

(1965) 08 CAL CK 0030
In the Calcutta High Court

Case No : Civil Revision Case No. 234 (W) of 1963

Jugal Chandra Pandit and Others

APPELLANT

Vs

The Board of Trustees Howrah and Others

RESPONDENT

Date of Decision : 17-08-1965

Acts Referred:

Calcutta Improvement Act, 1911 — Section 39C
Howrah Improvement Act, 1956 — Section 3, 33, 35, 37, 38

Citation : 70 CWN 275

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : Sudhir Kumar Dutta, for the Appellant; Susil Kumar Biswas and Nani Gopal Das, for the Respondent

Judgement

Banerjee, J.—There is an Act known as The Howrah Improvement Act (Act XIV of 1956). The Act was passed to make provision for the improvement and expansion of Howrah, particularly the area under the jurisdiction of the Howrah Municipality. Sections 3 and 4 of the Act deal with the creation, incorporation and constitution of a Board known as "The Trustees for the Improvement of Howrah."

2. Section 33 of the Act empowers the Board to frame and execute different types of improvement schemes or combination thereof, namely:--(a) general improvement scheme ; (b) street scheme ; (c) bustee improvement scheme ; (d) re-housing scheme ; and (e) housing accommodation scheme.

3. Section 37 of the Act provides when and under what circumstances a general improvement scheme may be framed, in the following language :

37. Whenever it appears to the Board, whether upon an official representation made u/s 38 or without such representation,--

(a) that any buildings in any area which are used as dwelling places are unfit for human habitation, or

(b) that danger to the health of the inhabitants of any area or of a neighbouring area is caused by--

(i) the narrowness, closeness and bad arrangement and conditions of streets or buildings or groups of buildings in such area, or

(ii) the want of light, air, ventilation or proper conveniences in such area, or

(iii) any other sanitary defects in this area, or

(c) that any area is undeveloped or has been developed without a satisfactory plan or design and that it is necessary to develop or re-develop it on a better plan after incorporating all or some of the improvements mentioned in sub-section (1) of section 35,

the Board may pass a resolution to the effect that a general improvement scheme as mentioned in subsection (2) of section 33 ought to be framed in respect of such area and may then proceed to frame such a scheme.

4. Sections 43 and 44 of the Act make provisions for framing of re-housing and housing schemes in the following language :

43. The Board may frame schemes (in this Act called re-housing schemes) for the construction, maintenance and management of such and so many dwellings and shops and other classes of accommodation as they may consider ought to be provided for persons who--

(a) are displaced by the execution of any improvement scheme sanctioned under this Act, or

(b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the State Government for sanction, under this Act.

44. Whenever the Board are of the opinion that it is expedient and for the public good to provide housing accommodation for any class of persons in any area to which this Act applies, the Board may frame a scheme for the purpose to be called a housing accommodation scheme.

5. Sections 45 to 52 of the Act deal with the procedure for preparation, publication, sanction or abandonment of improvement schemes and alteration or cancellation thereof after sanction.

6. In the context of this Rule, I need notice the provisions of section 45(2) of the Act, which requires the Board to cause publication of a notice of a improvement scheme weekly for three consecutive weeks in the official gazette and in the local newspapers, with a statement of the period within which objections to the scheme are to be filed are received. Further, I need notice the provisions of section 47 of the Act which read as follows :

47. (1) During the thirty days next following the first day on which any notice is

published u/s 45 in respect of any scheme, the Board shall serve a notice on--

(i) every person whose name appears in the municipal assessment-book as being primarily liable to pay the owner's share of the consolidated rate, or the rate on the annual value of holdings, as the case may be, in respect of any land which the Board propose to acquire in executing the scheme or in regard to which they propose to recover a betterment fee, and

(ii) the occupier (who need not be named) of each premises or holding, entered in the municipal assessment-book, which the Board propose to acquire in executing the scheme.

(2) Such notice shall--

(a) state that the Board propose to acquire such land or to recover such betterment fee for the purpose of carrying out a general improvement scheme or a street scheme as the case may be, and

(b) require such person, if he dissents from such acquisition or from the recovery of such betterment fee, to state his reasons in writing within a period of thirty days from the service of the notice;

(3) Every such notice shall be signed by, or by the order of, the Chairman.

I need also notice section 49 of the Act, which requires the Board to consider any objection, representation and statement of dissent received by the Board and further provides that "after hearing all persons making any such objection, representation or dissent who may desire to be heard, the Board may either abandon the scheme or apply to the State Government for according sanction to the scheme, with such modifications (if any), as the Board may consider necessary". Section 50 of the Act empowers the State Government to sanction the scheme with or without modifications or to refuse sanction thereto. Section 51 of the Act provides for notification of sanction to improvement schemes, the effect whereof is to supply conclusive evidence of due framing and sanction of such schemes. Lastly, I need notice section 52 of the Act, which provides for alteration or cancellation of the scheme. The relevant portion of section 52 is set out below :

Any time after any scheme has been sanctioned by the State Government u/s 50 and before it has been carried into execution, the Board may alter or cancel it:

Provided as follows:--

(a) * * *

(b) * * *

(c) * * *

(d) no scheme shall be cancelled without giving the Municipality or Muicipalities concerned an opportunity to express their views within sixty days of the receipt

of the notice of the cancellation and without the previous sanction of the State Government.

7. Keeping in view the above provisions of law I now turn to consider the grievance made by the petitioners in this Rule. In March 1961, there was a general improvement scheme notified u/s 45 of the Act, for acquisition of 42.1 acres of land. The petitioners claim to be interested in a part of the notified area and, on receipt of the notice u/s 47 of the Act, preferred their objections, inter alia, alleging that the scheme was bad, because of non-compliance with the provisions of sections 43 and 44 of the Act and also because more land was being acquired than was actually necessary for the notified purpose. Thereafter, the petitioners also filed application for abandonment of the acquisition, u/s 79 of the Act, in consideration of special payment. The objection made by the petitioners against the acquisition was heard by the Board, on August 25, 1959, along with other objections by other persons interested in different parts of the notified area and on consideration of all the objections, the Board made some modifications in the scheme, which the petitioners allege, did not benefit them in the least. The modified scheme was submitted by the Board for sanction of the State Government, u/s 49 of the Act. The prayer for abandonment of the acquisition, made by the petitioners, was rejected by the Board. The scheme has now been admittedly sanctioned and steps are being taken for execution thereof.

8. In these circumstances, the petitioners have moved this Court for a Writ of Mandamus directing the respondents to cancel the acquisition and for a Writ of Prohibition directing them not to take further steps for acquisition and have obtained this Rule.

9. Mr. Sudhir Kumar Dutta, learned Advocate for the petitioners, argued two points in support of this Rule. He contended in the first place, that after modification of the scheme, u/s 49 of the Act, the petitioners should have been given a further opportunity to object to the modified scheme u/s 47 (2) (b) of the Act. This argument is unworthy of acceptance. The scheme of the Act does not provide for invitation of objections to modifications made as a result of the objections made u/s 47(2) of the Act.

10. Mr. Dutta argued, in the next place, that without framing a re-housing scheme, u/s 43 of the Act, there could be no acquisition made in furtherance of a general improvement scheme, framed u/s 37 of the Act. This argument, in my opinion, is also misconceived. The framing of a re-housing scheme is not a condition precedent to the framing and execution of a general improvement scheme. The Board "may" frame a re-housing scheme to accommodate persons displaced or likely to be displaced by execution of a general improvement scheme, but this is not obligatory on the part of the Board, as it is u/s 39C of the Calcutta Improvement Act, which latter section I have dealt with in my judgment in Matter No. 294 of 1961 (Muneswar Ram v. Second Land Acquisition Collector--unreported). Mr. Dutta placed strong reliance on section 49(2) (f) of the Act, which requires the Board, while submitting an application for sanction of a

scheme to the State Government, to forward with the application "a statement of the arrangements made or proposed by the Board for the re-housing of persons who are likely to be displaced by the execution of the scheme" and contended that this requirement showed that the Board was obliged to frame a re-housing scheme before submitting a general improvement scheme for sanction. In my reading of section 49 (2) (f) of the Act the statement must be sent only if a re-housing scheme has been framed but not otherwise.

Both the arguments advanced by Mr. Dutta, therefore, fail and I discharge this Rule with costs, assessed at three gold mohurs.