
(1965) 06 CAL CK 0028
In the Calcutta High Court
Case No : A.F.O.O. No. 224 of 1963

Ganesh Chandra Banerjee and Others	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 29-06-1965

Acts Referred:

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

Citation : AIR 1967 Cal 143 : 70 CWN 387

Hon'ble Judges : H.K. Bose, C.J.;B.C. Mitra, J

Bench : Division Bench

Advocate : Sushil Kumar Banerjee, for the Appellant; Upendra Chandra Mullick, for the Respondent

Final Decision : Allowed

Judgement

Bose, C.J.—This is an appeal from an order of Mr. Justice Banerjee dated the 7th January, 1963, discharging a Rule under Article 226 of the Constitution subject to certain clarification made in the declaration u/s 6 as indicated in his order.

2. The appellants are residents within the Municipal limits of Bhatpara in the District of 24 Parganas and they are the recorded owners In respect of S. S. Dag Nos. 547, 548 and 549 of Khatian Nos. 1068 and 1282 of Mouza Bhatpara, P. S. Jagatdal in the District of 24 Parganas.

3. By a notification dated 8th November, 1956, and bearing No. 16796 L. Dev. the said plots of the appellants were sought to be acquired under the provisions of the West Bengal Land Development and Planning Act, 1948, for the purpose of settling immigrants. The appellants thereupon filed objections against the proposed acquisition and the Land Acquisition Collector upon hearing the objection was satisfied that the plots were of indispensable necessity to the appellants for residential and other purposes. It appears that subsequently another notification was published bearing No. 14932 L. Dev dated 13th August, 1957, whereby only a portion of plot No. 547 was declared as needed for a public

purpose, namely, for the settlement of immigrants. Nothing was said with regard to plots Nos. 548 and 549. This notification was issued u/s 6 of the West Bengal Land Development and Planning Act, 1948. Various other plots were also mentioned in the notification and the total area of all these lands is given as more or less measuring 4.89 acres. The appellants' case is that as plots Nos. 548 and 549 were no longer intended to be acquired under the provisions of this Act, they were excluded from this notification issued u/s 6 of the Act. As no indication was given in this notification u/s 6 as to the exact area of plot No. 547 which was intended to be acquired, the appellants moved this Court under Article 226 of the Constitution on the ground that the notification u/s 6 was bad inasmuch as it did not specify the area or part of plot No. 547 which was intended to be acquired under the provisions of the West Bengal Land Development and Planning Act. A Rule nisi was issued and this Rule came up for hearing before Mr. Justice Banerjee.

4. The learned Judge felt the weight of the contentions of the appellants. But he re-solved the difficulty by getting a clarification from the learned advocate appearing for the respondents with regard to the exact area intended to be acquired. The learned advocate who appeared before him, Mr. Prodyot Kumar Banerjee stated and made it clear that only 44 acres of land on the south-eastern side of plot No. 547 exclusive of the portion containing the residential structures belonging to the appellants was the subject-matter of the acquisition. Upon that clarification being made, the learned Judge was of the view that the appellants had thereafter no further grievance and so, he proceeded to make the following order:

""I record the clarification made by Mr. Prodyot Kumar Banerjee and direct that the declaration is to be read subject to the clarification now made by Mr. Prodyot Kumar Banerjee.

With the clarification aforesaid, I discharge the Rule but make no order as in costs."

5. The propriety of this order has been questioned by the appellants before us and the learned advocate for the appellants has argued that the learned Judge had no jurisdiction to make the order that he did in this case. If any clarification or rectification of the declaration is to be made, that is a matter for the State Government and it is only the State Government which has the power under the provisions of the West Bengal Land Development and Planning Act to issue a notification or a declaration and make any clarification or any rectification with regard to such notification or declaration. Section 6 of the West Bengal Land Development and Planning Act provides in Sub-section (1) that if the State Government is satisfied that any land in the notified area for which a scheme has been sanctioned is needed for the purpose of executing a scheme, a declaration to the effect that such land is needed for a public purpose shall, unless already made in pursuance of Section 7, be made by the State Government. Sub-section (1-a) provides that when the State Government is satisfied after taking into

consideration any report submitted under Sub-section (2) of Section 4-A, that any land in the notified area is needed for the public purpose specified in sub-Clause (i) of Clause (d) of Section 2. a declaration to the effect that such land is needed for the said purpose shall be made by the State Government. Relying on these provisions it is contended that these different sub-sections make it clear that the power is conferred only on the State Government to make a declaration u/s 6. The Court cannot, therefore, usurp to itself or arrogate to itself the power of rectifying any declaration made u/s 6 or making a declaration itself in substitution of the declaration made by the State Government; but the order of the learned Judge in effect rectifies the declaration made or substitutes another declaration in place of the declaration made by the State Government, and it is not permissible to do so. It appears to us that this contention is not without substance. The learned Judge exceeded his jurisdiction in directing that the declaration is to be read subject to the clarification which was made by the learned Advocate appearing for the respondents at the hearing of the Rule. The power of making a declaration or any rectification with regard to any declaration is conferred on the State Government under the provisions of the West Bengal Land Development and Planning Act and the learned Judge was not, therefore, justified in making the order that he did in this case.

6. Mr. Mullick, learned advocate appearing for the respondents, argued that the order made by the learned Judge was really a consent order and, therefore, the learned Judge had jurisdiction to make such an order and moreover, no appeal lies from such a consent order and, therefore, the present appeal is incompetent. But we do not find any indication in the judgment of the learned Judge to show that the order which was made by the learned Judge was, in fact, a consent order or an order made as a result of compromise or settlement arrived at between the parties. Therefore, we are unable to accept the contention of Mr. Mullick that the order of the learned Judge being a consent order, the appeal against that order is incompetent. It may also be pointed out that no counter affidavit was filed in answer to the petition under Article 226 of the Constitution. So, there is nothing to show that the State Government had accepted the position that the area sought to be acquired was only .44 acres of the south-eastern side of plot No. 547. The learned Judge acted on the basis of the statement made by the learned advocate for the respondents before the Court. It was also argued by Mr. Mullick that the declaration u/s 6 satisfies the requirements of Sub-section (2) inasmuch as the total area of the plots sought to be acquired is given in the declaration. But in view of the fact that the plots which were intended to be acquired and which are set out in the notification u/s 6 belonged to different persons and an unspecified part of a plot belonging to the appellants is made the subject of acquisition, mere mention of the total area in respect of all the plots is not a sufficient compliance with the requirements of the Sub-section (2). This Sub-section requires that whenever a particular plot of land is sought to be acquired under the provisions of this Act, the approximate area in respect of such land is to be stated in such declaration and it appears to us that

if there are different plots comprised in the notification which belong to different owners and only a part of a plot belonging to a particular owner is sought to be acquired, some more definite statements or indication with regard to the area of the unspecified part of the plot should appear in the notification. Otherwise, the person whose land is sought to be acquired would be totally in the dark as to which particular part of his land is intended to be acquired and this will also prevent him from putting forward all his objections that he would like to put forward in respect of steps taken for the proposed acquisition sub-sequent to the declaration u/s 6.

7. For these reasons, it appears to us that the order of the learned Judge cannot be sustained and so this appeal is allowed. The judgment and order of the learned trial Judge are set aside and the Rule is made absolute: and the notification u/s 6 dated the 13th August. 1957 in so far as it relates to plot No. 547 of Mouza Bhatpara in the District of 24 Parganas belonging to the appellants is cancelled. This will be without prejudice to the rights of the respondents to issue a fresh declaration in respect of plot No 547, if they are so advised.

8. There will be no order as to costs in this appeal.

9. B. C. Mitra, J. : I agree.