

18.07.2023
Item No.3
Ct. No.5
CHC
(disposed of)

**F.M.A.1461 of 2019
IA NO: CAN/4/2023**

**Dr. Bimal Kumar Raj & ors.
Vs.
The State of West Bengal & ors.**

Mr. Uttam Kumar Bhattacharya
...for the appellants

Mr. Soumitra Bandyopadhyay,
Mr. Aniruddha Sen
...for the State-respondents

Application for restoration is considered and
allowed for the ends of justice.

CAN/4/2023 is disposed of by recalling
order of dismissal.

F.M.A.1461 of 2019 is restored to its file and
number.

Learned advocate appearing for the
appellants reiterates the contentions of the appellants
as was advanced before the learned trial Judge. In
addition thereto, he submits that, one Collector heard
the arguments of the petitioners and such Collector
was transferred. Subsequently, another Collector
passed the order disposing of the objection under
Section 5A

By the impugned judgment and order, a
challenge launched by the writ petitioners/appellants

against acquisition proceedings was negated by the impugned judgment and order dated July 26, 2019.

Land Acquisition proceeding being LAP case No.14 of 06-07, LA case No.11 of 07-08 was initiated in respect of RS and LR plot nos.86/332, 135, 137 and 138. The Acquisition of the land in question was done on a proposal of the West Bengal Industrial Development Corporation Limited (WBIDC).

A Gazette Notification dated November 27, 2006 was issued inviting land owners to submit their objections, if any, to the proposed acquisition.

A representation dated December 23, 2006 was submitted by the writ petitioners/appellants contending that land was densely populated by cultivators and primarily agricultural in nature. The appellant no.1 being a medical practitioner intended to set up a Super Speciality Hospital thereat. Appellants also filed a supplementary objection dated January 15, 2007 contending that the land was being acquired by the private company hence no public interest would be subserved. There are other approach road to the main road and the appellants plots are located in the corner of two high ways and are valuable.

The appellants were called for personal hearing in terms of Section 5A of the Act of 1894.

Objection was disposed of by a reasoned order by a Collector on November 7, 2007.

Based on the communication dated November 13, 2007, a recommendation for acquisition was made by the Collector. A declaration under Section 6 of the Act of 1894 was approved by the State Government on November 23, 2007 and published in the English and vernacular newspaper on November 25 and 26, 2007.

Out of 405 land owners, in respect of 84 acres of land acquired, 400 persons neither challenged the acquisition nor filed any objection. 400 persons accepted the award of compensation however under protest.

The objection with regard to Section 5A of the Act of 1894 was dealt with by the learned trial Judge and no merit was found therein.

Today, the appellants' contention is that a different Collector passed the reasoned order dated November 7, 2007 with the objection under Section 5A being heard by another Collector.

We requested the learned advocate for the appellants to draw the attention of the Court to the portion of the impugned judgement and order as to whether such issue was raised before the learned trial court or not. Learned advocate for the appellants answers in the negative. We requested the learned

advocate for the appellants to draw our attention to the pleadings in the writ petition where such an issue was raised. His answer is again in the negative. Since there is no foundational basis for raising the contention that, a different Collector passed the reasoned order dated November 7, 2007, we find no merit therein.

The parties are required to confine themselves within the parameters of the pleadings. Since our attention was not drawn to any pleading in the writ petition on such aspect therefore, we find that such contention was without foundational basis made in the pleadings.

Other contentions of the appellants, with regard to suitability of the land and declaration under Section 6 of the Act of 1894 were elaborately discussed and dealt with by the learned trial Judge. The learned trial Judge found that, the publications were made in the English and vernacular newspaper within time. One days delay in the publication in the Official Gazette was not fatal. There is no material on record before us to suggest that view taken by the learned trial Judge is perverse.

Learned trial Judge, after discussing all objections raised by the appellants, proceeded to deal with them elaborately and negate the same. The learned trial Judge however, observed that rejection

of the writ petition will not bar the appellants from seeking a reference under Section 18 of the Act of 1984 for reconsideration of amount of compensation.

At the outset, we appraised the appellants that, they would be causing themselves prejudice in respect of the leave granted by the learned trial Judge with regard to Section 18 of the Act of 1894. Since the writ petitioners/appellants insisted that we look into and consider all objections of the writ petitioners/appellants under the Act of 1894 within the scope and ambit as permitted under Article 226 of the Constitution of India, we considered the appeal in such perspective. We find no reason to interfere with the impugned order so far as the objections with regard to acquisition are concerned. The learned trial judge found that, acquisition was for a public purpose and that, there was no infraction with regard to the Act of 1894 so far as the acquisition was concerned.

Since the appellants confined themselves to an enquiry as permitted under Article 226 of the Constitution of India with regard to acquisition proceeding and chose not to avail of the benefits under Section 18 of the Act of 1894 as permitted by the learned trial Judge we deem it appropriate that the liberty granted by learned trial Judge in this regard be recalled. We therefore recall the same. Moreover, the parties need not be sent to a different

forum to reagitate the issues with regard to the acquisition particularly in view of the choice exercised by the appellants.

With the aforesaid observations, F.M.A.1461 of 2019 is disposed of without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)