

(1987) 02 CAL CK 0002

Calcutta High Court

Case No: Original Order No. 3114 of 1984

Principal Maharani Kashiswari
College

APPELLANT

Vs

Bamandas Mukherjee and
Others

RESPONDENT

Date of Decision: Feb. 20, 1987

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 11, 12, 16, 4, 4(1)
- West Bengal Premises Tenancy Act, 1956 - Section 13

Citation: 91 CWN 873

Hon'ble Judges: Mookerjee, C.J; A.C. Sengupta, J

Bench: Division Bench

Advocate: S. Pal, Amitava Choudhury and T. Goswami, for the Appellant; Pradip Kumar Ghosh, Sekhar Bose and H. Chowdhury and P.K. Chatterjee for State, for the Respondent

Final Decision: Dismissed

Judgement

Mookerjee, C.J.

By judgment appealed against, Ajit Kumar Sengupta, J. has disposed of an application under Article 226 of the Constitution of India filed by the writ petitioner respondent No. 1, Bamandas Mukherjee by directing the respondents of the said application to proceed with the acquisition under the Land Acquisition Act, 1894 (Act 1 of 1894) of. Premises No. 25A, Ram Kanto Bose Street, Calcutta only after complying with the directions contained in his judgment as regards providing alternative accommodation to the writ petitioner who was a tenant of the said premises No. 25A, Ram Kanto Bose Street, Calcutta. In those two appeals preferred respectively by the State of West Bengal and the Principal, Maharani Kashiswari College for Girls, at whose instance the acquisition proceeding had been started, the principal point is whether in exercise of its writ, jurisdiction this court can issue a

mandate directing the State Government to provide alternative accommodation to an occupant of a premises before acquiring the same under the Land Acquisition Act, 1894.

2. There is no provision in the Land Acquisition Act, 1894 for giving such alternative accommodation to person or persons who are to vacate possession of a property acquired under the said Act. According to the scheme of the said Act, whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification u/s 4(1) of the said Act shall be published in the Official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places. Any person interested in any land which has been notified u/s 4(1) may within the prescribed time object to the acquisition. The sub-section (2) of section 5A of the Act provides for disposal of such objections if any. When the appropriate Government is satisfied after considering the report, if any, u/s 5A(2), a declaration u/s 6 of the Act shall be made and published in the Official Gazette. Under sub-section (3) of section 6 of the Act the said declaration shall be conclusive evidence that the land is needed for a public purpose or a company, as the case may be, and after making such declaration the appropriate government may acquire the land in manner appearing in the Land Acquisition Act. Section 9 provides for notices by the Collector of his intention to take possession of land and that claims to compensation for all interests may be made to him. The Collector u/s 11 of the said Act has to make enquiry into measurements, value and claim and to make his award for payment of compensation and if necessary to apportion the same among all persons interested in the land whose claims he has information. Such award under sub-section (1) of section 12 shall be filed in the Collector's office and under sub-section (2) of section 12 of the said Act, notice of the same shall given to the persons interested who were not present when the award was made. When the Collector has made his award u/s 11 he may u/s 16 of the Act take possession of the land which shall thereunder vest absolutely in the government free from encumbrance. Part-III of the Land Acquisition Act deals with reference to court and procedure thereon.

3. The learned trial judge has purported to direct the State to provide the writ petitioner with some other accommodation preferably a flat in the Government Housing Scheme solely upon considerations of social justice. According to the learned trial judge, the writ petitioner had been for may years occupying at a nominal rent the premises which is proposed to be acquired. Before any attempt is made to evict him from his hearth and home, the Government must consider whether such person has any other alternative accommodation or not and whether having regard to his financial capacity such person was able to take any alternative accommodation or similar residential accommodation.

4. The proposed acquisition of Premises No. 25A, Ram Kanto Street Calcutta which is the subject-matter of the present case and also of two other premises being 24B

and 25B, Ram Kanto Bose Street, was for expansion of Maharani Kashiswari College for Girls, Calcutta. In the writ application no objection has been raised as regards the validity of the declaration u/s 4 of the Land Acquisition Act in respect of the said premises. No ground has been taken as regards the validity of the enquiry, if any, u/s 5A of the Act. The petitioner did not question the vires of the relevant declaration u/s 6(1) of the Land Acquisition Act. Therefore, the said declaration u/s 6(3) of the Act is conclusive evidence that the aforesaid three premises are needed for a public purpose (vide [Smt. Somavanti and Others Vs. The State of Punjab and Others,](#)). Only in case malafide or colourable exercise of power on the part of the State Government is established, the writ court may quash the declaration u/s 6 of the Land Acquisition Act (see also [Land Acquisition Collector and Another Vs. Durga Pada Mukherjee and Others,](#)). In the instant case, such malafide or colourable exercise of power was neither established by the petitioner nor found by the learned trial judge. Therefore, with respect it was not necessary for the learned trial judge to make any observation as regards property of acquiring residential house adjoining the present college building and to observe that the college should have adopted a scheme for expansion by acquiring elsewhere vacant land. Choice of site for expansion of a college is to be made by the educational authorities and not by the writ Court.

5. The learned trial judge has also referred to the following statement in the affidavit affirmed by the Principal of the said College, "I state that the owners of the premises in question were offering their properties for sale. Finding that it could be difficult to compete with the outsiders in the bargain, Maharani Kashiswari College approached the Government for acquisition of the said premises so that the College could get that reasonable price". Learned trial judge had proceeded to observe that while it was true that the expansions of the college is for the benefit of the public at large, the interest of the individual could not be altogether ignored or brushed aside. If the owner of the premises had sold the premise, then the new purchasers could have only taken recourse to the Premises Tenancy Act for ejection of the tenants. The new purchasers could not have thrown them out of the premises. We fail to see any relevance of the provisions contained in section 13 of the West Bengal Premises Tenancy Act for deciding the validity of the impugned acquisition, proceedings. Such power of acquisition under Act 1 of 1984 is in substance one for compulsory purchase for public purposes or for purposes for company upon payment of compensation to persons interested. This power of acquisition has been judicially compared to power of eminent domain under the American Law. In the instant case, the purpose of acquisition was for expansion of a girl's college which was undoubtedly a public purpose. The stand taken by the petitioner himself indicated that he had throughout knowledge of the acquisition proceedings and had opportunity to file objection u/s 5A(1) of the Land Acquisition Act. When possession in terms of section 16 of the Act is taken the acquired property shall vest absolutely in the Government free from encumbrances. The expression "encumbrance" is wide

enough to include all right and interest in relation to the acquired land including tenancy, easement, customary right etc. A tenant in occupation of an acquired premises can no longer plead protection under the Rent Control Legislation inasmuch as u/s 16 of the Land Acquisition Act, the land vests absolutely and free from all encumbrances. In exercise of its power of eminent domain and not as successor-in-interest of the landlord, the State takes possession subject to its obligation to pay compensation to all persons interested in the acquired property. Not only the interest of the owner and the landlord is thereby extinguished, but all grades and kinds" of interests including leases stand statutorily annulled. We respectfully agree with the observations made by the Division Bench of the Allahabad High Court in the case of [Uma Shankar Dixit Vs. State of U.P. and Others,](#), regarding the power of the Collector to take possession of an acquired property by evicting the tenant in possession of the same. It may be also pointed out that not only the ownership of the landlord's right but also a tenant's interest in relation to an acquired property is converted into rights to claim compensation from the State. The Land Acquisition Act contains elaborate provisions for award of such compensation to persons interested and for reference to court, inter-alia, for determination of compensation for an acquired land and for apportionment of the same among the persons interested. Thus, there is no conflict between the provisions of the Land Acquisition Act and the objectives of social justice inasmuch as the persons interested who may be evicted by reason of the Collector taking possession of an acquired property are entitled to claim compensation in accordance with law.

6. Mr. Ghosh, learned advocate appearing on behalf of the writ petitioner respondent, submitted that in his writ application his claim had raised various grounds of legal objection against the proposed acquisition proceedings. He had questioned the existence of the purpose for which the acquisition was proposed to be made. Mr. Ghosh has accordingly submitted that in case we are not inclined to uphold the learned trial judge's view regarding provision for alternative accommodation, we ought to remit the writ petition for fresh disposal on other points and to direct by way of an interim order that without providing alternative accommodation the writ petitioner cannot be dispossessed. We regret we are unable to accept this submission. The impugned direction for providing alternative accommodation cannot be upheld either as an interim order or as a final order in writ petition. We have already indicated that upon the petitioner himself, there is not even any prima facie ground for holding that the State or the College authorities have acted mala fide or that the acquisition is going to be made in colourable exercise of powers. It is also very relevant that the petitioner previously had filed a writ application challenging the selfsame acquisition but failed to obtain any interim order upon his previous writ petition. He chose to file a second writ application challenging the same acquisition and succeeded in obtaining ad-interim orders. We may also record that Borooah, J. (as he then was) had discharged the separate writ

petition filed by some others challenging the acquisition of two other adjoining premises being Nos. 24B and 25B, Ram Kanto Bose Street under the same notification and declaration respectively u/s 4 and 6 of the Land Acquisition Act. It would be abuse of the process of court to permit further continuance of the present case concerning acquisition of Premises No. 25A, Ram Kanto Bose Street. The balance of convenience was clearly in favour of allowing the acquisition proceeding which have been held up to a considerable length of time to be completed by taking possession in accordance with law.

7. Mr. Pal, learned advocate appearing on behalf of the appellant, Principal of the said College, has placed before us the Division Bench Judgment in Appeal No. 318 of 1980 in the case of Sardar Baldeo Singh and Ors. v. The First Land Acquisition Collector, disposed of on March 18, 1986. The Division Bench consisting of R.N. Pyne and Prabir Kumar Majumdar, JJ. declined to follow the decision of Ajit Kumar Sengupta, J. in the present judgment under appeal to the effect that in every case of acquisition under the Land Acquisition Act a tenant in occupation of the acquired property must be provided with alternative accommodation. It is unnecessary for us to set out in extenso the views expressed in the said Division Bench decision inasmuch as we ourselves independently have come to the conclusion that power of acquisition under the Land Acquisition Act has not made conditional upon providing alternative accommodation to tenants or other occupants of the acquired property.

8. At the appellate stage, an affidavit has been purported to be filed on behalf of the writ petitioner respondent, inter alia, alleging that the West Bengal State Government also is to provide for alternative accommodation for persons" who may be dispossessed from an acquired property. According to the writ petitioner, in other cases such alternative accommodation has been provided. Therefore, to deny alternative accommodation to the writ petitioner would amount to discrimination and denial of equal treatment. In the first place, at this belated stage the writ petitioner respondents cannot be allowed to make out a new case requiring investigation of facts. Secondly, the averments made in the affidavit do not establish that in fact, the State Government has laid down any such uniform policy for providing alternative accommodation to persons who may be evicted by reason of the Collector taking possession of an acquired property. At the highest, because of the special facts and circumstances, the State Government might have to rehabilitate persons who might be displaced by reason of acquisition of lands for public purposes. But are unable to hold that either by declaration or by act the State has taken upon itself any binding obligation to provide such alternative accommodation in every case of acquisition for public purposes. In any case, there could be no question of. any estoppel against a statute which elaborately provides for the manner of acquisition for public purposes and for payment of compensation to persons interested in the acquired property.

9. Our attention has been also drawn to the decision of the Supreme Court in the case of [Olga Tellis and Others Vs. Bombay Municipal Corporation and Others](#), and in the case of [K. Chandru Vs. State of Tamil Nadu and Others](#), . In the former case the court did not interfere with the action taken for removal of encroachments from pavements and public streets but had granted time to minimise the hardship involved in the eviction. Similar directions were given in respect of slum dwellers and pavements dwellers of Madras City in K. Chanduru's case (supra). For the foregoing reasons, we allow both the appeals, set aside the judgment and order of the learned trial judge and dismiss the writ petitions without any order as to costs.

A.C. Sengupta, J.

I agree.