
(2001) 06 CAL CK 0030
In the Calcutta High Court
Case No : C.O. No. 16870 (W) of 1992

Ajoy Nandi Majumdar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-06-2001

Acts Referred:

West Bengal Land Development and Planning Act, 1948 — Section 1(2), 4, 4(1), 6

Citation : 106 CWN 334

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : N.C. Bhattacharjee, for the Appellant;

Judgement

Amitava Lala, J.—This writ petition is made challenging the notifications u/s 4(1) and u/s 6 Sub-section 1(a) of West Bengal Land Development and Planning Act, 1948. Such notifications were issued for a public purpose viz. for the settlement of immigrants, who have migrated into State of West Bengal, on account of circumstances beyond their control. Till now, various lands were incorporated in such notifications. The date of such notifications are 24.2.82 and 31.12.91 respectively. Therefore, it is crystal clear from the notifications that the purpose of issuing the same is bonafide. Nobody has come forward on behalf of the state-respondents nor any affidavit-in-opposition has been filed for clarifying the position as to why the second notification was issued so belatedly, i.e., almost after 9 years of the earlier notification for a subsequent stage and whether the validity of the notifications are still in existence or not. The only communication as available from their part under Memo dated 24.4.90 is that the plot- is included in acquisition proceeding and further that a High Court case is also pending in respect of the matter. It was further stated therein, "It is therefore, not possible to release this plot from the acquisition proceedings so long as the court case exists."

2. Numerous representations were made by the petitioner from an unanswered representation dated" 29.7.92. This court has come to know that the court case

which was pending, is over and there cannot be any embargo in releasing the plot of land for construction of residential accommodation. That apart, I have come to know that the petitioner is also a displaced person from District Sylhet (erstwhile East Bengal) now in Bangladesh. In absence of the reply to such representation in connection thereto on behalf of the Land Acquisition Collectorate, State of West Bengal that the aforesaid statements are to be treated as presumably correct. Against this background I have to consider what are equitable grounds in favour of the petitioner. The petitioner purchased the land measuring more or less 3 cottas 8 chittaks 15 sq. ft. in 1997. The land was mutated by the appropriate mutating authority in 1978. A plan was sanctioned for the purpose of construction of building in the year 1989. The petitioner obtained clearance from the Calcutta Metropolitan Development Authority and Calcutta Improvement Trust. By way of state amendment when the land is in the area of Calcutta Improvement Trust, acquiring and requiring the land cannot be in the hand of the Land Acquisition Collectorate by Land Acquisition Act 1894, being Central Act. It is also by the West Bengal Land Development and Planning Act, 1948. So far as the above Central Act is concerned by way of State amendment publication of notification, hearing of objections and declaration under the Calcutta Improved Act was substituted for those under sections 4, 5A and 6. Similarly in the Section 1(2) of the Act exclude the area under Calcutta Municipality as defined in clause (b) of the Section 2 of the Calcutta Improvement Act, 1911. In such circumstances the release of the Calcutta Improvement Trust itself is enough for the purpose of its applicability. Therefore, once the Calcutta Improvement Trust is informed that the land is not under the scheme of alignment of the trust, it cannot be said that the land is under the control of the Land Acquisition Collectorate any more.

3. That apart, the requisition or acquisition of land under the Act cannot be applicable without any public purpose. When the public purpose is made for settlement of immigrants and when the petitioner himself is an immigrant by the necessary presumption is absence of any objection, the applicability of the notifications cannot be enforceable in respect of the person. Moreover, as per the notice they were not in a position to release the matter in view of the pendency of the court case and as soon as it has withdrawn and intimated by the petitioner, no reply has come forward which is also giving a direct presumption in favour of the petitioner in a court of equitable justice in drawing and inference in their favour.

4. It is contended by the learned counsel for the petitioner that the land is surrendered by the high rises and in such circumstances, no other purpose will be surrounded irrespective of applicability of the legal parameters as specified hereinabove. These are the factors which are governing the field of balance of convenience in favour of the petitioner. As a result whereof, I hold that the requisition or acquisition whichever applicable under the notification is no longer existable so far as this plot of land is concerned. Therefore, in other words, the land is free from acquisition. As a result whereof the petitioner will be entitled for

making an appropriate construction on the basis of the sanctioned plan earlier or by way of any notification, if necessary.

5. Thus, the writ petition is disposed of. There will be no order as to costs. Let urgent Xerox certified copy of this order, if applied for, be given to the learned Counsel for the petitioner within seven days from the date of putting requisition.