

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPO 1719 of 2001
IA NO: GA/2/2010 (OLD NO: GA/3759/2010)
SMT. ANJALI DEVI CHAUDHRY
VS
THE FIRST LAND ACQUISITION COLLECTOR

For the petitioner	:	Mr. Debayan Bera Ms. Debjani Ray Ms. Sumitra Das Advocates
For the State	:	Mr. P. Sinha, AOR Mr. Supratim Dhar, Mr. Arindam Mondal, Mr. Shourya Samanta, Advocates
For respondent nos. 3 & 4	:	Mr. Subrata Goswami, Advocate
For KMC	:	Mr. Gopal Ch. Das, Mr. Debangsu Mondal, Advocates
Heard lastly on	:	17.01.2024
Judgment on	:	15.04.2024

Jay Sengupta, J:

1. This is an application challenging the acquisition of premises No.68, Golf Club Road, (now known as, Uday Shankar Sarani), which was sought to be acquired under the provisions of Land Acquisition Act, 1894.

2. Learned counsel for the petitioners submitted as follows. The petitioner was the owner of 68, Uday Shankar Sarani. The petitioner got the ownership of the said land by way of purchase. The property had area of 6 cottahs 15 chittacks and 43 sq.ft. (468.05 sq. meters). The premises No.70 Uday Shankar Sarani, was just contiguous to premises No.68, Uday Shankar Sarani. Smt. Kamala Banerjee was the owner of 70, Uday Shankar Sarani, having an area 32 sq. meters. The balance 436.10 sq. meter of 70, Uday Shankar Sarani, Kolkata stood vested to the State and after vesting the said area of 436.10 sq. meter was settled in favour of Shrutinandan, the respondent No.3. Shrutinandan was a society registered under the West Bengal Societies Registration Act, 1961. Pandit Ajoy Chakraborty, the respondent No.4, used to run the said society alongwith its other members. After getting the said land, the authority of Shrutinandan started to make construction in the said land being premises No.70, Uday Shankar Sarani, Kolkata. In course of such construction, Shrutinandan tried to encroach the premises being No.68, Uday Shankar Sarani belonging to the petitioner and also started to stack building materials on the land of the petitioner for such construction. Accordingly, a dispute arose between the petitioner and the said Shrutinandan. For such attempt to encroach of the land, the petitioner filed criminal case and writ petition and orders were passed in the said proceeding. Lastly, the petitioner filed T.S. No.33 of 1997, in the court of

Learned 1st Munsif at Alipore for declaration of the title and permanent injunction impleading the said Shrutinandan and others as defendants in the said suit. In the said suit the petitioner got an ad-interim order of injunction restraining the defendants from damaging the boundary wall and from making any construction encroaching the land of the petitioner. Subsequently, various orders were passed in the said suit. Ultimately, the petitioner filed an application for contempt in the said suit alleging violation of the interim order of injunction passed in the said suit. During the pendency of the said contempt petition, the petitioner's husband was served with a copy of the notification dated 20.03.2000 passed under Section 4 of the Land Acquisition Act, purporting to acquire the land of the petitioner being premises No.68, Uday Shankar Sarani, Kolkata. The alleged notification stated that the property was sought to be acquired for the purpose of expansion of Shrutinandan. On getting the notice of acquisition, the petitioner filed an objection against the said acquisition under Section 5A, of the Land Acquisition Act, 1894. Various points were taken in the said objection. Main grounds of the objection were that there were no public purpose for acquisition, the acquisition was malafide, to avoid contempt proceeding in the suit, the acquisition proceeding was initiated. It was also contended in the said objection that acquisition would deprive the only residential accommodation of the petitioner. Thereafter, notice of hearing of 5A objection was served. The petitioner attended the hearing through representative and hearing was held. But the order passed in 5A objection was not served. Thereafter, the instant writ petition was filed challenging the

acquisition proceeding of premises No.68, Uday Shankar Sarani, Kolkata. The writ petition was moved on 17th October, 2001 when an interim order was passed, inter alia, directing that till 8 weeks after vacation the possession shall not be taken over by the respondents and though proceeding under Section 11 might be concluded but section 12 (2) notice shall not be served. The said interim order was extended from time to time. Lastly, on 21st December, 2012 the Hon'ble Court was pleased to direct that the interim order which was passed earlier will continue until further order. In the affidavit-in-reply, the petitioner disclosed the report under section 5A passed by the Land Acquisition Collector, Calcutta. The report was prepared on 12th December, 2000. From the report passed in 5A objection that although several points were taken in the 5A objection, but none of the points had been considered. The 5A objection was dismissed without considering any of the points taken in the objection without assigning any reason. In the Affidavit-in-Opposition filed on behalf of the State, nothing had been disclosed. But, no Sanctioned Scheme of the Institution Shrutinandan had been disclosed. In the Affidavit-in-Opposition, order was not annexed and no statement had been made in the Affidavit-in-Opposition. In the opposition of the respondents 3 and 4, no statement had been made regarding alleged public purpose for acquisition of the property. The acquisition process started on the basis of the written prayer made on behalf of Shrutinandan, Respondent No.3, to the then Hon'ble Minister of Land Revenue and Reforms, Government of West Bengal. On plain reading of the said letter, it would appear that because of some disputes between the

petitioner and Shrutinandan prayer for acquisition was made. Although, no prayer for expansion of Shrutinandan was made in the letter of acquisition, the Government suo motu decided to acquire the premises for the expansion of Shrutinandan with the rider that Government will provide a token grant of Rs.10/- out of the budget provision for the current financial year. A Notification under Section 4 of the Land Acquisition Act, 1894 was published in the Calcutta Gazette on 18th January, 2001. The said declaration was published in daily newspaper. Hearing under Section 5A(2) was held on 3rd November, 2000. Estimated cost of acquisition assessed to Rs.16,67,910.57 was prepared and sanctioned by the First Land Acquisition Collector Calcutta. The Governor was pleased to sanction payment of Rs.10/- for acquiring the land. Ultimately, the award was published on 22nd November, 2001. The Award was declared for a total sum of Rs.16,67,910.57. The awarded amount was deposited with the Court of Special Land Acquisition Judge at Alipore, 24 Parganas vide Cheque dated 28th April, 2005. It was clear case of the writ petitioner that there was no public purpose for acquiring the land. The acquisition was made for private purposes. Since, the property was to be necessary that the conditions laid down in Section 3(f) had to be satisfied. Part-II started with section 4. Section 4 stated that whenever it appeared to the appropriate Government that land in any locality was needed or was likely to be needed for any public purpose, a notification under Section 4 should be published. So condition precedent for publication of Section 4 was public purpose. Section 3(f) which defined public purpose contained as many as eight clauses. Out

of 8 clauses, clause 2(f)(vi) read was the most vital. In the year 1984 the Land Acquisition Act, 1984 was amended and by virtue of amendment Section 3(f) was inserted in the Land Acquisition Act. The definition of public purpose as defined in pre-amended Act had a very wide connotation. Almost every property could have been acquired under the Land Acquisition Act for public purpose prior to 1984 amendment. Here, in this case the property was sought to be acquired for an educational institution i.e. for musical school, Shrutinandan. Section 3(f)(vi) clearly provided that public purpose means the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by the Government or by any authority established by the Government for carrying out any such scheme or with the prior approval of appropriate Government by a local authority or society registered under the Societies Registration Act, 1860 or under any corresponding law for the time being in force in a State or a co-operative society, within the meaning of any law relating to co-operative societies for the time being in force. Unless the State satisfied the conditions of public purpose, there would be no public purpose at all. If any land is to be acquired for any educational institution established by any society registered under the Societies Registration Act, there must be a sanctioned scheme by the Government or sponsored by the Government. In the instant case there was no such sanctioned schemes for expansion of Shrutinandan. So, public purpose as defined in Section 3(f)(vi) was not satisfied at all. On the point the petitioner relied upon the decisions in (i) (1995) 2 SCC 677 (H.M.T. House Building Co-operative Society – Vs – Syed Khader & Othes.),

(ii) (2012) 3 SCC 727 (Bangalore City Co-operative Housing Society Limited – Vs – State of Karnataka & Ors.). In the said case it had also been held that payment of Rs.100/- could not be construed as State Government's implicit approval of the housing scheme which had never been prepared. In the said case, Somawanti's Case (AIR 1963 SC 151) had been distinguished. 5A(2) had two parts. The first Part provided that the Collector should consider the objection under Section 5A and make a report of such objection. The second part provided that the said Report was to be placed before the appropriate Government considering his recommendations on the objections, together with record of the proceedings held by him for a decision of that Government and decision of the Appropriate Government on the objections should be final. So far as First Part was concerned it stated that objection was to be considered by the Collector. It had been constantly held by the Hon'ble Supreme Court that hearing of objections was not an empty formality. Hearing of objection must be effective one and after hearing the objections, the Collector should pass a reasoned order and each and every point taken in the objection under Section 5A should be decided. If the order was not reasoned one, the proceeding was liable to be quashed by the Hon'ble Court. So far as second part was concerned it had also been held by the Hon'ble Supreme Court consistently that report of objection should be filed before the appropriate Government for consideration together with the record of the proceedings and after considering the objections, the Government would pass its independent finding on the objections filed by the objector. It would be clear from the said report that no reasons had been assigned at all by the

Land Acquisition Collector in deciding objection under Section 5A. It would further be evident from the said Report that none of the grounds of objection had been considered and the 5A objection had been dismissed in limine. Thus, the order passed under Section 5A dated 12.12.2000 was liable to be quashed by this Hon'ble Court. Secondly, it would also appear from the said report at the bottom that the report of the Land Acquisition Collector in Section 5A was simply approved by the Government on 01.01.2001. There was no independent finding of the Government as to why the recommendation made by the Land Acquisition Collector was approved. So, the second part of Section 5A(2) had not been complied with by the Government. Further, the Government did not produce any record of the land acquisition proceeding before this Hon'ble Court to show how the recommendations of the Land Acquisition Collector were considered by the appropriate Government and whether there were any independent finding regarding consideration of 5A objection and in accepting the recommendations of the Land Acquisition Collector. In such view of the matter second part of 5A(2) had not been complied with by the Government. The petitioner relied upon the following cases on the above proposition of law: i) (2013) 1 SCC 403 (Surinder Singh Brar and Others –Vs- Union of India & Ors.), ii) (2013) 16 SCC 660, (Gojer Brothers Private Limited and Another –Vs- State of West Bengal & Ors.), iii) (2013) 4 SCC 210 (Usha Stud and Agriculture Farms Pvt. Ltd. –Vs- State of Haryana & Ors., iv) (2013) 8 SCC 99 (Women's Education Trusts and Anr. –Vs- State of Haryana & Ors., v) (2017) 11 SCC 601 (Kedar Nath Yadav –Vs- State of West Bengal & Ors.

Prior to 1984 amendment the “public purpose” as defined in the Act had a wide amplitude. After 1984 amendment the “public purpose” as defined in Section 3(f) comprised of various sub-sections. The instant acquisition was initiated on 29.03.2000 so the public purpose as defined in Section 3(f) was applicable. Prior to 1984 amendment in one case, AIR 1963 SC 151 (Smt. Somawanti Case) it was held that payment of Rs.100/- (Rupees one hundred) only given by this State would satisfy the public purpose. The said case was decided prior to 1984. The said case had been distinguished in the case of Bangalore City Co-operative Housing Society Ltd. -Vs- State of Karnataka & Ors. (2012) 3 SCC 727. Further, from the second proviso to Section 6 of the Land Acquisition Act, it would appear that unless compensation to be awarded for the property was to be paid by the Government or wholly or partly out of public revenues or some fund controlled or managed by local authority, no declaration under Section 6 should be made. In other words, payment of consideration money by the Company or partly from public exchequer was condition precedent for publication of declaration under Section 6. It had nothing to do with the public purpose mentioned in Section 4 of the Land Acquisition Act. So, the alleged payment of Rs.10/- (Rupees Ten) only in this case was necessary for publication of declaration under Section 6 and that had nothing to do with the public purpose as defined in Section 3(f) as also the public purpose mentioned in Section 4 of the Land Acquisition Act. So payment of Rs.10/- (Rupees Ten) only would not satisfy the acquisition of the property for public purpose or it could not be inferred that public purpose as mentioned in

Section 4 had been satisfied on payment of Rs.10/- (Rupees Ten) only by the Government.

3. Learned counsel for the respondent nos. 1 and 2 submitted as follows. The proceedings under the Land Acquisitions Act, 1894 were done properly. The decisions taken under Section 5A of the said Act if not communicated to the Petitioner would not render the proceedings invalid. There was acquiescence of the petitioners to the proceedings, which rendered the present petition infructuous. There was a difference between public purpose and public utility. The contention of the petitioner that they were not served with a copy of the orders of the proceedings u/s 5-A was not valid simply because the statute did not require the respondent to do the same. The aforesaid Section did not provide for any order, but merely a report that had to be filed by the Collector after hearing the objections. Reliance was placed on *Ramniglal N. Bhutta and Anr. Vs State of Maharashtra and Ors.*, (1997) 1 SCC 134. Courts should keep the larger public interest in mind when deciding the writ petitions. There were multiple ways of affording appropriate relief and redressing a wrong. The petitioners herein submitted to the process of acquisition and of further proceedings after the declaration was made under Section 6 of the Act. The petitioner by their conduct acquiesced to the proceedings and therefore could not challenge the same by a writ petition. *Shrutinandan* fell under the definition of 'public purpose' given under Section 3(f)(vi), as it was an educational scheme, sponsored by the Government, by a society registered under the Societies Registration Act, 1860, not as a company as contended by the petitioners. The phrase 'public

purpose' could not be given a narrow meaning as had been done by the petitioners in this case. The Hon'ble Supreme Court in the landmark decision in *State of Bihar vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga*, (1952) 1 SCC 528, held that anything that furthered the general interests of the community as opposed to a particular interest of an individual must be regarded as public purpose. In another decision it was held that 'Public purpose was bound to vary with times and prevailing conditions in the Community or locality and, therefore, the legislature had left it to the State (Government) to decide what public purpose was and also to declare the need of a given land for the purpose. The legislature had left the discretion to the Government regarding public purpose. The Government had the sole and absolute discretion in the matter.' The Hon'ble Supreme Court in *Pratibha Nema v State of M.P. and Ors.*, (2003) 10 SCC 624, held that the for an acquisition for facilitating the setting up of an industry in private sector could get imbued with the character of public purpose acquisition if only the Government came forward with the sanction of the payment of nominal sum towards compensation. The same was done by the State Government in the instant case. In addition to the above, the Hon'ble Apex Court held that whether an acquisition was for 'public purpose' or not, the Government was the best judge. There was no scope for any individual interest or the interest of one person in this present case. Further, the three conditions (the standards) that were to be considered when land was being acquired for the public purpose were - a) The number of people affected as against the number of people benefitted. b) The extent to which the affected

people would be affected and the benefitting people would be benefitted. This would encompass the cumulative effect of the acquisition. c) The effect (the benefit to general public from opening the school) and the cost of mitigation (the compensation to be paid in this case) would have to be considered so that the costs of mitigation did not exceed the effect. The Court could not question the decisions taken by the legislature unless it violated:-i) Due process of law, ii) Exceeded the limits of the statutory procedure as laid down by the legislature, iii) Infringed fundamental rights, iv) Invalidated/infringed any other law for the time being in force. The Hon'ble Supreme Court in the case of TISCO v Union of India, (1996) 9 SCC 709, held that the Court would not interfere with decisions taken by the Government unless the decision was inconsistent with constitutional principles and laws in force. In Rajeev Suri v DDA, (2022) 11 SCC 1, the Hon'ble Supreme Court held that a pure policy decision of the Government could not be challenged unless there was a 'manifest illegality or arbitrariness or procedural lapses in the culmination of a policy decision'. It was also held that while disclosure of information in public domain depicted transparency, absence of such information would not vitiate the administrative process. The effect of such absence of information had to be tested on the anvil of actual prejudice to the citizen's ability to participate in decision making process. It has to result in denial of a legally enforceable right. In the present case, the State Government followed the procedure laid down by the legislature there was compliance with the procedure laid down by law. The petitioners had not made any averment to show that the

executive in exercise of its functions failed to follow the statutory provisions. No legally enforceable right of the petitioner had been violated in this case. With respect to disclosure of decisions, the Hon'ble Supreme Court in the case of *KalumiyaKarimmiya v The State of Gujarat and Ors.*, (1977) 1 SCC 715, held that the non-supply of collector's report on the non-conclusion of the hearing, where no mala fides were alleged, held, was not fatal since another hearing by the State Government under Section 6 was not required under the law.

4. Learned counsel for the State submitted as follows. The acquisition of land took place in a regular manner and all requirements of law were duly complied with. Public purpose was of paramount importance. The information and Cultural Affairs of the Department sponsored the Acquisition Proposition and sanctioned a token amount of Rs.10, to be paid by the State.

5. I heard the learned counsels for the parties, perused the writ petition, the affidavits and the written notes of submissions.

6. It is trite law that this Court will not interfere with decisions taken by Government unless the same is consistent with constitutional principles and the laws in force.

7. In the instant case, a contiguous property belonging to the petitioner was sought to be acquired under the Act of 1894 in favour of the adjacent land owner on the alleged ground "public purpose".

8. The respondent no.3 was a society registered under the West Bengal Societies Registration Act and was run by a famous musician, the respondent no.4. The acquisition process started on the basis of a written prayer made by the respondent no.3 to the Minister of Land and Revenue and Reforms, Government of West Bengal. On a plain reading of the letter, it would appear that because of certain disputes between the petitioner and the said respondent no.3 that prayer of acquisition was made. Although there was apparently no prayer for extension of the institute namely, Shrutinandan, in the letter of acquisition, the Government suo motu decided to acquire the premises for expansion of the said Shrutinandan with a rider that the Government would provide token amount of Rs.10/- out of the budget provision for the current financial year.

9. The disputes pending between the parties appear to be quite long standing and were apparently started over stalking of materials in the petitioner's land. Proceedings came to be pending even under the provisions of the Code of Criminal Procedure. A contempt application also became pending. Reflection of such disputes, although present in the initial letter, was kept aside and apparently replaced by the concept of "public purpose".

10. Moreover, as has been rightly contended on behalf of the petitioner, if such acquisition had to be made for public purposes it ought to come within the fold of the clauses of Section 3(f). After the amendment of 1984, the scope of public purpose became less wide. Here, the property was sought to be acquired for an educational institution that is for a music school. But, the relevant clause clearly provided that there had to be a sanctioned

scheme of the Government or sponsored by the Government. The respondent no.3 did not satisfy such criteria.

11. Furthermore, the provision of Section 5A of the Act has not been complied with in its true sense. Hearing of objection has to be an effective one and after hearing such objection, the Collector ought to pass a reasoned order and deal with every point taken. If the order is not a reasoned one, the proceeding is liable to be quashed.

12. There is also some merit in the contention of petitioner that there was no independent finding of the Government as to why the recommendation made by the Land Acquisition Collector was approved. As would appear from the careful leading to Section 6 of the Land Acquisition Act, 1894, the payment of consideration money of a company or apparently from the public exchequer was a condition precedent for publication of a declaration under Section 6. It had nothing to do with the public purpose mentioned in Section 4 as the purported payment of Rs.10/- as in the instant case had nothing to do with public purposes as defined in Section 3(f).

13. Even otherwise, the underlying issue of prior disputes between the private parties renders the whole exercise of acquiring of such property a colourable one. In such circumstances, it is not necessary to actually find out whether the said machinery was influenced unduly by anyone or swayed by the sheer personality of an important individual. If this kind of exercise is permitted, then the common citizens of this country would always be wary of losing their hard-earned property as the same could be acquired at the drop of a hat, even at the mere asking of an important individual.

14. In view of the above discussions, the acquisition proceeding in respect of premises No.68, Uday Shankar Sarani, Kolkata is set aside.

15. In the event any money had been paid by the private respondents to the Government, the same shall be returned by the respondent authorities within a period of 2 months with simple interest at the rate of 6%.

16. With these observations, the writ petition is disposed of. Connected application, if any, shall also stand disposed of.

17. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

18. Parties shall act on a server copy downloaded from the official website of this Court.

(Jay Sengupta, J.)

Later:

Learned counsel for the State prays for a stay of this order.

The same is considered and is rejected.

Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

