

(1960) 12 CAL CK 0016
In the Calcutta High Court
Case No : Civil Revision Case No. 3937 of 1958

An1tendeanath Mitter

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 07-12-1960

Acts Referred:

Constitution of India, 1950 — Article 31

West Bengal Land Development and Planning Act, 1948 — Section 2, 4, 6, 8, 8(1)

Citation : (1961) 2 ILR (Cal) 493

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : R. Deb and Rabindra Chandra Kar, for the Appellant; N.C. Chakravarty, Government Pleader and V.N. Basu, for the Respondent

Judgement

Sinha, J.—The Petitioner in this case is the absolute owner, having Raiyati Mokorari tenancy in C.S. Plot Nos. 1550, 1552-1558, 1560-64, 1620, 1621 and portions of C.S. Plot Nos. 1559 and 1569 of Mouza Napara, Police Station Barasat, in the District of 24-Parganas. On August 24, 1947 a notification was published u/s 4 of the West Bengal Land Development and Planning Act, 1948, dated August 18, 1949, for the compulsory acquisition, inter alia of the Petitioner's land. The introductory statement in the said notification ran as follows:

Whereas it appears to the Governor that land is likely to be needed for public purposes, viz., for the settlement of immigrants who have migrated into province of West Bengal on account of circumstances beyond their control and for the establishment of a model colony for creation of better living conditions in the village of Napara.

2. On April 12, 1951, a declaration u/s 6 of the said Act, dated April 12, 1951, was published. In the notification u/s 4, a total area of 28.87 acres were proposed to be acquired but the declaration was made in respect of sin area of 18.83 acres. In the declaration u/s 6 also, it was mentioned that the land was

needed for a public purpose, viz.; for the settlement of immigrants who have migrated into the State of West Bengal on account of circumstances beyond their control and for the establishment of a model colony for creation of better living conditions in the village of Napara. On October 28, 1951, possession was obtained by the Land Acquisition Collector, Alipore, u/s 8 of the said Act and thereupon the property vested absolutely in the State. Thereafter, the land was made over to the Respondent No. 2, the Pioneer Co-operative Rehabilitation and Housing Society Ltd., who are proceeding with the work of rehabilitating displaced persons. The purposes mentioned in the said notification and declaration, viz., the settlement of immigrants who migrated into the State of West Bengal on account of circumstances beyond their control as well as the establishment of a model colony for creation of better living conditions are all public purposes as defined in Sub-section (d) of Section 2 of the said Act. Under Article 31 of the Constitution as it was originally framed, and which deals with compulsory acquisition of property by the State, the compensation payable was just compensation, that is to say, the market price which prevailed at the time of acquisition. On or about April 27, 1955, Article 31 was amended by the Fourth Constitution (Amendment) Act of 1955 which provided that no property shall be compulsorily acquired or requisitioned save for public purposes and save by authority of law, and that no such law shall be called into question in any Court on the ground that the compensation provided by that law is not adequate. In order to take advantage of this amendment in the Constitution, the West Bengal Land Development and Planning Act, 1948, was amended by making material changes in Section 8, by the West Bengal Land Development, and Planning (Amendment) Act, 1955 (West Ben. Act XXIII of 1955). By this amendment, alterations were made in proviso (b) of Sub-section (1) of Section 8, dealing with the principle for determining compensation. By this amendment, it was provided that if the market value of the land on the date of the publication of the notification under Sub-section (1) of Section 4 exceeded the market value of the land on December 31, 1946, then such excess shall not be taken into consideration. In this particular case, it is admitted in the affidavit in opposition that the market value in 1949, which was the date of the notification u/s 4 of the said Act, was higher than the market value on December 31, 1946. In order to avail of this lower compensation, two notifications or "errata" dated August 12, 1957, were published in the "Calcutta Gazette, Extraordinary" dated August 13, 1957. By the Notification No. 14SS8 L. Dev., it was notified that in the notification u/s 4, dated August 18, 1957, the following alterations were to be made:

Omit the words "and for the establishment of a model colony for creation of better living conditions" occurring after the words "for settlement of immigrants who have migrated into the State of West Bengal on account of circumstances.....beyond their control.

3. The Notification No. 14890 L. Dev., purported to amend the declaration u/s 6 dated March 27, 1951, to the same effect. The admitted object in publishing

these errata is to pay a lower rate of compensation. The Petitioner has now made an application challenging the right of the State Government to alter the object of acquisition with retrospective effect, after possession has been taken and made over to the Respondent No. 2. In my opinion, the application must succeed. The object with which a property can be compulsorily acquired from a citizen must be a "public purpose". What constitutes a "public purpose" has been defined in the Land Development and Planning Act. In conformity with the said Act, the objects were declared. A person concerned with such compulsory acquisition could only make objections upon the footing that the property was acquired for a "public purpose" which was stated. After the property has been acquired and possession having been taken whereby the land vested in the State Government, it is no longer possible for the State Government to alter the original object of acquisition. In other words, having professedly acquired the property for a stated "public purpose", the State Government cannot be heard to say at the time of paying compensation that the object was going to be altered so as to entitle Government to deprive a citizen of his just compensation. If it was a case of an accidental mistake or inadvertence, that would have been one thing, because such errors can always be corrected. Here, however, it is openly declared that the amendment is made with the express object of depriving a citizen of his just compensation. It is not a case of a mistake in stating the original purpose, but a retrospective change in "public purpose" after the property has been acquired and after the title to the property has passed to the State Government, upon the representation that the property was being" acquired for certain purposes mentioned in the notification u/s 4 and declaration u/s 6. It is stated in the affidavit in opposition that in the agreement made with the society, only one object Was mentioned namely the settlement of immigrants. In my opinion, that has nothing to do with the person whose land has been acquired for a specified "public "purpose". After acquisition, the State Government may change one public purpose into another, and as long as it remains a public purpose, the acquisition would probably remain valid, although I do not finally decide that question here. But, having acquired the property for a stated public purpose, it cannot be heard to say that the original object was different. That would either be untrue or an unauthorised and unwarranted alteration, which has no effect, so far as the owner of the land is concerned, whose property has been compulsorily acquired. In this case, it is openly admitted that this kind of amendment has been made in order to deprive the owner of the, higher compensation to which he was entitled in law. In my opinion this amendment is not bonafide and I very much regret that the State Government should be a party to such a transaction. It is not fit that the constituted Government of the country should take recourse to round about methods of depriving the citizen of his just compensation, when the land has been acquired compulsorily. I may put the matter in another way. The land was acquired for declared public purposes which were three in number, viz., the settlement of immigrants, the establishment of a model colony and creation of better living conditions. This was mentioned in the notification u/s 4 and

repeated in the declaration u/s 6. These notifications were duly authenticated and I must presume that the Governor had these objects in view when issuing the notification and the declaration. Years afterwards, it is stated that these were not the objects and it is avowedly done in order to deprive a citizen of; his just compensation. As I said, either the statement that the object of acquisition was different is untrue or else it is a change in the object, which, coming years after the acquisition had been completed, is unwarranted in law. I do not see how any reliance can be placed on the affidavit of Shri N.K. Chakravarty, who states that he was a Special Land Acquisition Collector and who affirms the affidavit and particularly para. 12, as "true according to the "information derived from the office record" without disclosing what records he wishes to refer to. The notification and declaration were authenticated by Mr. S. Banerjee, the then Member of the Board of Revenue and Secretary to the Government of West Bengal. There is no affidavit by him stating that there was any mistake in the notification or declaration so far as the purposes of acquisition were concerned. In para. 13(a) of the said affidavit, Shri Chakravarty has stated that, "the purposes of "acquisition came subsequently to be the exclusive purposes of "settling immigrants who have migrated into the State of West "Bengal under circumstances beyond their control." It is, therefore, admitted that it is not the original object which, was defective but the object came to be changed after about 9 years from the acquisition, just because the Government wished to escape payment of just compensation to the owner. Such an attitude on behalf of the Government must be condemned. In my opinion., this is not permitted in law and has no legal effect.

4. The result is that this rule must be made absolute and there will be a Writ in the nature of Certiorari quashing the two notifications or errata, dated August 12, 1957, which are at pp. 4-5 of the annexure to the petition and there will also be a Writ in the nature of Mandamus directing the Respondents not to give effect to the same. There will be no order as to costs.