

(1973) 12 CAL CK 0019
In the Calcutta High Court
Case No : A.F.O.O. No. 279 of 1960

Haripada Mazumdar and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 24-12-1973

Acts Referred:

Constitution of India, 1950 — Article 14

West Bengal Land Development and Planning Act, 1948 — Section 2, 5, 6, 7, 8

Citation : AIR 1974 Cal 277 : 78 CWN 327

Hon'ble Judges : Ghose, J;B.C. Mitra, J

Bench : Division Bench

Advocate : Arun Kumar Dutt and Nandalal Pal, for the Appellant; C.D. Roy Choudhury and K.N. Roy, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitter, J.—This appeal arises out of an application under Art. 226 of the Constitution challenging the validity of acquisition of several plots of land under the West Bengal Land Development and Planning Act, 1948 (hereinafter referred to as the Act). The appellants claimed to be refugees who had migrated to India in 1947 from what was previously known as East Pakistan. They claimed that they purchased various plots of land in Village Hijalpukuria, District 24 Parganas and to have been in possession thereof when a notification u/s 4 of the Act was published in the Gazette on August 2, 1956, declaring several plots of land, including those in the possession of the appellants, as "notified area." The appellants made a representation to the Land Acquisition Collector, 24 Parganas, on October 4, 1956, to the effect that they had migrated from the District of Chittagong on account of circumstances beyond their control and could not be evicted from the said plots. They admit that a notice u/s 4-A of the Act was served requiring them to attend at the hearing of their objection on the spot.

2. Aggrieved by the proceedings under the Act the appellants obtained a Rule Nisi on a writ petition which was discharged by a judgment and order dated

January 22, 1960, against which this appeal has been preferred.

3. Appearing for the appellants Mr. A. K. Dutt pressed only one point before us, viz., that the proviso to Section 5 of the Act was introduced into the Act by amendment on September 21, 1955, after the fourth amendment of the Constitution on April 27, 1955 and, therefore, the amendment was not protected by Article 31-B of the Constitution. It was argued that the 9th Schedule "to the Constitution was inserted by the first amendment of the Constitution, when the Schedule contained only 13 statutes, and the West Bengal Land Development and Planning Act, 1948 was not one of these statutes. By the fourth amendment of the Constitution which came into force on April 27, 1955. 7 more statutes were added to the Schedule, including the said Act. It was argued that at the time when the said Act was inserted in the 9th Schedule on April 27, 1955 the proviso to Section 5 of the Act was not there and therefore, the proviso introduced by the amendment on September 21, 1955 was not entitled to protection of Article 31B. In other words, it was contended that it was open to the appellant to challenge the vires of the proviso on the ground that it was violative of Articles 19(1)(f) and 14 of the Constitution. In support of this contention reliance was placed by Mr. Dutt firstly on a decision of the Supreme Court - Ramanlal Gulabchand Shah Vs. The State of Gujarat and Others, . In that case it was held that Article 31-B no doubt gave protection to the statutes listed in Schedule 9, but an amendment of a statute so listed, made after the inclusion of the statute in the Schedule was not entitled to the protection, as it would have the indirect effect of amending the original Schedule 9 by including something in it which was not there previously, and that this was beyond the competence of the State legislature. Reliance was next placed by Mr. Dutt on another decision of the Supreme Court Sri Ram Ram Narain Medhi Vs. The State of Bombay, , in which it was held that future amendments made after a statute was listed in the 9th Schedule had to be treated in the light of the provisions in the Constitution and were not saved by Article 31-B and also that Article 31-B envisaged that the competent legislature would have the power to repeal or to amend the Acts mentioned in Schedule 9 and if any such amendment was ever made the vires of that would have to be tested.

4. The next contention of Mr. Dutt was that the proviso discriminated between different classes of public purpose, inasmuch as, with regard to settlement of immigrants no scheme was required to be framed whereas in the case of other public purpose, defined in Section 2 (d) (ii), (iii) and (iv) such a scheme was necessary. It was argued that by reason of such discrimination the proviso was violative of Article 14 of the Constitution and, therefore, should be struck down. In support of this contention reliance was placed by Mr. Dutt on a decision of the Supreme Court reported in Jia Lal Vs. The Delhi Administration, .

5. Attractive though the argument of Mr. Dutt appears to be, it cannot be upheld. So far as the challenge to the vires of the proviso to Section 5 on the ground of violation of Article 14 is concerned, Mr. Roy Chowdhury appearing for the

respondents contended that the classification of the two objects, viz., settlement of immigrants and the other objects specified in Section 2 (d) (ii), (iii) and (iv) must be held to be a reasonable classification. He contended that the two classes were altogether different with different objects and, therefore, the proviso could not be struck down on the ground of discrimination. In support of this contention he relied on a decision of the Supreme Court -- *The State of West Bengal and Others Vs. Naba Kumar Seal*, . In that case the vires of the same Act was challenged and a Division Bench of this Court had come to the conclusion that although land might be acquired in an emergency like the settlement of immigrants, a development scheme should be framed as contemplated by the statute after possession had been taken. This conclusion of the Division Bench was overruled by the Supreme Court and it was held that where land was acquired u/s 7 of the Act, there was nothing in the statute which required that a development scheme should be framed. On the question of violation of Article 14 of the Constitution it was held that on a fair reading of the relevant provision of the statute it was clear that the Act contemplated acquisition of two distinct classes, viz., (1) Where the Government at first consider and sanction a development scheme under the provisions of Section 5 and then make a declaration that the land in a notified area was needed for the purpose of executing particular development scheme and (2) Where the notification u/s 6 was made without any development scheme being prepared and sanctioned u/s 5. After holding that these were two distinct classes, it was further held that the two classes could be easily identified and the purpose of the classification was based on a rational consideration having due regard to the purpose and policy underlying the Act, viz., to acquire land for the public purpose, inter alia, of resettling immigrants and that such case of urgency came u/s 7 of the Act which was meant to serve the main purpose of the Act.

6. On this question a reference may also be made to a judgment of P. B. Mukharji J., (as he then was) in Civil Rule No. 3720 of 1956 (*Fayaz Sheik Jangi v. District Magistrate of Nadia*) in which a challenge to the vires of the proviso to Section 5 of the Act on the ground that it was violative of Article 14 of the Constitution was also rejected.

7. In our view the classification of the two public purposes, viz., settlement of immigrants on the one hand and the other objects specified in Section 2 (d), (ii), (iii) and (iv) cannot but be held to be a reasonable classification. The contention of counsel for the appellants on this question cannot be upheld and is rejected.

8. On the question of violation of Article 19(1)(f) of the Constitution, beyond saying, that the proviso was violative of that Article no argument was advanced by counsel for the appellants as to how it violated the provisions in the Constitution. It is not enough to say that a particular provision in a statute should be struck down on the ground that it is ultra vires a particular provision of the Constitution. It is incumbent upon the party challenging the vires to show how the statutory provision amounts to violation of the rights conferred by the

Constitution. Counsel for the respondents did not make out any grounds as to why the proviso to Section 5 of the Act should be struck down on the ground of infringement of Article 19(1)(f). For these reasons the challenge to the vires of the proviso to Section 5 of the Act cannot be accepted.

9. Counsel for the respondents, however, advanced another argument which seems to us to be decisive. He argued that there are other provisions in the statute for acquisition of land in an emergency, viz., Section 7 of the Act which provides as follows:--

"In cases of urgency, if in respect of any notified area the State Government is satisfied that the preparation of development scheme is likely to be delayed, the State Government may, at any time, make a declaration u/s 6, in respect of such notified area or any part thereof though no development scheme has either been prepared or sanctioned u/s 5".

Relying on the provision in Section 7 of the Act it was argued that the State Government had ample powers to acquire land under the Act in case of emergency without framing a scheme, and therefore, even if the proviso to Section 5 of the Act was held to be ultra vires, the acquisition proceeding could not be challenged by the appellant-He argued that the statute contemplated two distinct classes of acquisition, viz.. acquisition for general development as contemplated by Section 2 (d), (ii), (iii) and (iv) and acquisition in an emergency. In the case of acquisition for general development work a scheme was required to be framed by Section 5 of the Act. But in the case of acquisition in an emergency a development scheme was not required to be framed and the State Government was entitled to make a declaration u/s 6 of the Act in respect of a notified area, though no development scheme had either been prepared or sanctioned. The latter variety of acquisition, viz., acquisition in case of an emergency was sanctioned by Section 7 of the Act.

10. In our view the contention off counsel for the respondents is sound and must be upheld. Quite plainly two different classes of acquisition were contemplated by the statute as mentioned above and to meet an emergency, the necessity of framing a development scheme, has been expressly dispensed with by the statute. In such a case the State Government has been given the power to make a declaration u/s 6 of the Act and thereafter proceed to acquire the land as prescribed by Section 8 of the Act.

11. In this case it is not in dispute that the land was sought to be acquired for the purpose of settlement of immigrants and there can be no doubt that this is an emergency with which the State Government was confronted.

12. An attempt was made by counsel for the appellants to contend that there was nothing in the notification or in the declaration to show that the acquisition was made u/s 7 of the Act. The acquisition proceedings in our opinion cannot be struck down merely on the ground that Section 7 of the Act has not been quoted in the declaration u/s 6 of the Act. Where power has been conferred upon an

authority by different provisions of a statute, the exercise of the power cannot be challenged on the ground that the particular provision in the statute by which the power was conferred has not been quoted or mentioned in the notification by which the power is sought to be exercised. In this case, the publication of the declaration u/s 6 of the Act can be clearly upheld on the ground that the State Government was exercising its power u/s 7 of the Act and, therefore, the notification and the declaration cannot, in our opinion, be struck down.

13. The other points raised on behalf of the appellants in the trial court were not pressed before us. The only point pressed before us was relating to the vires of the proviso to Section 5 of the Act and as the contentions of counsel for the appellants on that point cannot be accepted, this appeal must fail. The appeal is accordingly dismissed. There will be no order as to costs.

14. The operation of this order will be stayed for six weeks.

Ghose, J.

15. I agree.