
(1952) 03 CAL CK 0034

In the Calcutta High Court

Case No : Civil Revn. Case No's. 931 and 932 of 1951

Hurdeodas Agarwala

APPELLANT

Vs

The State of W.B. and Others

RESPONDENT

Date of Decision : 03-03-1952

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Land Development and Planning Act, 1948 — Section 7

Citation : AIR 1952 Cal 857

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Hemendra Chandra Sen and Satyendra Chandra Sen, for the Appellant; Jajneswar Majumdar, Asst. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for an appropriate Writ for a direction on the opposite parties to forbear from, depriving the petitioner of his property mentioned in the petition and from taking possession of the same and also for a direction upon the opposite parties not to take any steps or proceedings under: the West Bengal Land Development and Planning Act of 1948.

2. The petitioner's case is that he holds 6 bighas, 10 cottahs and 4 chatacks of land in Jote Tikalmal at Siliguri in the District of Darjeeling where he resides and carries on his business. By a declaration made u/s 6, West Bengal Act 21 of 1948 the Provincial Government purported to acquire lands measuring 27.78 acres in. Siliguri, Pargana Baikunthapur, District Darjeeling, including the said land belonging to the petitioner. This Notification was dated 19th December 1949, and was published in the Calcutta Gazette, dated 22nd December 1949.

On 18th February 1950, the petitioner in the present proceeding submitted a petition of objection to the Deputy Commissioner of Darjeeling and therein prayed for exemption of the land of the petitioner from the proposed scheme of

acquisition. It is alleged in the petition that the petitioner migrated from Dinajpore (East Pakistan) in 1948 and on 14th May 1948, he took settlement of the said land on a lease for a period of 9 years and paid a selami of Rs. 16281-4-0 for the land and the annual rent in respect of the land was fixed at the rate of Rs. 2 per cottah. After obtaining the said lease, the petitioner invested a sum of Rs. 35,000 in erecting buildings on the said land and also in planting a jute-baling machine and in building an ice-factory on the said land with the object of residing there and carrying on business at the said place.

It appears that pursuant to the application of the petitioner praying for exclusion of his land from the said acquisition, the Government have exempted from acquisition proceeding .64 acres of land on which there exist the structures erected by the petitioner. It further appears that thereafter an award was made by which certain compensation was awarded to the petitioner in respect of the portion of the land which remained the subject-matter of the acquisition proceeding. Thereupon, the petitioner has filed a petition u/s 18, Land Acquisition Act, praying for a reference to the Civil Court and that application is still pending! In the petition several grounds have been taken attacking the validity of the acquisition proceeding.

3. The petitioner moved this Court on 80th April 1951, and obtained this Rule on that date.

4. The principal point that has been urged by Mr. Sen, the learned Advocate for the petitioner, is that the petitioner himself being a refugee from East Pakistan, the acquisition proceeding taken in respect of the petitioner's land for the settlement of the immigrants who have migrated into the province of West Bengal on account of circumstances beyond their control is not an acquisition for a public purpose and, therefore, the whole proceeding should be declared invalid. Mr. Sen relies on the observations of B. K. Mukherjea J., in the case of Province of Bombay Vs. Kusaldas S. Advani and Others, , which are as follows :

"It may be stated here that, before the learned Judges of the appellate Bench in the High Court no attempt was made on behalf the Government to establish that the premises in question were requisitioned for any public purpose. A public purpose involves some benefit to the community as a whole, as opposed to the personal gain or interest of particular individuals. Housing of refugees may certainly be a public purpose, and under certain circumstances even securing a house for an individual may be in the interests of the community, but it cannot be to the general interest of the community to requisition the property of one refugee for the benefit of another refugee.""

It may be pointed out that in this particular case a flat in a building known as " Paradise " at Warden Road in Bombay was in occupation of three refugees from Sind and about three weeks thereafter the Government of Bombay issued an order requisitioning the said flat and on the same day allotted the said premises to another person who was also a refugee from Sind. The refugees, who were

sought to be displaced by the order of requisition, made an application for cancellation of the said order u/s 45, Specific Relief Act, and also for a writ of Certiorari before the Bombay High Court. Bhagwati J. of the said Court granted a writ against the Province of Bombay. On appeal the appellate Court confirmed the appeal as regards the issue of a writ of Gertiorari. Chagla C. J. observed in the case of P.V. Rao Vs. Khushaldas S. Advani, as follows :

" Now, the housing of refugees may certainly be a public purpose, but it cannot be said that if you choose one refugee as against another without any ostensible cause, that by itself would constitute public purpose for which a land can be requisitioned.....The purpose for which land has to be requisitioned must involve some benefit to the community as a whole. But there may be cases, where securing a house for an individual may itself confer a benefit upon the community. Each case, therefore, must be determined upon its own facts and circumstances. In this case I am satisfied that Government have not requisitioned the premises for any public purpose and, therefore, the requisition order made by them is in excess of their jurisdiction."

It is clear that the learned Chief Justice of the Bombay High Court came to the conclusion upon the particular facts of that case that the requisition of the premises for one refugee at the expense of the other refugee was not a requisition for a public purpose. The observations made by Mukherjea J. in that case, when it went up to the Supreme Court, must also be limited to the particular facts of the case. Mukherjea J. in the passage which I have quoted above, was merely reproducing in a different language the substance of the observations made by the learned Chief Justice of the Bombay High Court. What Mukherjea J. wanted to lay down was that ordinarily a public purpose connotes some benefit to the community as a whole as opposed to benefit to a particular individual. He further came to the conclusion that if the property of one refugee is requisitioned for the benefit of another individual, who also happens to be a refugee, in other words, in the interest of a particular individual the requisition, would not be for a public purpose.

The learned Judge of the Supreme Court certainly did not intend to lay down that if the particular acquisition or requisition of property be for the benefit of the community as a whole, or a particular section of the public and if this particular section is composed of refugees who have migrated into Indian Union under stress of circumstances, the acquisition or requisition will not be for a public purpose, simply because the¹ property belonged to a particular person, who also happened to be a refugee. It appears to me, that no such proposition can be spelt out from the observations made by Mukherjea J. On the other hand, it appears from the observation of Das J. made in the same case at p. 717 that he did not agree entirely with the general observations which have been made by the learned Judges of the Bombay High Court. The following observations of Das J. are relevant on this point :

"But the learned Chief Justice went on to say that choosing one refugee as

against another . . . without any ostensible cause would not constitute a public purpose for which the flat in question could be requisitioned. This conclusion, with great respect to the learned Chief Justice, appears to be founded on a slight confusion of ideas. It has to be remembered that this was not a solitary order of requisition made by the Government for the public purpose of housing refugees. The petitioner's solicitors' letter dated 27-2-1948, clearly stated that there were " similar orders " issued by the Government. The impugned order itself shows ex facie that the order was made generally for " public purpose housing. " It was not in terms made for the benefit of any particular individual refugee."

The trend of these observations by Das J. shows that the learned Judge was inclined to take the view that the requisition in such, case would be for a public purpose. In the case of *Hamabai Framjee Petit v. Secy, of State for India in Council*, reported in 42 I. A. 44 (P. C), the Judicial Committee made certain observations as to the real implications of the expression " public purpose " which are as follows :

" They think the true view is well expressed by Batchelor J. in the first case, where he says " General definitions are, I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase " public purpose " in the lease; it is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

This observation of the Judicial Committee is also relied on by Mahayana J. in the case referred to above, reported in 1950 Section c. E. 621 at p. 657. It is clear that if a requisition is made of a property belonging to an individual in the interest and for the benefit of another individual, it may not be a public purpose in every case and in all circumstances. As has been pointed out by the learned Chief Justice of the Bombay High Court as also by the learned Judges of the Supreme Court that if the requisition endures for the benefit of the public or a particular section of the public, it is a requisition for a public purpose, even though the property be actually required for the housing of a particular individual.

It may be pointed out that in the case of *Sudhindra Naih Dutta v. Sailendra Nath Mitra*, reported in 87 C. L. J. 140, the learned Chief Justice of this Court, held that requisition for a Minister of the State is a requisition for a public purpose, because the public is benefited by providing accommodation to the Minister. In the present case, however, the proposed acquisition is not for the benefit of any particular individual, but it is for a large number of refugees who have come over to the Province of West Bengal and want to settle here ; in other words, the acquisition is in the interest of the community. I have already held in the case of *Md. Safi Vs. State of West Bengal and Another*, , that acquisition for settlement of immigrants is an acquisition for a public purpose. It appears to me, therefore, that the contention of Mr. Sen on this point has no force.

5. Mr. Majumdar submitted that as the Notification was issued prior to the Constitution of India coming into force, the petitioner cannot take advantage of Article 226 of the Constitution for the purpose of challenging the validity of the acquisition proceeding. It may be pointed out, however, that what the petitioner is seeking to do in this application is to challenge the vires, of the action taken by the Government purporting to act under the provisions of the West Bengal Land Development Act. If a particular act is ultra vires, it furnishes a recurring cause of action to the party aggrieved by such act and there can be no doubt that in such circumstances the aggrieved person can have recourse to Article 226 of the Constitution for impugning the validity of such act. I have already held in *Rajendra Kumar Ruia and Another Vs. Govt. of West Bengal and Another*, that ultra vires notifications or acquisition proceedings can be challenged under Article 226 of the Constitution even though such notification was issued or proceedings were initiated before the Constitution came into force. Therefore, the contention of Mr. Majumdar cannot be accepted.

It may be further pointed out that in the present case the petitioner has, acquiesced in the proceeding for acquisition taken under the West Bengal Act of 1914 in the sense that he has filed a petition u/s 18, Land Acquisition Act, by way of an objection to the award made by the Collector giving him a certain amount by way of compensation for the land which is the subject-matter of acquisition. Moreover, it is clear from the facts stated above that the buildings, which were erected by the petitioner and which had been originally made the subject of acquisition proceedings, have been exempted from acquisition and only a certain plot of land which formed part of the entire plot, which was taken on lease by the petitioner, is being acquired under the West Bengal Act of 1948. The petitioner not being totally deprived of his property, he will still have the building for the purpose of his residence and he may utilise such building for carrying on his business. It appears to me that no ground has been made out for interference by this Court under Article 226 of the Constitution and in my view this petition must fail and the rule is accordingly discharged.

6. There will be no order for costs.

7. G. B. No. 982 of 1951. This rule will be governed by the judgment in C. Rule No. 931 of 1951.