the earlier notification u/s 4 of the Act was modified by providing that so much of the said notification u/s 4 of the Act as related to the land containing the building measuring more or less 0.0996 of an acre out of the total area of 0.1640 of an acre was cancelled. On the same day, that is to say, on June 23, 1966 a declaration u/s 6 for acquisition of the premises measuring 0.0644 of an acre was published. Being aggrieved by the acquisition proceedings, the appellant obtained a Rule nisi which was, however, discharged by the judgment and order under appeal.

5. Mr. Sankar Das Banerjee, appearing for the appellant contended before us that by reason of the notification dated June 23, 1966 by which the earlier notification u/s 4 of the Act was modified his client had been very seriously prejudiced as his right to enjoy the property had been substantially affected. He submitted that almost the entire vacant plot of the land to the east of the premises was sought to be acquired under the declaration u/s 6 of the Act and this acquisition would affect not only his client's right to enjoy the building which had been left out, but also would affect the value of the property. He also argued that no opportunity of being heard was given to him with regard to the acquisition of the land only, as the objection u/s 5-A refers to the notification u/s 4 of the Act which comprises the entirety of the two premises mentioned above. He also argued that the purpose and object of filing objections u/s 5-A of the Act and also of considering all these objections by the Land Acquisition Collector had been defeated by the procedure adopted by the State Government, in publishing the notification on June 23, 1966 and publishing the declaration u/s 6 of the Act on the same day.

6. Mr. Banerjee further contended that the power of the State Government to amend a notification u/s 21 of the General Clauses Act, 1897, assuming that the amendment was made in exercise of that power, was limited by the conditions laid down in Section 21 of the said Act itself. In other words, he argued that since his client had an opportunity of filing objections and also of being heard, with regard to the earlier notification u/s 4 of the Act, similar rights should be given to him with regard to the modification or amendment of the notification u/s 4 of the Act, by the subsequent notification dated June 23, 1966. In support of this contention Mr. Banerjee relied on a decision of the Supreme Court *Kamla*

Prasad Khetan Vs. The Union of India (UOI), . In that case dealing with the power to issue notification u/s 21 of the General Clauses Act the Supreme Court held that the power to issue an order under any Central Acts included a power to amend the order but that power was subject to a very important qualification, and the qualification was contained in the words "exercisable in the like manner and subject to the like sanction and conditions (if any)." It seems to us that there is a good deal of force in the contention of Mr. Banerjee.

7. Dr. Monotosh Mukherjee, appearing for the respondents, however, contended that the appellant was not entitled to file any further objections with regard to the proposed acquisition nor was he entitled to get an opportunity of being heard. He argued that the respondents had the right to leave out any portion of a property sought to be acquired with regard to which the notification u/s 4 of the Act had been published, at the time of making a declaration u/s 6 of the Act. In other words, he submitted that it was entirely at the discretion of the State Government, and also entirely a matter of satisfaction of the State Government, to decide whether the entirety of a property with regard to which a notification u/s 4 of the Act had been issued, should be acquired by the State Government or whether certain portion of the property notified should be left out. He further argued that although a notification was issued on June 23, 1966, releasing portions of the property, the same effect could have been achieved by the State Government in publishing the declaration u/s 6 of the Act excluding certain areas from the scope of the acquisition proceedings, instead of such areas being left out in the separate notification published on June 23, 1966. He also argued that the appellant was not entitled to a further opportunity of being heard as he had already filed objections with regard to the proposed acquisition and was also heard by the Land Acquisition Collector.

8. In support of his contention Mr. Mukherjee firstly relied on a decision of the Supreme Court Abdul Husein Tayabali and Others Vs. State of Gujarat and Others, . In that case a notification was issued u/s 4 of the Act for the purpose of a fertiliser factory. This notification was subsequently withdrawn and on the very next day a fresh notification was again issued u/s 4 in respect of the same lands, this time for the purpose of a company. The owner of the land filed objections challenging the validity of the notification and while these proceedings were pending in the High Court, the State Government withdrew the notification. A third notification u/s 4, however was issued by the State Government on the ground that the lands were needed for the establishment of a factory. The owners of the land again filed their objections. In the inquiry, u/s 5-A of the Act, these objections were rejected, and thereafter the State Government issued a declaration u/s 6 of the Act. In these facts it was held that a second opportunity of being heard u/s 5-A of the Act could not be given to the owner after the Government had duly taken into consideration the report made by the Land Acquisition Collector u/s 5-A of the Act. We do not see how this decision is of any assistance to the respondents in the peculiar facts of this case now before us. Mr. Mukherjee also invited our attention to another decision of the Supreme Court,

State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, . In that case it was held, where a notification was issued for the acquisition of a piece of land u/s 4 of the Act, only one notification u/s 6 of the Act could be issued in respect of the lands proposed to be acquired and it was not open to the Government to issue successive notifications u/s 6 in respect of different pieces of land comprised within the area in respect of which the notification u/s 4 was issued. We do not see how this decision, again, is of any assistance to the respondents in this case.

9. The question In effect turns on the appellant's right to file objections u/s 5-A of the Act. That section says that where a person is interested in any land which has been notified u/s 4, Sub-section (1) as being needed for a public purpose he may within 30 days after the issue of the notification, object to the acquisition of the land. In this case after the notification u/s 4 was published on March 27, 1965, objections were filed by the appellant and these objections were heard and disposed of. But what happened thereafter was somewhat extraordinary. The State Government instead of publishing a declaration u/s 6 of the Act, adopted a very curious course of publishing a notification u/s 21 of the General Clauses Act for releasing a part of the premises with regard to which notification u/s 4 had been published. The result was that the appellants were deprived of the opportunity of raising any objection with regard to the acquisition of the land only, leaving out the building. He could not possibly know what portion of the premises the respondents would proceed to acquire or if they would acquire anything at all. Again, he could not possibly raise any objection to acquisition of the land only as that, according to him, would substantially affect his enjoyment of the building. By virtue of the publication of the notification on June 23, 1966 a situation was created which he could not possibly anticipate and laterally, therefore, could not raise any objections with regard to the proposed acquisition of the entire vacant plot of land leaving out the building. It seems to us that the appellant has been wholly deprived of the opportunity of raising objections with regard to the proposed acquisition of virtually the entire vacant plot of land leaving out the building for the appellant's occupation and enjoyment. As we read the Section 5-A of the Act, it seems to us that the purpose of the statute is to give an opportunity to the parties interested in the land to raise their objections and to have their objections heard and disposed of by the Land Acquisition collector. Such an opportunity, undoubtedly, was denied to the appellant in this case. We see no reason why the appellant should be denied the opportunity of raising objections and also of being heard, having regard to the situation that was created by the notification dated June 23, 1966. The appellant's objection is that a declaration u/s 6 should not have been published without giving an opportunity of filing objections, and also of dealing with the same, before publication of a declaration u/s 6 of the Act. It seems to us that the contentions of the appellant in the particular and peculiar facts of this case are well founded. The State Government's right to exclude any portion of the premises with regard to which a notification u/s 4 has been published by a

declaration u/s 6 of the Act, is no answer to the contentions raised by the appellant that in the situation created by the notification dated June 23, 1966 he should be given an opportunity to raise objections and of being heard on these objections.

10. In our view the trial Court was in error in holding that the modification of the notification u/s 4 by the subsequent notification dated June 23, 1966 was entirely in favour of the appellant, and did not affect him prejudicially. According to the appellant he has been very much prejudicially affected by the proposal to acquire the entire vacant plot of land, leaving out the building for his occupation. For the reasons mentioned above this appeal succeeds. The judgment and order under appeal are set aside. We make it clear, however, that the State Government will be at liberty to proceed from the stage of the notification dated June 23, 1966 after giving an opportunity to the appellant to file objections and after the same have been dealt with by the Land Acquisition Collector in accordance with law. A fresh declaration u/s 6 of the Act, if any, has to be made by the State Government only after the objections of the appellant have been considered and a report submitted by the Land Acquisition Collector. We quash the declaration published by the State Government u/s 6 of the Act. The Pule is made absolute to the extent mentioned above. Let appropriate Writs be issued accordingly. Such party to pay and bear its own costs. There will be a stay of the operation of the order for six weeks.

Janah, J.

11. I agree.