

(1958) 05 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 29 of 1957

Yusuf Ali Bepari

APPELLANT

Vs

The State of Assam and Another

RESPONDENT

Date of Decision : 19-05-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : AIR 1958 Guw 154

Hon'ble Judges : Haliram Deka, J;G. Mehrotra, J

Bench : Division Bench

Advocate : T.N. Phukan, for the Appellant; D.N. Medhi, Sr. Govt. Advocate, for the Respondent

Judgement

H. Deka, J.—This is an application under Article 226 of the Constitution for issue of an appropriate writ quashing a notice u/s 6 of the Land Acquisition Act issued by the Assam State Government in respect of the land measuring more or less 3B. 1K. 5L. in village Fulaguri for the purpose of a cattle market in the village of Fulaguri, mouza Jagial in the District of Nowgong. What happened is that a notice u/s 4 of the Act was issued in respect of the identical plot of land on 4-5-1955 and objection was invited u/s 5A of the Land Acquisition Act. An objection was filed on behalf of the Petitioner who claimed interest in the land.

He alleged that there was a mosque on the site and a part of the land was covered by burial grounds which was considered sacred. On receiving the Deputy Commissioner's letter in support of the proposal, the Government by its letter No. R.A. 84/55/6 dated 26-9-1955 conveyed to the Deputy Commissioner that it appeared to the Government reasonable to drop the present proceeding and start another. The relevant passage in the letter is:

It is advisable to drop the present proceedings and start a fresh proceeding for the land with new boundaries. You are therefore requested to submit a detailed report as to what land you now propose to acquire for the purpose. Sketch of the

land may also be submitted with the report.

The purport of this letter was recorded by the Additional Deputy Commissioner in the order sheet of the proceedings on 30-9-1955. It does not appear what happened in between 30-9-1955 and 24-3-1956 when the Deputy Commissioner ordered as follows:

Seen Govt. letter No. R.A. 54/55/27 dated 20-3-56. Declaration has been published under No. R.A. 84/55/22 dated 27-2-56 and sanction of the cost of acquisition and order to proceed with the acquisition of land have also been received. Prepare award statement.

In pursuance of this order a notification was issued u/s 6 of the Land Acquisition Act as I have mentioned above. Mr. Medhi, the senior Govt. Advocate, appearing on behalf of the State submits that it was due to the insistence of the Local Board Chairman that the original proposal was stuck to. We have however, not been furnished with a scrap of paper to show what happened in between and what correspondence passed between the State Government and the Deputy Commissioner of Nowgong.

Nor has Mr. Medhi been able to point but what was contained in the letter of the State Government dated 20-3-1956 bearing No. R.A. 54/55/27. As a court of law we cannot go on inferring facts unless some materials are placed before us and therefore on the face of it we find, no justification for a notice u/s 6 of the Land Acquisition Act alter the objection was allowed u/s 5A of the Act and the proposal was directed to be dropped in favour of a fresh proposal for acquisition of lands with new boundaries accompanied with a sketch.

The direction to drop the proposal must be construed as accepting the objection raised u/s 5A of the Act. Therefore a revision of this order even on the part of the State Government without giving notice to the parties to file fresh objections to the renewal of the original proposal was illegal and against the principle of natural justice. What happened between the Local Board Chairman and the Government was not for the parties to know, nor have we been acquainted with what happened and how the Government's mind changed, if they proceeded to acquire the same plot of land in regard to which they had a different mind, as conveyed through their letter of 26-9-1955.

Therefore in our opinion the proceeding subsequent to 30-9-1955 might or might not be valid in law but it could not in any way affect the interest of the patta-holder. Accordingly, we quash the latter part of the proceeding and if the Government has a mind to continue the acquisition proposal in the original form or otherwise, the proceeding will continue but objections u/s 5A should be invited afresh from the Petitioner or any body interested in the land. The notice u/s 6 of the Act is therefore quashed as prayed for. The rule is made absolute to the extent indicated above and the Government is to pay cost of Rs. 100/- to the Petitioner.

G. Mehrotra, J.

2. I agree.