# Land Acquisition Collector & Anr vs Durga Pada Mukherjee & Others on 27 August, 1980

## Equivalent citations: 1981 SCR (1) 573, 1980 SCC (4) 271, AIR 1980 SUPREME COURT 1678

## Author: A.D. Koshal

## Bench: A.D. Koshal, Y.V. Chandrachud, Syed Murtaza Fazalali

PETITIONER:
LAND ACQUISITION COLLECTOR & ANR.

Vs.

RESPONDENT:
DURGA PADA MUKHERJEE & OTHERS

DATE OF JUDGMENT27/08/1980

BENCH:
KOSHAL, A.D.
BENCH:
KOSHAL, A.D.
CHANDRACHUD, Y.V. ((CJ)
FAZALALI, SYED MURTAZA

CITATION:
1981 SCR (1) 573 1980 SCC (4) 271

ACT:
Land Acquisition Act-Section 6-Declaration that land is required for a public purpose-If conclusive evidence-Mala fides and colourable exercise of power-Burden of proof-On whom lies-Burden of proving that land acquired is not suitable for industrial activity-On whom lies.

HEADNOTE:
The State Government issued a notification under Section 4 of the Land Acquisition Act stating that the land referred to therein was needed for a public purpose, namely, for expansion of the factory of a Company at the expense of the company. On the respondents' objections that the purported purpose was not a public purpose in that the land was being acquired for the benefit of a company, the State Government issued another notification in respect of the

same land as also some more land stating that the land was needed for industrial development at public expense. Objections were again raised by the land owners that though ostensibly the purpose was a public purpose in truth it was a private purpose, namely, for the benefit of a company. In cancellation of the first notification the Government issued another notification under section 6.

Dismissing the respondents' writ petitions under Article 226 a single Judge of the High Court held that the industrial development of a particular area was in itself a public purpose and no further details need be given in the notifications.

On appeal, a Division Bench of the High Court held that although a declaration under section 6 was final and conclusive as to the need for acquisition and as to the purpose being a public purpose, the aggrieved party could challenge a declaration only on the ground of mala fides and colourable exercise of power and that in the instant case no such allegation had been made out. The appeals were, however, allowed on the ground that the State Government failed to produce evidence that the land was being acquired for a public purpose and not for the benefit of a company.

Allowing the appeals.

^

HELD: The High Court erred in accepting the appeals in view of its finding that mala fides or colourable exercise of power on the part of the State Government had not been established.

1. It is well-settled law that a declaration under section 6 of the Act shall be conclusive evidence that the land is needed for a public purpose, the only exception to this being that the declaration was issued mala fide or in colourable exercise of power. The third notification

574

in this case had to be taken at its face value in so far as the purpose was concerned. [577B; 578B]

2. The burden of proving mala fides or colourable exercise of power is on the party claiming the benefit of the exception, namely the respondents. This burden could not be held to have been discharged by a mere allegation in that behalf. [578H]

3. If the argument that it is for the State to satisfy the Court about the nature of the purpose for which the land is sought to be acquired is accepted the whole object of the provision under which the conclusive presumption has to be raised in regard to the nature of the purpose would be defeated. It cannot, therefore, be held merely on the strength of the absence of production of documentary evidence by the State that the onus (which rested heavily on the respondents) to prove

mala fides or colourable exercise of power on the part of the State Government has been discharged. [578 H, 579 A-B]

4. The respondents have produced no material to show that the assertion about the public purpose as stated in the third notification was in correct for the reason that the acquired land was not suitable for any industry or that no industrial activity, except that by a company, had been undertaken in the neighbourhood of the acquired area. There is a clear averment to the contrary by the State which was not controverted by the respondents and that cuts at the root of their plea of mala fides or colourable exercise of power. [579 B-C; E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 143-147 of 1970.

From the Judgment and Order dated 17-2-1967 of the Calcutta High Court in Appeal from Original Order Nos. 123- 127 of 1966.

D. N. Mukherjee and G. S. Chatterjee for the Appellants.

S. Balakrishnan and M. K. D. Namboodry for the Respondent.

B. Sen and D. N. Mukherjee for the Intervener. The Judgment of the Court was delivered by KOSHAL, J.-By this judgment we shall dispose of Civil Appeals Nos. 143 to 147 of 1970, all five of which have been filed by certificates granted under article 133(1)(a) of the Constitution by the High Court of Calcutta and are directed against its common judgment dated the 17th February, 1967 accepting five Letters Patent Appeals and, in reversal of the judgment of a learned Single Judge, issuing a writ of mandamus directing the Land Acquisition Collector, Burdwan and the State of West Bengal to cancel or withdraw a notification dated November 3, 1961 and another containing a declaration dated June 20, 1963 issued under sections 4 and 6 of the Land Acquisition Act (hereinafter referred to as the Act) respectively.

2. The facts leading to the litigation covered by the appeals before us may be briefly stated. On February 12, 1960 a notification (later in this judgment called the first notification) was issued by the Government of West Bengal under section 4 of the Act stating that a piece of land delineated in the plan available in the Office of the Special Land Acquisition Officer, Burdwan, as well as in that of the Director of M/s Sen Raleigh Industries India Ltd. (hereinafter referred to as the Company) at Kanyapur in District Burdwan was likely to be needed for a public purpose (not being a purpose of the Union) namely, for expansion of the factory of the Company and "for construction of quarters for its workers and staff and for providing other amenities directly connected therewith, such as

school, play-grounds, hospitals, markets, police out- posts, etc., in the villages of Sarakdih, Nadiha, Garui, Hatgaruy and Panchgachhia, jurisdiction lists Nos. 1, 2, 3, 42/3 and 34 respectively, Police Stations Asansol and Barabani, Pargana Shergarh, District Burdwan..... " at the expense of the Company. An area totalling 17.20 acres and belonging to the respondents was included in the land covered by the notification.

The respondents preferred objections to the proposed acquisition under section 5A of the Act to the effect that the land was not acquired for any public purpose, that the real purpose was to benefit the Company and that the first notification was a fraudulent exercise of the power conferred by the Act on the State Government.

A fresh notification (second notification for short) under section 4 of the Act was issued on November 3, 1961 in respect of land measuring 146.90 acres which was the same land as was covered by the first notification, except for a small area. The second notification stated that the land was likely "to be needed for a public purpose, not being a purpose of the Union, namely, for industrial development at Asansol in the villages of Sarakdih, Nadiha, Garui, Hatgaruy and Panchgachhia, jurisdiction list Nos. 1, 2, 3, 78 and 34 respectively, Police Stations Asansol and Barabani, Pargana Shergarh, District Burdwan..... at public expense."

The area of 17.20 acres mentioned above was included in the land covered by the second notification also and the respondents filed objections under section 5A of the Act over again contending that although the ostensible purpose of the acquisition was a public purpose, the land was really sought to be acquired for a private purpose, i.e., for the benefit of the Company.

The first notification was cancelled by an order dated the 26th April 1962 and, on the 20th June, 1963, the impugned notification containing the declaration under section 6 of the Act (the third notification for brevity) was made. About three months later the respondents were served with notices under section 9 of the Act informing them that the State Government was taking steps to secure possession of the acquired lands and that they could submit their claims for compensation. Further representations were made by the respondents in an effort to have the acquisition proceedings dropped but without success and it was then that each one of them filed a petition under Article 226 of the Constitution asking for the issuance of a writ which was ultimately granted to them by the impugned judgment.

3. The grounds of challenge taken in all the petitions were identical and were to the following effect:

> (a) Full particulars of the public purpose for which the land was sought to be acquired were not stated in the second and third notifications.
>
> (b) Both those notifications were issued in colourable or malafide exercise of the power conferred by the Act.

Before the learned Single Judge ground (b) was not pressed at the hearing. In relation to ground (a) he held that the industrial development of a particular area was in itself a public purpose and no

further details of such purpose need be given in the notifications issued under the Act. Reliance in this connection was placed on Barkya Thakur v. State of Bombay(1). It was further observed by the learned Single Judge that the proceedings under section 5A of the Act in relation to the impugned notifications had not been completed, that it would be open to the respondents might possibly have another cause of action in case the supply of information was refused and that the petitions under Article 226 of the Constitution were, therefore, pre- mature. All the five petitions were in the result dismissed by the learned Single Judge.

4. In the Letters Patent Appeals decided by the impugned order the argument advanced on behalf of the respondents before us that the purpose of the acquisition as stated in the impugned notifications suffered from vagueness and that they had in consequence been deprived of the right to make effective objections under section 5A of the Act was held to be untenable. The Division Bench noticed that the learned Single Judge had erred in assuming that the objections filed by the respondents under the section last mentioned had not been decided by the time of his judgment. The ground that the real purpose of the proposed acquisition was not a public purpose at all but was to benefit the Company and that the impugned notifications were, therefore, issued in colourable exercise of the powers conferred on the State Government by the Act was strongly put forward before the Division Bench and was considered by it at length. Relying upon Somawanti v. State of Punjab(1), it held that although a declaration made under section 6 of the Act was final and conclusive not only in regard to the need for acquisition but also in regard to the purpose being a public purpose if it was so stated therein, it was open to a person whose land was acquired to challenge it on the ground of colourable exercise of power. The Division Bench referred to the pleadings of the parties and took note of the fact that although the respondents had clearly taken up the position that the real purpose of the acquisition was not a public purpose but was to benefit the Company, the Land Acquisition Collector had not in his affidavit taken any specific stand on the point but had only made an evasive denial of the plea put forward by the respondents and that while it was open to the State Government to produce documentary evidence showing that the purpose for which the land was acquired was a public purpose and not merely to benefit the Company it had failed to adopt that course. Refusing to hold, however, that there had been a colourable exercise of power on the part of the State Government the Division Bench held that the presumption that if such evidence had been produced it would be unfavourable to the State Government was available to the respondents in the present case. In this connection it further observed:

> "After all, when the proposed acquisition is impugned as acquisition in colourable exercise of power and there is a specific allegation of the real purpose of the acquisition, it is for the respondents to disclose, except for good reasons, the relevant material or information, to enable the Court to pronounce on the matter and not to maintain a meaningful silence or indulge in equivocations and double standards, rely on the doctrine of onus of proof and defect the course of justice. For the Court to permit this to be done with success, will be to stultify itself, abdicate its functions and abjure its duties."

and on this finding accepted all the five Letters Patent Appeals.

5. After hearing learned counsel for the parties we find that the learned Judges of the Division Bench seriously erred in accepting the Letters Patent Appeals in view of the finding arrived at by them that malafides or a colourable exercise of power on the part of the State Government could not be held established. Not only had their attention been drawn to the dictum in Somawanti's case (supra) but they had in the impugned judgment extracted certain observations made therein by Mudholkar, J., to the effect that a declaration made under section 6 of the Act and published in the Official Gazette shall be conclusive evidence that the land is needed for a public purpose and that to this rule there was only one exception, namely, that the declaration could be challenged on the ground of malafide or colourable exercise of power. It was thus clear that the third notification had to be taken at its face value in so far as the purpose was concerned unless the exception was established. It further goes without saying that the onus of proving that the declaration contained in the third notification fell within the exception would be on the party claiming the benefit of the exception, namely, the respondents. While criticizing the attitude of the State Government for not having produced the documentary evidence from which the purpose of the acquisition could be ascertained, S. K. Mukherjee, J., who delivered the judgment on behalf of the Division Bench, repeatedly stated that he did not intend to say that the land of the respondents was not sought to be acquired for a purpose which was a public purpose as declared in the third notification or that that notification was necessarily vitiated by any malafides or colourable exercise of power. He further observed that according to the rules of evidence it was for the respondents to satisfy the Court that there had been a colourable exercise of power because the onus of proof in that behalf was on them. In this situation we do not see how the respondents could be given any relief whatsoever. The acquisition could be struck down only if the declaration contained in the third notification was proved to be vitiated by malafides or colourable exercise of the power. On the other hand. if it was not established that such exercise of power was so vitiated, the declaration had to be taken at its word. On the findings of fact arrived at by the Division Bench, therefore, the Letters Patent Appeals merited nothing but dismissal.

6. Learned counsel for the respondents urged that they were really entitled to a finding of malafides on the part of the State Government but we find ourselves wholly unable to agree with him. The burden, as he concedes, was squarely on the respondents to prove colourable exercise of power. In the face of the conclusive presumption which the Court has to raise under sub-section (3) of section 6 of the Act about the nature of the purpose stated in the declaration being true. the onus on the respondents to displace the presumption was very heavy indeed and we do not think that the same could be said to have been discharged by a mere allegation in that behalf which has been denied by the State. If we accept the argument that it is for the State to satisfy the Court about the nature of the purpose for which the land is sought to be acquired, the whole object of the provi-

sion under which the conclusive presumption has to be raised in regard to the nature of the purpose would be defeated. We cannot, therefore, hold merely on the strength of the absence of production of documentary evidence by the State that the onus (which rested heavily on the respondents) to prove malafides or colourable exercise of power on the part of the State Government, has been discharged. Even so the respondents have produced no material to show that the assertion about the public purpose as stated in the third notification was incorrect for the reason that the acquired land was not suitable for any industry or that no industrial activity except that by the Company had been

undertaken in the neighbourhood of the acquired area. On the other hand, there is a clear averment to the contrary by the State in paragraph 1 of each of the applications dated August 26, 1967, for the grant of certificates under Article 133 of the Constitution. That averment reads:

> "That the Asansol Sub-Division within the District of Burdwan is a highly developed industrial area having a number of big industrial concerns, viz. The Indian Iron & Steel Co., Indian Aluminium Corporation and several collieries, etc., etc. It is within the industrial belt of Durgapur-Asansol area where besides the above mentioned industries, there are Hindustan Steel, Durgapur Projects Graphite Company and a number of other very big industries."

This averment which was supported by affidavit was never controverted by the respondents and cuts at the root of their plea of malafides or colourable exercise of power.

7. Mr. Balakrishnan, learned counsel for the respondents raised a preliminary point to the effect that the second notification was void inasmuch as it had been issued while the first notification was still in force. We do not see any reason for entertaining the point when it was not raised on behalf of the respondents at any stage before the High Court.

8. In the result all the five appeals succeed and are accepted. The impugned judgment is set aside and the petitions made by the respondents to the High Court are dismissed. There will, however, be no order as to costs in any of the appeals.

P.B.R. Appeals allowed.