

(1958) 07 CAL CK 0014

Calcutta High Court

Case No: Civil Revision Case No. 3732 of 1954

Md. Sahadat Ali Gazi and Others

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: July 7, 1958

Acts Referred:

- Land Acquisition Act, 1894 - Section 4, 45, 5A, 6

Citation: 62 CWN 788

Hon'ble Judges: Sinha, J

Bench: Single Bench

Advocate: Haridev Chatterjee, for the Appellant; Bholanath Roy and S.K. Rai Choudhury, for the Respondent

Judgement

Sinha, J.

The petitioners are some of the residents of village Netra, within the Sub Division of Diamond Harbour, District 24-Parganas. In the said village, there is an educational institution known as the Netra H. E. School. By a notification. No. 4984 L.A. dated the 3rd April, 1954 made u/s 4 of the Land Acquisition Act, which was published in the Calcutta Gazette, on the 15th April, 1954 certain plots of lands in mouja Netra and mouja Nudia were proposed to be acquired for extension of the Netra H. E. School and for construction of. hostels for boys and girls, quarters for teachers and play-ground of the School. The said notification called upon the persons interested to file objections. The petitioners are owners of certain plots and/or interested in them, which are covered by the said notification. An objection petition u/s 5A was filed before the Land Acquisition Collector by 32 persons. As far as I can gather, barring 3 or 4 persons, they are all petitioners before me here. A copy of this objection petition is annexure III to the petition. The petition was tiled through a Revenue Agent, Sri Nishi Bhusan Mitra. If it said that on the 29th May. 1954, the date for hearing of the objection u/s 5A was fixed for the 19th June 1954 at 2 P.M.

Looking into the original order 1 find several alterations. It is very unsatisfactory that these alterations are made in the body of the order and it becomes difficult to find out whether the dates appearing therein are genuine or not. Be that as it may, I may assume that the date of hearing was fixed on the 19th June, 1954 at 2 P.M. The way in which this notice was served is by the office of the 1 and Acquisition Collector informing the said Revenue Agent Sri Mishi Bhusan Mitra that the date was so fixed. In the order-sheet there is a specific instruction "inform the objectors." There is no direction to inform the Revenue Agent. It is said that the Revenue Agent was asked to convey the message to the objectors and this was done because in the petition of objection the residential addresses of the parties were not given. On the other hand, the petitioners say that the Revenue Agent, upon being asked to inform the objectors, flatly refused and he was relieved from the task of doing so. It is very difficult to find out what the truth is. I shall, however, proceed upon the footing that the Revenue Agent was given information that the matter will be heard on a particular date and requested to inform the parties about it. The question is whether this is sufficient service of notice according to the Act and the Rules. Section 5A of the Act makes it incumbent that, the objections should be heard. Section 45 lays down how notices under the Act should be served. It provides that whenever it was practicable the service of notice shall be made on the persons their in named. This is quite understandable, because the compulsory acquisition of land belonging to a citizen is a very serious matter, and personal service, wherever possible, is highly to be desired. It then provides that when such a person cannot be found, service may be made on any adult male member of his family residing with him, and if no such adult male member can be found, notice may be served by affixing a copy on the outer door of the house in which the person ordinarily dwells or carries on business, or by affixing a copy in some conspicuous place in the office or the court house and also on the land to be acquired. While this is the general provision as to the service of notice, there are specific provisions for service of a notice for hearing of objections u/s 5A. That is to be found in the Executive instructions issued by the Government of West Bengal. In paragraph 19(a) of those instructions, sub-paragraph (3), it is laid down that the Collector shall issue notice on the persons who filed objections within a period of 30 days after the date on which public notice of the substance of the notification is given in the locality, fixing a date, time and place, for the hearing of the objections. In the case of a joint objection by a number of persons, the notice shall be served on the first or the principal objector. The objectors shall be allowed to adduce evidence in support of their objections, if they desire to do so. It is quite clear that, in this case, neither the provisions of the Act, nor the Rules, were followed. The Revenue Agent had no authority to accept notice issued u/s 5A. Mr. Roy Choudhury referred to the vakalatnama filed by this Revenue Agent. But it appears from the vakalatnama that he had no such authority. I have directed that a copy of this vakalatnama be filed and be kept as of record. The service of a notice under the Act and the Rules is a matter of law, and the procedure having been laid down, notice cannot be served in any manner selected by the

officials and new and novel modes of service cannot be evolved. Without going into the disputed questions of fact as to whether the Revenue Agent did or did not refuse to accept service, it is clear that he was not authorised to accept service and that service upon him, if it had been made at all, is not good service. The provisions of law in this respect had not been complied with. That being so, further proceedings have become illegal. It is said that at least 2 of the petitioners were present at the enquiry. This again is denied by them.

2. In my opinion, therefore, upon this limited point, this Rule should be made absolute and the declaration u/s 6 and all other proceedings had subsequent to the filing of the objections must be set aside and quashed by a Writ in the nature of Certiorari and there will also be a Writ in the nature of Mandamus directing the respondents not to give effect to them. But this will only be limited to the petitioners and no others and will affect only the lands in which they are interested, and not lands belonging to others. The respondents will now proceed to hear the objections and to take future action in accordance with law. There will be no order as to costs.