
(1980) 03 CAL CK 0007
In the Calcutta High Court

Kamini Kumar Bhattacharyya and Another	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 04-03-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 300A, 31
Land Acquisition Act, 1894 — Section 23, 4

Citation : (1980) 03 CAL CK 0007

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : Sitaram Bhattacharyya and Anilananda Mukherjee, for the Appellant;
Amaresh Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice Chittatosh Mookerjee

1. The petitioners claim to be owners of a portion of plot No. 492 mouza Jadavpur, P.S. Tollygunge. The Additional Collector, Estate Acquisition, by a Memo dated 23rd December, 1971 informed the petitioners that 17th January, 1972 had been fixed for hearing of an application filed by Jagannath Das for acquisition and settlement of the said homestead land in terms of West Bengal Acquisition and Settlement of Homestead Land Act, 1969. The petitioners have challenged in this Rule that the said Act was ultra vires Articles 14 and 31 of the Constitution of India.

2. During the pendency of this Rule, clause (f) of Article 19(1) and Article 31 were deleted by the Constitution (forty-fourth Amendment) Act, 1973. "Right to Property" has ceased to be a "Fundamental Right" within the meaning of Part III of the Constitution and now Article 300A lays down that no person shall be deprived of his property save by authority of law. Mr. Bhattacharyya, learned advocate for the petitioners, however, is right in his submission that the above deletions of clause (f) of Article 19(1) and of Article 31 were prospectively made. Therefore, it is still open to the petitioners to urge that at the date of the

enactment of the West Bengal Acquisition and Settlement of Homestead Land Act, the West Bengal State Legislature had no legislative competence to enact law inconsistent with or in derogation of any of the rights enumerated in Pt. III of the Constitution.

3. Mr. Bhattacharyya submitted that the West Bengal Acquisition and Settlement of Homestead Land Act, 1969, inter-alia, provides for acquisition of land on payment of compensation far less than that payable under other laws for compulsory acquisition of lands to "persons interested". Secondly, Mr. Bhattacharyya submitted that the purpose for which land may be acquired under the aforesaid Act XV of 1969 is not a public purpose within the meaning of Clause (2) of Article 31. Therefore, in substance, Mr. Bhattacharyya's submission is that the aforesaid law was in contravention of Article 31(2) of the Constitution and therefore the same was void abinito.

4. The West Bengal Act XV of 1969 was passed to provide for acquisition of land on which homestead had been constructed and settlement of such land with the person in possession thereafter. In other words, the object of the said Act was to acquire land not exceeding .0334 hectare, in order to confer upon certain occupiers without title, tenancy right to lands upon which they had constructed homestead at least three years before the commencement of the Act. The occupiers holding other lands more than .8094 hectares are not eligible for benefits under the said Act. The Act does not apply to the lands belonging to the Government or local authorities. Thus, the Act endeavored to legalize occupation of small strips of lands by those who had built their homestead and who had no other land exceeding .8094 hectares. Thus, the Act reasonably restricts right to property under Article 19(1)(f).

5. Further, the said object of acquisition under the Act was a "public purpose" within the meaning of clause (2) of Article 31 of the Constitution. Secondly, under the amended Article 31, as the same stood, at the date of the enactment of the impugned Act, inadequacy or insufficiency of compensation was no longer a ground for declaring a law for public purposes as ultra vires. Section 8 of the Act XV of 1969 inter-alia provided for payment of compensation for land acquired equivalent to 20 times of the annual revenue on rent of the said land as the case may be. Determination of value of acquired land by capitalizing the annual rent is one of the well recognized methods of valuation. Therefore, section 8 cannot be considered as arbitrary or that compensation payable under the said section is illusory. In the above view the aforesaid Act XV of 1969 can be neither called unreasonable nor ultra vires Article 19(1)(f) and 31(2) of the Constitution.

6. I may now proceed to examine the other submission of Mr. Bhattacharyya that Act XV of 1969 was violative of Article 14 of the Constitution. Mr. Bhattacharyya's submission is that there is no reasonable basis for classification between the lands acquired under Act XV of 1969 and the lands which might be acquired under the Land Acquisition Act and other allied legislation. According to Mr. Bhattacharyya, in case the land in question had been acquired under the

Land Acquisition Act, the petitioners would have been entitled to receive not only the market value of the acquired lands but also a solatium of 15% thereon vide sub-sections (1) and (2) of section 23 of the Land Acquisition Act. According to Mr. Bhattacharyya, the provision for payment of compensation according to rental value contained in section 8 of the Act XV of 1969 was an integral part of the scheme for acquisition under Act XV of 1969 and, therefore, in case the said section 8 is held to be ultra vires Article 14, the entire Act should be held to be invalid and void. In this connection, Mr. Bhattacharyya relied upon the decisions of the Supreme Court in (1) *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, (2) *Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma*, (3) *Balammal and Others Vs. State of Madras and Others*, (4) *Nagpur Improvement Trust & Anr. v. Vithal Rao & Others*, reported in 1973 S.C. 689 (5) *Ramendra Nath Nandi and Others Vs. State of West Bengal and Others*, .

7. Having given my anxious consideration to the above submission of Mr. Bhattacharyya, I hold that the ratio of these decision is not applicable in deciding vires of Act XV of 1969. The majority of these decisions had considered the question of violation of right to equality granted by Article 14 of the Constitution in the context of the provisions of the different statutes which deleted the application of sub-section (2) of section 23 of the Land Acquisition Act and denied payment of statutory allowance to owners of lands acquired under the said special statutes.

8. Their Lordships laid down that no differentiation in compensation payable to persons interested could be made on the ground of the proposed user of the acquired lands. At the same time, these decisions recognized that it was possible to differentiate in the matter of payment of compensation on intelligible basis. Thus, some of the reported decisions upon which Mr. Bhattacharyya placed reliance recognized that when under a statute the owner of the acquired land would be recipient of some benefit by reason of acquisition then the amount of compensation might be different. In *P. Vairavelu Mudaliar's* case (Supra), under the Land Acquisitions Madras Amendment Act a lesser value was payable in case of acquisition of land for housing Scheme than the value payable in case of acquisitions for other public like hospital etc. In *Deputy Commissioner etc. v. Durganath Sarma* (Supra) the Assam Acquisition of Land For Flood Control and Prevention of Erosion Act, 1955 was held to be violative of Article 14 on the ground that land in connection with flood control or prevention of erosion could be acquired also under the Land Acquisition Act on payment of adequate compensation. A reference may be also made to the observations of Sikri CJ. in *Nagpur Improvement Trust's* case (Supra) regarding the validity of Nagpur Improvement Trust Act, 1936. But, at the same time, the Courts have uniformly held that is open to the State to decide which particular acquisition law should be invoked for compulsory purchase for public purposes. But in applying these laws the State Government cannot discriminate between one owner equally situated from another owner of acquired lands.

9. In my view, there are intelligible basis for differentiation between the lands acquired under the West Bengal Acquisition and Settlement of Homestead Land Act, 1969 and the lands which may be acquired under the Land Acquisition Act, or West Bengal Development and Planning Act, 1948. Therefore, it cannot be said that the persons whose lands were acquired under the West Bengal Act XV of 1969 are similarly situated as the owners whose land might be acquired under other Land Acquisition Acts.

10. I have already stated that the Act XV of 1969 was enacted to provide for acquisition of land on which homestead had been constructed and settlement of such land with the person in possession thereof. Thus, the Act has endeavored to legalize possession of persons of small plots of land not exceeding .0334 hectares in case their occupation without any interest in the said lands had commenced at least three years before the enactment of the Act XV of 1969 and as presently indicated the Act XV has also made a time limit for making application for acquisition of such land and for settlement of the same in favour of the occupant concerned. Occupier u/s 2(h) of the Act XV of 1969 means "a person in possession of any land of another person without any interest therein based on title and who holds no land or not more than .8094 hectares of land either as owner or tenant thereof and includes the heirs of such persons.

11. The Scheme for acquisition under Act XV of 1969 is entirely different from those of other laws for acquisition for public purposes. A proceeding under Act XV is commenced by filing of an application u/s 4 by an occupier who had constructed a homestead on the land in his possession and had been residing therein continuously for a period of not less than three years immediately before the date of coming into force of this Act. Section 4 also sets a time limit within which such application by an occupier may be made to the Collector. The scope of an enquiry by the Collector u/s 5 of the Act XV is different from an enquiry which follows a Notification made u/s 4 of the Land Acquisition Act. The Collector u/s 5(1) of the Act XV of 1969 is required to determine whether an occupier had constructed a homestead on the land in his possession and had been referred to in section 4. Under sub-section (2) of section 5 the Collector has a power to make a suo moto enquiry. I have also pointed out that maximum area of land which may be acquired under Act XV is .0334 hectares on which a homestead had been constructed not less than three years immediately before the date of coming into force of the Act.

12. After a plot of land is acquired u/s 7 of the Act XV of 1969, the Collector u/s 11 of the said Act is under a statutory duty to settle the same with the occupier of the said land who has made an application u/s 4 of the Act. Sub-section (2) of section 11 specified the status of the occupier who is granted such settlement u/s 11 of the Act. Thus, only for the settlement of land in favour of an occupier who had constructed a homestead during the prescribed period and who has made an application within time, land can be acquired under Act XV. Therefore, the provisions of the Act XV of 1969 are not pari material with those of the Land

Acquisition Act and other Laws for acquisition for public purposes.

13. I have also mentioned that the method prescribed by Section 8 of the Act XV of 1969 for determination of the compensation or rental basis is not illusory or arbitrary. It may be also observed that when the land acquired is in possession not of the owner but of an occupier obviously such owner cannot legitimately claim payment of the full market value of the land which would be payable to the owner who was in khas possession at the date of the acquisition. Therefore, Section 8 of the Act XV of 1969 cannot be also considered discriminatory. For the foregoing reasons, I conclude that the provisions of Act XV of 1969 are intra vires and the Rule should, therefore, fail.

14. Mr. Bhattacharyya drew my attention to the fact that there had been protracted legal proceedings between the petitioner, on the one hand, and the Respondent No. 3, on the other, and according to him at the date of the issue of the Rule proceedings for execution of the eviction order obtained by the petitioners against the Respondent No. 3 had been pending. Section 10 of Act XV of 1969 provides inter-alia that an occupier is not liable to be evicted or dispossessed from the land demarcated u/s 6 notwithstanding any judgment, decree or order of any Court. Sub-sections (2) and (3) of Section 10 of the Act deal with the cases where suits and proceedings for eviction of an occupier may be stayed till the disposal of the application of the occupier u/s 4 (f) of Act XV of 1969.

15. In the instant case, the Collector has not yet made any determination u/s 5 of the Act. It is open to the petitioner to contest the said proceeding before the Collector inter alia by contending that the Respondent No. 3 Jagannath Das is not entitled to relief under Act XV. I, however, express no opinion on the same. I have no doubt that the Collector will dispose of the said pending proceeding in accordance with law.

Subject to these observations the Rule is discharged without any order as to costs.

Let the operation of this order be stayed for one month.