
(1965) 11 CAL CK 0006
In the Calcutta High Court
Case No : Civil Rule No. 1424 (w) of 1964

Gopalpur Land Development Society Ltd.	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 18-11-1965

Acts Referred:

Constitution of India, 1950 — Article 166, 226
Land Acquisition Act, 1894 — Section 48
West Bengal Land Development and Planning Act, 1948 — Section 10, 11, 4, 5, 5(1)

Citation : 70 CWN 359

Hon'ble Judges : A.N. Ray, J

Bench : Single Bench

Advocate : D.N. Das and N.K. Ganguly, for the Appellant; B.C. Dutt and Susil Kumar Biswas for O.P. 1 to 4, A.D. Mukherjee and N.K. Ganguly for O.P. 5 to 14 and S.C. Bose and Bhagabati P. Banerjee for the O.P. No. 15, for the Respondent

Judgement

A.N. Ray, J.—This Rule is directed against an order of the Government of West Bengal, Land and Land Revenue Department, embodied in the Notification No. 20402 L. Dev. dated the 26th November, 1964. That notification is annexed to the petition and is marked with the letter "J". Under that notification it appears that notification No. 7574 dated the 11th June 1951 u/s 4 of the West Bengal Land Development Planning Act, 1948, and a declaration dated the 21st June 1951 u/s 6 read with section 7 of the West Bengal Land Development and Planning Act, 1948 in respect of acquisition of land for the settlement of immigrants who had migrated into the State of West Bengal on account of circumstances beyond their control in the villages of Gopalpur and Salua, P.S. Rajarhat, District 24 Parganas, are cancelled by the order of the Governor. The notification dated June 11, 1951 u/s 4 of the said Act and the declaration dated 21st June 1951 were impeached in an application under Article 226 of the Constitution in Civil Rule No. 784 of 1952. That application was dismissed on March 29, 1954. An appeal was preferred from that judgment and the appeal was dismissed on May 17, 1961.

2. The only point which arises for consideration in the present case is whether the Government has power to cancel the notifications dated June 11, 1951 and the declaration dated 21st June 1951. Counsel on behalf of the petitioner contended first that the Government had no such power under the West Bengal Land Development and Planning Act, 1948, secondly that even if the provisions of the Land Acquisition Act were attracted, the Government could not exercise any power u/s 48 of the Land Acquisition Act because possession had been taken by the petitioners in the present case and thirdly that the opposite parties were estopped from contending that the notification and the declaration in the year 1951 suffer from irregularities or infirmities.

3. The provisions of the West Bengal Land Development and Planning Act contain provisions for declaration by the Government that any area is needed or likely to be needed for any public purpose. Upon such declaration it shall be lawful for the Government to enter upon the land. After the notification u/s 4, persons affected can object to the notification. The State Government in accordance with the provisions contained in section 6 may direct the authorities to prepare scheme in respect of the notified area. When a development scheme is sanctioned under sub-section (2) of section 5 and the Government is satisfied that any land is needed for the purpose of executing such a scheme, a declaration is made u/s 6 of the Act. u/s 7 of the Act in case of urgency if the Government is satisfied that the preparation of a scheme is likely to be delayed, the Government may make a declaration u/s 6 in respect of such notified area. u/s 8 of the Act after a declaration is made u/s 6, the provisions of the Land Acquisition Act shall, so far as may be, apply. u/s 10 of the Act the State Government may direct the authority to execute development scheme and if the Government so thinks fit it may empower a company to execute such development scheme and to dispose of the land on such terms and conditions as may be settled by the State Government and embodied in an agreement to be entered into by the State Government and the company. u/s 11 of the Act if the Government is satisfied that any of the terms in the agreement is not complied with, it may, by order served in accordance with the rules on the company or local authority, as the case may be, withdraw the power conferred on it to execute any development scheme or to dispose of the lands comprised therein or both and may thereafter make such arrangement in that behalf as it may deem fit and proper.

4. I have summarised the substance of the provisions of the Act in order to appreciate the point in controversy as to whether there is a power for cancelling the order. Counsel for the opposite parties contended that such a power was implicit in the provisions of the Act, that if the Government had the power to acquire land, the Government had a fortiori a power to cancel such an acquisition. Apart from such implicit power it appears to me that there is specific power contained in section 11 of the Act to withdraw any power conferred on any company or any authority to execute any development scheme. In the present case no scheme has been prepared. It is also manifest in the present case that there has been no agreement as contemplated in section 10 of the Act. These

two features are sufficient to clothe the Government with authority to exercise power u/s 11 of the West Bengal Land Development and Planning Act, 1948. Further, it is apparent that under the provisions of the General Clauses Act there is also power to amend, vary or rescind any order made. Such power is engrafted on the authority of the Government in order to enable the authorities to amend, vary or rescind orders which they have power to make. I am, therefore, of opinion that the Government has power to cancel the notifications.

5. Counsel on behalf of the petitioner contended relying on the authority of the decisions of the Supreme Court in *The State of West Bengal and Others Vs. Naba Kumar Seal*, that the West Bengal Land Development and Planning Act contemplates acquisition of two classes, viz., first where the Government has first considered and sanctioned a development scheme under the provisions of section 5 and then made a declaration that the land was needed for the purpose of executing the development scheme and secondly, where the notification u/s 6 was made without any development scheme being prepared and sanctioned u/s 5. Counsel for the petitioner relied on the observations of the Supreme Court at page 20 of the report *The State of West Bengal and Others Vs. Naba Kumar Seal*, to the effect that once the declaration is made u/s 6, the machinery of the Land Acquisition Act will come into operation subject to the reservations contained in the proviso to section 8, and that therefore the absence of a scheme is no bar and would not stand in the way of the petitioner. I have already indicated that the Government has power to cancel notifications. Further I am of the opinion that when a scheme has not been prepared and when the provisions of the Act had not been followed, the Government can cancel the notification already made.

6. Another point was taken on behalf of the opposite parties that the notification and the acquisitions proceedings were bad by reason of non-compliance with the Business Rules of the West Bengal Government in relation to the West Bengal Land Development and Planning Act, 1948. This was considered in the case of *Bejay Laxmi Cotton Mills Ltd. Vs. The State of W.B. and Others*, . The decision of the Trial Court will appear in (2) *Bejay Laxmi Cotton Mills Ltd. Vs. The State of W.B. and Others*, . An appeal was preferred from that decision and the decision of the Appellate Court will appear in *Shambhu Nath Ghosh and Others Vs. Bejoy Lakshmi Cotton Mills Ltd. and Others*, The decision of the Trial Court was affirmed on appeal. The Appellate Court held on a consideration of the Rules of Business framed under Article 166 of the Constitution by the Government of West Bengal that the duty of being satisfied u/s 6 of the West Bengal Land Development and Planning Act and the duty of giving sanction u/s 5 (2) of the same Act was not delegated to the Assistant Secretary or to anybody else and that these duties had to be performed by the Minister-in-charge in order that the satisfaction u/s 6 and the sanction u/s 5(2) might amount in law to be satisfaction of the Government or sanction by the Government respectively. The Appellate court said that since the matter was not placed before the Minister in any of these stages, the necessary consequence was that the direction made u/s 5(1) of the 1948 Act to prepare a scheme, the sanction of the scheme u/s 5(2) and the

satisfaction u/s 6 had not been in the eye of law, by or of the State Government. This is a question of law. There cannot be any estoppel against statute or statutory provisions. The contention of Counsel for the petitioner that the decision of the Appellate court in the appeal from Civil Rule No. 784 of 1952 raised the bar against the opposite parties to plead infirmities, is in my opinion, devoid of merit and substance. A matter which has no validity in the eye of law cannot be rendered valid just because the parties have not in the past litigated upon it or there has been silence upon that question. The matter of satisfaction as far as the Governor is concerned is to be regulated in accordance with the aforesaid Business Rules. A distinction was made by Counsel for the opposite parties between the words "it appears" and the words "is satisfied". The petitioner annexed to the petition the notification and the declaration made in the year 1951. They are to be found in annexures B and C to the petition. The notification starts with the words "whereas it appears to the Governor". The present notification which has been impeached is to be found in annexure J and that notification starts with the words "the Governor is pleased". This distinction is too obvious to be stressed and it shows the exact requirements to comply with the provisions of the Constitution where the satisfaction of the Governor is necessary for any order. There is a gulf of difference between a Governor being satisfied and it appearing to the Governor that an order is to be made for a particular purpose. The affidavit (evidence) shows that acquisition pursuant to the notification and the declaration in the year 1951 was not complete. No scheme was prepared. No agreement was entered into. The notification as well as the declaration suffer from statutory vices viz., that the matter was not placed before the Minister in charge and the satisfaction of the Governor was not inherent in the notification.

On the question of possession the matter bristles with disputes. Counsel on behalf of the opposite parties relied on a Bench decision dated the 7th April 1955, appearing as annexure U to the petition of Salil Kumar Ghosh affirmed on the 13th May 1965. That judgment was invoked in aid of the contention on behalf of the opposite parties that possession was not taken. Irrespective of the rival contentions of possession I am of opinion that the Government has power to cancel the notification.

For these reasons I am of opinion that the petitioner is not entitled to succeed. The Rule is discharged. There will be no order as to costs in this Rule. The injunction order is vacated.