

28.
14.02.2022.
Ct. No. 11.
F.B.

WPA 20157 of 2013

(Via Video Conference)

Kartick Rit & Ors.

-Vs.-

The State of West Bengal & Ors.

Mr. Rudradeb Chaudhuri,

Mr. Subhasish Pachhal

..... For the Petitioners.

None appears on behalf of the respondents in spite of the notice served upon the respondents.

The petitioners have filed the instant writ petition praying for rescind, withdraw and cancellation of the declaration dated 20.12.1968 wherein the respondent, i.e. the Deputy Secretary to the Government of West Bengal on behalf of the Governor issued notification for acquisition of the land mentioned below under Section 6 of the Land Acquisition Act, 1984.

“Description of the land

Mouza Baltikuri, Jurisdiction No.1,

Police-station Jagacha, District Howrah.

Cadastral survey plots in full-1380, 1381, 1383 to 1393, 1396 to 1398, 1413, 1414, 1422 to 1476, 1478 to 1484, 1486, 1539 to 1547, 1554 to 1576, 1594, 1612, 1613 and 1630.

Cadastral survey plots in part-

No. of plot, its specific portion with area in acre and area in hectare is given below:-

1365-Southern-.18-.078

1377-Southern-.45-.1821

1378-Southern-1.10-.4494

1379-Southern-.39-.1578

1382-Southern-.98-.3966

1394-Southern-.29-.1174

1395-Southern-.095-.0384

1405-Southern--.20-.0894

1535-Southern-.33-.1335

1536-Southern-.20-.0894

1538-Southern-.055-.0020

1548-Southern-.14-.0567

1485-Southern-.46-.1862

This declaration is made, under the provisions of Section 6, Act 1 of 1894, to all whom it may concern.

A plan of the land may be inspected in the office of the Special Land Acquisition officer (Howrah Improvement Trust), Howrah."

It is submitted that before issuance of notification dated 20th December, 1968, on 2nd February, 1966 the respondent authorities have issued a notification under Section 4 of the Land Acquisition Act, 1894 for acquisition of the certain landed properties for the purpose of Howrah Improvement Trust. The schedule of land was as follows:-

“Schedule of land

Mauza Balitkuri, Jurisdiction List No. 1, police station Jagacha, district Howrah.

Cadastral, survey plots in full-1242, 1243, 1247 to 1297, 1301, 1303 to 1305, 1317, 1318, 1380, 1381, 1383 to 1393, 1396 to 1399, 1403, 1476, 1478 to 1484, 1486, 1539 to 1547, 1549 to 1580, 1594, 1612, 1613, 1618, 1619, 3691 to 3701, 3703, 3705 to 3708 and 1429/1630.

Cadastral survey plots in part- 1201, 1238, 1244, 1246, 1298, 1300, 1302, 1306, 1314, 1319, 1322, 1337, 1362, 1363, 1365, 1377, 1378, 1379, 1382, 1394, 1395, 1400, 1402, 1485, 1516, 1531, 1533, 1535, 1536, 1538, 1548, 3684 to 3690, 3702, 3704, 3709, 3710, 3710/3924 and 3710/3925.

Mauza Santragachi, jurisdiction list No. 4, police station Jagacha, district Howrah.

Cadastral survey plots in full- 1 to 27, 31 to 52, 62, 138 to 173, 178, 181, 254, 265 to 319, 327, 328, 329, 2313, 2306, 2317, 2318 and 2319.

Cadastral survey plots in part –320, 323, 324, 325, 326, 329, 330, 333, 334 and 406.

Mauza Dharsa, jurisdiction list No. 5, police station Jagacha, district Howrah.

Cadastral survey plots in full-1630 to 1636, 1672 to 1681 and 2375.

Cadastral survey plots in part- 1629, 1637, 1638, 1639, 1654, 1655, 1670, 1671, 1682, 2371, 2372, 2373 and 2374.

This notification is made under the provisions of section 4 of Act I of 1894, to all whom it may concern.”

The Counsel for the petitioners submitted that the petitioners are the owners of the landed property being Dag Nos. 1425 to 1472 but the notification issued under Section 4 of the Act dated 2nd February, 1966 the aforesaid Dag Nos. 1425 to 1472 were not mentioned. It is further submitted that without issuance of notification under Section 4, the respondents have issued notification under Section 6 by acquiring of the land of the petitioners i.e. Dag Nos. 1425 to 1472. It is further contended that vide notification dated 3rd January, 1972 the respondents have deleted/withdrawn some of the landed properties from acquisition but in the notification the Dag Nos. 1425 to 1472 are not appearing implied that the respondents have acquired the land of the petitioners i.e. Dag Nos. 1425 to 1472 without following due process of law.

The Learned Counsel for the petitioners further submitted that no notice was issued with regard to the acquisition of the landed properties. The land in question is recorded in the name of the petitioners. It is further submitted that the petitioners are also paying land revenue to the concerned authority with regard to their recorded land i.e. Dag Nos. 1425 to 1472. It is further contended that the petitioners are in occupation

of the properties in question and are enjoying the landed properties without an interference from any corner. The petitioners came to know about the acquisition of the said landed properties only in the year 2008, when some sign boards have been put up on behalf of the Howrah Improvement Trust in some of the landed properties. Immediately thereafter the petitioners have enquired from the authorities and have sent legal notices to the authorities. When the petitioners have not received any reply, the petitioners have obtained documents under Right to Information Act. After obtaining documents, the petitioners have filed the instant writ petition. The respondents have filed their affidavit-in-opposition wherein the respondents have admitted that :-

“However, from office case records so far available after a lapse of more than 43 years, it is not clear whether claim petition U/S 5 of L.A. Act-I of 1984 was received or not. However, on the basis of declaration U/S 6 and thereafter withdrawal of some plots as noted above U/S 48(1) of said Act, Govt. order issued U/S 7 was received.”

The respondents failed to produce any documents to revert the contention of the petitioners to the effect that whether any notification under Section 4 is issued in respect of Dag Nos. 1425 to 1472. The respondents also failed to produce any documents to prove that the respondents have taken possession of

the properties in question and have paid the compensation with regard to the acquisition of the landed properties in question.

It is settled law that notice under Section 4 is mandatory and unless notice is not given in accordance with the provisions contained therein, the entire acquisition proceedings are vitiated. In the instant case respondent authorities have issued notice on 2nd February, 1966 but the Dag Nos. of the landed properties of the petitioners i.e. 1425 to 1472 is not appearing. All of a sudden, in the notification dated 20th December, 1968 the respondent authorities have acquired the land being Dag Nos. 1425 to 1472. No possession has been taken and no compensation has been paid to the petitioners and till date as per the submission of the Learned Counsel of the petitioners, the petitioners are in occupation of the properties in question.

Considering the submission made by the Learned Counsel for the petitioners and the documents available on record, this Court finds that the respondent authorities have acquired the land of the petitioners by way of the notification dated 20th December, 1968 without following the due process of law by not issuing any notice under Section 4 of the

Land Acquisition Act. Section 4 of the Land Acquisition Act 1894 reads as follows:-

“4. Publication of preliminary notification and powers of officers thereupon.- (1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company] a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].”

In the case of *Narindrajit Singh -vs- The State of U.P. & Ors.*, reported in (1973) 1 SCC 157 it is held that the notification in official gazette must be published and the collector has to cause public notice of the substance of such notification to be given. These two questions must be satisfied for the purpose of compliance with the provision of Section 4(1) of Land Acquisition Act, 1894.

Thus this Court is of the view that the procedure adopted by the respondents for acquisition of the land being Dag Nos. 1425 to 1472 is illegal and without the due process of law.

The notification dated 20th December, 1968 is hereby set aside with respect of Dag Nos. 1425 to 1472 situated at Balitikuri, Jurisdiction No. 1, Police Station Jagacha, District Howrah. The respondents are further restrained from disturbing the possession of the petitioners without acquisition of the landed properties of the petitioners in accordance with law.

W.P.A. 20157 of 2013 is allowed.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Krishna Rao, J.)