

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 10831 of 2003

With

**IA No: CAN/2/2006(Old No: CAN/3452/2006),
CAN/4/2019(Old No: CAN/6095/2019),
CAN/5/2019(Old No: CAN/6096/2019)**

Soumitra Sreemani & Ors.

Vs.

The State of West Bengal & Ors.

**For the petitioners : Mr. Kallol Basu, Sr. ADv.
Mr. Shibaji Kumar Das ,
Mr. Samik Sarkar,
Ms. Rupsa Sreemani**

**For HIDCO : Mr. Debabrata Banerjee,
Mr. Samir Kr. Chakraborty**

For the State : Mr. Chandi Charan De

Judgement on : 18.09.2023.

Bibek Chaudhuri, J.

Acquisition of a piece of land situated in R.S. Plot No.1189 and 1193 of Khatian No.760 and Khatian No.968 respectively measuring about 1.06 decimal of land and 1.24 decimal of land respectively, total being 2 acres and 30 decimal of land at Mouza Jatragachi, J.L. No.24 within Police Station Rajarhat is challenged in the instant writ petition by the petitioners. It is pertinent to mention at the outset

that during the pendency of the instant writ petition, original petitioner No.5 died and she was substituted by her legal heirs and representatives.

It is the case of the petitioners that the petitioners along with five others jointly purchased the above-mentioned plots of land for construction of their residential house by a registered deed of sale dated 16th December, 1992.

It is alleged by the petitioners that on 26th October, 1994 a purported notice claiming to be under Section 4(1) of the Land Acquisition Act, 1894 was published in a Bengali Daily "Ganasakti" stating, *inter alia*, that land in Mouza Jatragachi would be needed or would likely to be needed for public purpose, i.e. to construct a satellite township at Rajarhat. The said notice under Section 4 of Act-I of 1894 was absolutely vague and indefinite on the basis of the said notification. It is submitted on behalf of the petitioner that acquisition process under Section 6 of the said Act could not proceed. The notification published in the Bengali Daily only stated the name of Mouza Jatragachi, JL number and police station. The said notice did not explicitly state the Dag numbers of the land, which were required to be taken by the acquiring authority for public purpose. Therefore, the petitioners did not get any opportunity to know as to whether

their lands situated in Dag Nos.1189 and 1193 would at all be acquired by the acquiring authority or not.

Further case of the petitioners is that though the petitioners did not know as to whether their lands would be taken by the acquiring authority or not, they filed an objection under Section 5A of Act-I of 1894 before the competent authority. However, the petitioners were not given opportunity of hearing. On the contrary, in a Bengali Daily "Bartaman", the West Bengal Housing Department issued a notice purportedly under Section 6 of the said Act, stating, *inter alia*, that Dag Nos.1189 and 1193 which were owned by the petitioners and others were acquired by the L.A. Collector, North 24-Parganas and handed over to the West Bengal Housing Department being the Requiring body. The acquiring body also declared compensation in respect of the said land. It is admitted by the learned Advocate for the petitioners that out of 12 persons who purchased the said land, 5 persons accepted their proportionate compensation. The petitioners are the remaining seven persons who has challenged the entire acquisition process.

Mr. Das, learned Advocate for the petitioners submits that Section 4 notification is bad in law and inoperative because of the non-disclosure of land particulars. Therefore, when notice under Section 4 of the Land Acquisition Act suffers from vagueness, all

subsequent proceeding is also bad. In support of his contention, he refers to a Three Judges' Bench Decision of the Hon'ble Supreme Court in the case of ***Madhya Pradesh Housing Board Vs. Mohd. Shafi & Ors.*** reported in ***(1992) 2 Supreme Court Cases 168.*** Paragraph 8 of the said report is relevant for the purpose of this case and reproduced below:-

"8. It is settled law that the process of acquisition has to start with a notification issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 is a condition precedent to the exercise of any further powers under the Act. Any notification which is aimed at depriving a man of his property, issued under Section 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the courts. The object of issuing a notification under Section 4 of the Act is twofold. First, it is a public announcement by the government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the government for the "public purpose" mentioned therein; and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be

published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the "public purpose" for which the acquisition proceedings are being commenced but also the "locality" where the land is situate with as full a description as possible of the land proposed to be acquired to enable the "interested" persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged "public purpose" also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad."

Thus, it is submitted by Mr. Das, learned Advocate for the petitioners that if a notification under Section 4(1) of Act-I of 1894 is defective and does not comply with the requirement of the Act, it not only vitiate the notification, but also renders all subsequent proceedings connected with the acquisition, bad.

Mr. Chandi Charan De, learned Advocate for the State, on the other hand, submits that the notification published in a Bengali Daily "Ganashakti" on 26th October, 1994 and all subsequent notifications

were unilaterally cancelled by the State Government. Subsequently, on 22nd January, 2003, the L.A. Collector-cum-District Magistrate, North 24-Parganas issued a notification under Section 4 read with Section 17(4) of Act-I of 1894 which was published in the Official Gazette on 7th February, 2003. The said notification contains declaration of plot Nos.1189 and 1193 of Mouza Jatragachi as the lands to be acquired along with other lands of the same Mouza.

Mr. De also submits that the notification published in the official gazette on 22nd January, 2003 was also published in a Bengali Daily "Ganashakti" on 22nd March, 2003. Thereafter, declaration was made for acquisition under Section 6 of the said Act.

It is also submitted by Mr. De that as the subsequent notification was published in the official gazette as well as in the news paper under Section 4, read with Section 17 of the said Act, the petitioners were deprived statutorily of filing any objection under Section 5A of Act-I of 1894.

In view of such circumstances, after the statutory period of time, the notice of acquisition of land was published in the official gazette. Therefore, there is no illegality in the acquisition proceeding.

Having heard the learned Counsels for the parties and on careful perusal of the materials on record, this Court finds that the notification dated 22nd January, 2003 which was published in official

gazette on 7th February, 2003 cannot be said to be illegal and inoperative.

Subsequent to the notice paper publication was made on 22nd March, 2003. It was within the knowledge of the petitioners because of the fact that the petitioners filed the writ petition in 2003 itself challenging the order of acquisition.

It is urged by the learned Advocate for the petitioners that when the acquiring body intends to acquire certain land on the ground of urgency, it is bound to comply with the provision of Section 4 of the Act in more stringent manner by publication of the notification in two daily news paper circulating in the locality where the land is situated, of which at least one shall be in the regional language, in addition to the already existing requirement of the Collector causing public notice of the substance of such notification to be given at the convenient places in the said locality. Thus, Section 4 stipulates three modes of publication of notice- the first mode is by way of publication in the official gazette, the second mode is by way of publication in two daily news papers, one of which must be of regional language circulating in the locality and thirdly, by publication of notice on or near the land.

In the instant case, the State respondents failed to prove any publication of notice near the place where the land is situated.

In view of such circumstances, Section 4 notice should be held to be bad in law.

It is not in dispute that the petitioners by their act and conduct have established that they knew the commencement of acquisition proceeding on 11th February, 2003 when notice under Section 4 of Act-I of 1894 was published because the petitioner No.1 immediately filed an objection on 10th April, 2003 before the Additional Land Acquisition Officer under Section 5A of the Land Acquisition Act. The said objection was not taken into consideration because of the fact that publication of notice under Section 17(4) of the Act waived the right to file objection by the land owners or any person interested to the land. Thereafter, notice was duly published and land was acquired. Compensation was calculated and out of 12 co-owners, 5 co-owners have accepted the compensation.

In view of such circumstances, this Court is not in a position to hold that the notification under Section 4 of the Act-I of 1894 was bad in law as well as the subsequent proceedings thereto.

For the reasons stated above, I do not find any ground to interfere with the administrative order of acquisition of the land of the petitioners. Accordingly, the instant writ petition is dismissed on contest. There shall be, however, no order as to costs.

(Bibek Chaudhuri, J.)

***Mithun.
A.R. (Ct).
SI No.05.***