

DL-4

14.07.2023
Court No.5
(AD)

**FMA 540 of 2020
With
IA No.: CAN 2 of 2023**

**Sri Monoranjan Ghosh & Anr.
Vs.
State of West Bengal & Ors.**

*Mr. Asok Nath Ghosh
Mr. Kinkar Chandra Basu*

... for the appellants.

*Mr. Lalit Mohan Mahata
Mr. Rudranil De
Mr. Ziaul Haque*

... for the State.

*In re. **IA No.: CAN 2 of 2023***

CAN 2 of 2023 is an application for restoration.

For the ends of justice and considering the plea sought to be set up for restoration, we allow the application for restoration.

The order of dismissal of the appeal dated May 4, 2023 is recalled.

Appeal is restored to its original file and number.

*In re.: **FMA 540 of 2020***

The application for restoration was taken up for consideration two days earlier.

The parties were requested to address the Court on the merits of the appeal also.

While considering the application for restoration, the parties were requested to address the Court on the

merits of the appeal in order to appreciate the merits of the appeal while considering the application for restoration.

Learned Advocate appearing for the appellants submits, that an acquisition proceedings was initiated as against the property belonging to the appellants. He submits that, the appellants filed an objection in the proceedings. Supplementary objection was also filed. The appellants were heard with regard to the objection. A decision was taken on the objection. An order on the objection was passed.

Learned Advocate appearing for the appellants submits that, based on the disposal of the objection under Section 5A of the Land Acquisition Act, 1894, a declaration under Section 6 of the Act of 1894 was approved by the Government on November 23, 2007. The same was published in the English and Vernacular Newspapers on November 25, 2007 and November 26, 2007 respectively. He draws the attention of the Court to the fact that the Gazette Notification was published on November 27, 2007. He contends that, therefore, the publication of the Gazette Notification was beyond the period prescribed under Section 6 of the Act of 1894. Therefore, according to him, the entire acquisition proceeding is invalid.

Without prejudice to such contention, he submits that, the land was not adequately and properly

described. The notifications speak of middle area. The middle area was not demarcated. Therefore, on such counts also, the acquisition proceedings stand vitiated.

Learned Advocate appearing for the appellants draws the attention of the Court to the conduct of the authorities. He contends that, steps under Section 7 of the Act of 1894 were taken prior to the declaration under Section 6 of the Act of 1894 being published in the Gazette Notification. Referring to Section 8 of the Act of 1894, learned Advocate appearing for the appellants submits that, the lands sought to be acquired is yet to be marked, measured and planned in terms of Section 8 of the Act of 1894. Referring to the impugned order, learned Advocate appearing for the appellants submits that, such contentions were not correctly appreciated and that, the impugned order should be set aside.

State is represented.

All the contentions raised by the appellants in the appeal were raised and considered by the learned Trial Judge in *extenso*. The learned Trial Judge not only took the factual matrix into consideration but also the authorities cited at the bar on behalf of the appellants in the impugned judgment. The view taken by the learned Trial Judge is a plausible view. There is no material on record to suggest that the view taken by the learned Trial Judge as recorded in the impugned order is perverse.

So far as the aspect of consideration of the

objection is concerned, the learned Trial Judge noted that, the objection of the appellants to the acquisition proceedings were, in fact, considered elaborately by the order dated October 31, 2007 of the Collector. The appellants were allowed to file the supplementary objection in addition to their original objection. The order of the Collector recorded that, the appellants were not able to produce any applications or steps taken towards the proposal for establishment of a super-speciality hospital. The location of the land was shown to be in harmony with the objects and purpose of the acquisition. The Collector also noted that, the appellants were required to show that the land proposed to be acquired was not suitable for the purpose of such acquisition and that, there was alternative land available to meet the requirements of the acquisition.

In the facts of the present case, acquisition was sought for on behalf of a private company for the purpose of setting up an industrial park. The appellants seek to set up super-speciality hospital on the said land. Given the nature of the user that the appellants seek to put the land into and the proposed object of acquisition, it cannot be said that the land sought to be acquired was unsuitable for the purpose of the acquisition. Both the appellants and the proposed user of the land on acquisition require the land to construct a building thereat. One is for industrial park. The other is for

super-speciality hospital. Therefore, it cannot be said on the strength of the contentions of the appellants itself that the land sought to be acquired did not meet the requirement of its proposed user.

The next contention with regard to the declaration being beyond prescribed time is concerned, the learned Trial Judge noted that, that the publication of the declaration in the two newspapers, one in English and the other in Vernacular happened within the time prescribed. The learned Trial Judge noted the provisions of Section 6 of the Act of 1894 and expressed the view that, it would be pedantic reading of Section 6 of the Act to hold that the publication of the declaration in the Gazette one day after expiry of the period was fatal to the acquisition proceedings.

We are considering an appeal against an order passed under Article 226 of the Constitution of India. The scope of enquiry under Article 226 of the Constitution of India is limited. Since, the authorities caused publication in the newspapers within time, there was no material to infer that the authorities did not send the declaration to be published in the Calcutta Gazette within time.

Therefore, there is no material on record to upset the view taken by the learned Trial Judge in the impugned order with regard to the issue of Section 6 of the Act of 1894.

Demarcation under Section 8 and actual demarcation of the land or its description issues were also considered by the learned Judge in the impugned order. The plot number is identified in the declaration notice. It is nobody's case that the plot does not belong to the appellants before us. There is no dearth of understanding between the rival parties as to the plots concerned. Therefore, this issue, in our view, is not germane.

The learned Judge, granted leave to the appellants to approach the Collector under Section 18 of the Act of 1894.

Since the appellants chose not to avail such opportunity as granted by the learned Trial Judge and since the appellants insisted that the appeal court considers all the issues on the basis of materials on record, therefore in order to shorten the litigation between the parties, it would be appropriate that, such leave granted to the appellants is withdrawn. Moreover, the appellants cannot be allowed to repeatedly raise the same issues.

The appellants consciously chose to press on the appeal given the limited scope of an appeal from an order passed in the writ jurisdiction. The appellants were repeatedly apprised that they would be better placed to avail of the remedy under Section 18 of the 1894 Act which gives wider scope in such an adjudicating process.

The appellants consciously exercised their right to press on the appeal.

In such circumstances, the impugned order is modified to the extent of the liberty granted to the appellants in terms of Paragraph 34 thereof. Such liberty is withdrawn.

FMA 540 of 2020 is disposed of accordingly without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

