

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

F.M.A.1552 of 2011

IA NO: CAN/2/2019(Old No:CAN/5250/2019)

Smt. Sankari Naskar & ors.

Vs.

The State of West Bengal & ors.

For the appellants : Mr. Saptansu Basu, Sr. Advocate
Mr. Ayan Banerjee, Advocate
Mr. Nimai Chandra Betal, Advocate
Mr. Suresh Kumar Sahoo, Advocate

For the State : Mr. Tapan Kr. Mukherjee,
Sr. Advocate & A.G.P.
Mr. Supratim Dhar, Advocate

Hearing on : 17.08.2023

Judgment on : 17.08.2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against an order dated June 17, 2008 passed in W.P.23476 (W) of 1997.

2. Learned Senior Advocate appearing for the appellants submits that, the appellants are owners of premises No.10/3 and 10/4 Danesh Sheikh Lane, Howrah. He contends that those two premises are not included in the notification for acquisition. His clients are in possession

of the properties. He refers to the notification for acquisition dated May 26, 1964.

3. Referring to the notification dated May 26, 1964, the learned Senior Advocate appearing for the appellants submits that, the notification is vague. It does not enumerate premises nos.10/3 and 10/4, Danesh Sheikh Lane, Howrah as the premises which were sought to be acquired.

4. Moreover, referring to the description of the boundary given in such notification, learned Senior Advocate appearing for the appellants submits that, premises no.10 is also shown as forming part of the boundary of the property sought to be acquired. According to him, since premises No.10 was shown as boundary, therefore, a portion of premises no.10 was left out of the purview of the acquisition. Alternatively, it highlights the vagueness of the notification.

5. Referring to the Howrah Municipal records, learned Senior Advocate appearing for the appellants submits that premises no.10 was a large plot of land. It was bifurcated into 8 different parts starting from premises no.10 to premises no.10/7 in or about 1956-57, much prior to the notification dated May 26, 1964. . He submits that, the notification dated May 26, 1964 proceeded on the basis of municipal holding number. The bifurcation was recorded in the year 1956-57. Therefore, the authorities were incorrect in proceeding on the basis of Municipal holding number and claiming that, premises no.10/3 and premises

no.10/4 were also included in the acquisition proceedings when, no such number was enumerated in the notification under Section 4 of the Land Acquisition Act, 1894.

6. Learned Senior advocate appearing for the appellants relies upon the documents annexed to the application under Order XLI Rule 27 of the Code of Civil Procedure, 1908. He submits that, the bifurcation of premises no.10 occurred in 1956-57 as appearing from the documents annexed to such application.

7. Referring to the impugned order dated June 17, 2008, learned Senior Advocate appearing for the appellants submits that, the impugned order erroneously proceeds on the basis that the acquisition proceedings were in respect of premises nos.10/3 and 10/4 when actually it was not. No notice in respect of the acquisition proceedings for such premises were served upon any of the appellants or their predecessor-in-interest. No previous enquiry under Section 4 of the Act of 1894 was carried at the locale. Since, the appellants or the predecessors-in-interest of the appellants were not favoured with any notice under Section 4 of the 1894, the appellants were deprived of the rights enshrined under the provisions of the Act of 1894. The appellants could not challenge the violation of the provisions of the Act of 1894 or the award passed in respect of the acquisition proceedings. No copy of the award was served upon the predecessors-in-interest of any of the appellants or the appellants, under Section 11 of the Act of 1894. According to him, the

entire acquisition proceeding was vitiated. They were undertaken in violation of the provisions of the Act of 1894. Therefore, no acquisition took place in respect of premises nos.10/3 and 10/4. Such premises be declared to be beyond the so-called acquisition.

8. Learned Senior Advocate appearing for the appellants relies upon **(2005) 13 Supreme Court Cases 477 (Competent Authority vs. Baranagore Jute Factory and others)** and submits that, since the notification was vague, the entire acquisition proceeding stood vitiated.

9. Relying upon **(2005) 10 Supreme Court Cases 306 (Om Prakash Sharma and others vs. M.P. Audyogik Kendra Vikas Nigam and others)** learned Senior Advocate appearing for the appellants submits that, the notification herein was vague and therefore, entire proceeding stood vitiated.

10. Relying upon **(2018) 8 Supreme Court Cases 266 (Vijay Mahadeorao Kubade vs. State of Maharashtra)** learned Senior Advocate appearing for the appellants submits that none of the claim of the appellants are barred by limitation in view of the fact that notice under Sections 4, 6 and 11 were not served upon either any of the appellants or their predecessors-in-interest.

11. Learned Senior Advocate appearing for the State submits that, all the appellants and their predecessors-in-interest were aware of the acquisition proceeding. He highlights the delay in the appellants approaching the High Court by way of the writ petition. Referring to

averments made in the affidavit-in-opposition, learned Senior Advocate appearing for the State submits that, the notification under Section 4 was published on June 25, 1964 for an area of 17.10 acres out of which, an area of 4.5435 acres was cancelled by the notification dated January 18, 1969. Therefore, the total area under the notification Section 4 of the Act of 1894 was 12.5565 acres.

12. Learned Senior Advocate appearing for the State submits that, the notification under Section 4 of the Act of 1894 correctly and properly describes the property sought to be acquired.

13. Referring to the records produced before Court, pursuant to the order dated November 25, 2022, learned Senior Advocate appearing for the State submits that, the predecessors-in-interest of the appellants were issued notices under Sections 9(1) and 9(3) of the Act of 1894. The area held by the predecessors-in-interest by the appellants were noted in the award notesheet. He contends that, an award was passed in respect of the acquisition proceeding. He refers to the contents of the award. He submits that, municipal holding no.10 was acquired as will appear from the contents of the award. He submits that, initially apportionment was not done. Subsequently, in view of the order dated November 9, 1976, passed in C.R.1476 (W) of 1972 apportionment was also carried out. He submits that, the predecessors-in-interest of the appellants were parties to such writ petition.

14. Learned Senior Advocate appearing for the State submits that, the predecessors-in-interest of the appellants, were aware of the acquisition proceeding. They raised objections. Their objections were considered. In fact, the award was also apportioned. He refers to the provisions of Sections 12 and 16 of the Act of 1894 and submits that, since, none of the predecessors-in-interest of the appellants came to collect the money awarded on apportionment, the money was kept as a revenue deposit.

15. Referring to a letter written by one of the predecessors-in-interest of the appellants, to the Additional Land Acquisition Officer, learned Senior Advocate appearing for the State submits that the appellants were aware of the proceeding. Consequently, he submits that no interference is called for with regard to the impugned order.

16. By the impugned order dated June 17, 2008, the learned Trial Judge, held that, there was no dispute with regard to issuance of notification under Section 4 of the Act of 1894 in respect of the land in question. Learned Trial Judge also found that there was no dispute with regard to declaration under Section 6 of the Act of 1894 being published. The learned Trial Judge also found that there was an award made in the proceeding. Consequently, the learned Trial Judge did not find any merits in the claims made by the appellants.

17. There is a notice under Section 4 of the Act of 1894 in respect of few premises which were under acquisition in such proceeding for acquisition.

18. The notification under Section 4 of the Act of 1894 dated May 6, 1964, refers to municipal holding nos.8 to 11 in respect of the street concerned. It is the common case of the parties that the acquisition proceeding proceeded on the basis of municipal holding number.

19. Consequently, municipal holding nos.8 to 11 will obviously bring within its ambit premises no.10 and the bifurcated premises of premises no.10 thereof.

20. We gave anxious consideration to the contention of the appellants that they were not aware that premises no.10/3 and premises no.10/4, which were borne out of the bifurcation of premises no.10, and bifurcation being completed in the year 1956-57 as appearing from the municipal records, were part of the acquisition proceeding.

21. The appellants are the heirs and legal representatives of late Amulya Naskar, late Chandra Sekhar Naskar and late Sushil Naskar. Late Amulya Naskar, late Chandra Sekhar Naskar and late Sushil Naskar appeared in the proceeding before the Collector raising objections to the acquisition proceedings. This fact is established by the records produced by the State in Court in terms of the order dated November 25, 2022.

22. An objection was taken on behalf of the appellants that, the records produced by the State, purported to be in compliance with the order dated November 25, 2022 should not be considered as they were

not part of the Trial Court records and no application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 was made in respect thereof.

23. We are unable to accept such contention of the appellants on the ground that, the records were called for by the order dated November 25, 2022 by the coordinate Bench. The appellants did not object to the production of such records at the material point of time. In any event, the appellants prayed for a writ of certiorari in the writ petition in respect of records of the acquisition proceeding. Moreover, the Appeal Court is clothed with the power to consider the records of a case, if so required. The coordinate Bench exercised its discretion and called for the records of the acquisition proceeding.

24. The participation of the predecessors-in-interest of the appellants, in the acquisition proceeding before the Collector, as appearing from the records produced before Court and as highlighted on behalf of the State and as noted in the contention on behalf of the State, establishes the fact that, the appellants were aware of the exact nature, scope and extent of the acquisition proceeding. They were aware that the premises no.10/3 and premises no.10/4 were involved in the acquisition proceeding. It is now late in the day for any of the appellants to raise objections with regard to the vagueness of the notice issued under Section 4 of the Act of 1894 dated May 26, 1964.

25. **Vijay Mahadeorao Kubade (supra)** and **Om Prakash Sharma and others (supra)** found that the notices issued under the Act of 1854 were

vague, in the facts and circumstances of those cases. In the facts and circumstances of the present case, as noted above, there was active participation by the predecessors-in-interest of the appellants, in the acquisition proceeding leading right upto the award being passed including its apportionment pursuant to an order of the High Court in a writ petition where the predecessor-in-interest of the appellants were parties. Therefore, it cannot be said that the appellants were not aware of the extent of the acquisition proceeding as sought to be contended therein.

26. In **Baranagore Jute Factory and others (supra)** the Supreme Court held that since the notification speaks of acquisition of a part of a plot, without specifying which part of the plot is sought to be acquired, the notice for acquisition was said to be bad in law being vague.

27. Again the factual scenario herein is completely different. The acquisition proceedings were initiated on the basis of municipal holding numbers. In any event, as noted above, the predecessors-in-interest of the appellants participated in the acquisition proceeding and therefore, the extent, nature and scope of the acquisition was known to them.

28. Significantly, the predecessors-in-interest of the appellants were party respondents in C.R.1476 (W) of 1972 which was disposed of by an order dated November 9, 1976, requiring the Collector to apportion the value of the award amongst the co-owners. At that stage also, the predecessors-in-interest of the appellants did not inform the High Court

that, their properties were not under acquisition or that premises no.10/3 and premises no.10/4 were not covered under the acquisition.

29. It is the contention of the appellants that premises no.10 was also owned by the same predecessors-in-interest of the appellants as that premises no.10/3 and premises no.10/4 and therefore, the apportionment spoken of in the order dated November 9, 1976, passed in C.R.1476 (W) of 1972 was limited to premises No.10 only.

30. With the deepest of respect, we are unable to accept such contention since, the area of land comprised in premises no.10 after bifurcation and the area of land which is comprised in all the premises commencing from premises no.10 to premises no.10/7 are not the same, obviously. A larger portion of the area was acquired. Award was passed in respect of the larger area. Award was apportioned as directed by the High Court in presence of the predecessors-in-interest of the appellants. They understood the order to be so. They worked upon such order. Therefore, at this stage, the contention that, the appellants or their predecessors-in-interest were not aware of the entire extent and nature of the acquisition is belated as appearing from the materials produced in Court.

31. In such circumstances, we find no merit in the present appeal.

32. F.M.A. 1552 of 2011 along with connected application are dismissed without any order as to costs.

33. However, since we considered the documents sought to be produced by the appellants in their application under Order 41 Rule 27 of the Code of Civil Procedure, 1908, such application stands allowed.

(Debangsu Basak, J.)

34. I agree.

(Md. Shabbar Rashidi, J.)

CHC