

(1936) 02 CAL CK 0024

Calcutta High Court

Case No: None

District Board of
Chittagong

APPELLANT

Vs

Sasi Bhusan Pal and
Others

RESPONDENT

Date of Decision: Feb. 7, 1936

Acts Referred:

- Land Acquisition Act, 1894 - Section 5A

Citation: AIR 1936 Cal 225

Hon'ble Judges: Guha, J; Bartley, J

Bench: Full Bench

Judgement

Bartley, J.

This is an appeal against the decision of the Additional Subordinate Judge, Chittagong, affirming a decree of the Munsif, Third Court, which declared a resolution of the District Board, Chittagong, dated 24th February 1931, to be illegal and ultra vires, and restrained the Board from taking steps to acquire lands in pursuance of the said resolution. The succinct history of the case, as found by the Courts below, is that rivalry between the Choudhuries of Chittagong and Paragalpur on the one side and the Roy Choudhuries of Dhoom on the other, resulted in the establishment by the former of a Hat called Santi Hati, close to a long established Hat owned by the Roy Choudhuries, known as Mahajan Hat. In 1928, the site of Santi Hat was moved to the Ganekchara Khal. There is a road, known as the Khan Saheb Serajuddin Road, which was khas mahal property, but enlisted as a Local Board Road in 1924, which runs from the road to Mahajan Hat to the Leake Road, a distance of 1½ miles. About 800 feet from the Mahajan Hat Road this road is intersected by the Khal, immediately beyond which is the site of Santi Hat. The resolution, with which the present suit is concerned, deals with the acquisition of this section of the Serajuddin Road and the adjacent land, which is the property of

the plaintiffs.

2. In 1928 an attempt was made to widen this part of the road by force. The perpetrators, tenants of the Pargalpur Choudhuries, were convicted in the criminal Court. A Local Board contractor, who claimed to be carrying out a contract to widen the road on behalf of the Board, was also convicted. Then a petition was filed before the Sadar Khas Mahal Officer, complaining of encroachments on the road. This petition was placed by the Chairman of the Local Board before the Collector who merely referred the Board to the civil Courts. The next step was a proposal by one Kobbad Ahmed whose brother had been convicted in the criminal proceedings that the land should be acquired at his expense. This proposal was adopted by the Board on 23rd August 1930, and the following resolution passed:

Resolved that the land be acquired at the expense of the party, and District Board be moved to take action in the matter as early as possible.

3. Rupees 400 out of an estimated "acquisition cost of Rs. 687 was deposited by Kobbat in March 1931. The Local Board resolution was sent to the District Board, which passed a resolution recommending the acquisition, but omitting any reference to the source of the costs of it. This resolution, which was duly forwarded to the Commissioner, is challenged in the present suit. The Courts below on examination of the whole evidence have concurrently found in the first place that the proposed acquisition was not necessary for any public purpose. The first Court said:

The conclusion thus seems irresistible that these transactions were the outcome of conspiracy between the Chairman of the Local Board and the Sub-Overseer to support the organizers of Santi Hat.

4. The finding of the lower appellate Court is that:

Everything leads to the irresistible conclusion that attempts were made by the Local Board authorities to accommodate the promoters of Santi Hat in their nefarious object to damage the rival Mahajan Hat.

5. In the second place, both Courts have found that the road in question is Khas Mahal property and does not belong to the Board which originally recommended acquisition. The position as summarised by the Court of appeal below, is that the entire project of land acquisition was conceived for a purpose other than a public purpose, and that an attempt was made to carry it out by persons who had no authority to move in the matter, with funds non-existent at the time but to be procured by private persons to serve their own purposes. On appeal before us, the contention urged was that the suit was maintainable, as the District Board had no power to do more than recommend acquisition which must be carried out by Government. It was said in this connexion that u/s 5-A, Land Acquisition Act, any person aggrieved by the proposals could file objections, and that no other remedy

was available to him. We are entirely unable to give effect to this contention. On the finding of the Courts below, there has been a definite threat to the plaintiffs, owners of the land, affecting their right to peaceful enjoyment of the lands, and emanating from a public body.

6. The principle immediately applicable in such a case is the necessity of keeping such bodies within control. They may not exceed the limits of the authority committed to them by law; they must act in good faith and reasonably and with some regard for the interests of those who may suffer for the good of the community. Even when a public body is acting within the limits of its jurisdiction, the Court may, and will interfere, if it be shown that the discretion given by law has not been exercised bona fide: see *Westminster Corporation v. L. & N. W. Ry. Co.* (1905) A C 426 It remains to apply these well established principles to the facts of the present case as found by the Courts below. The position has not been challenged, and need not therefore be considered here, that the District, Board acted within its powers in passing the resolution. What has been challenged is the good faith and reasonable character of the resolution itself.

7. The concurrent findings of the Courts below establish a complete want of good faith, and an entire lack of regard for the interests of the owners of the land recommended for acquisition. On these findings there can be no doubt that the Courts have jurisdiction to interfere and to safeguard the interests of the owners. It is immaterial that some future development of the situation might afford the plaintiffs a different remedy. On the facts found in their favour at this stage, they are entitled to claim protection from the Courts by way of injunction. In this view of the case, the decisions of the Courts below must be affirmed, and the present appeal dismissed with costs.

Guha, J.

8. I agree.