

(1969) 02 CAL CK 0006

In the Calcutta High Court

Case No : Civil Revision Case No. 3212 (W) of 1966

Kanailal Mondal and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-02-1969

Acts Referred:

Land Acquisition Act, 1894 — Section 17, 18, 4, 5(A), 6

Citation : 73 CWN 422

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : S. Samanta, for the Appellant; Somendra Chandra Bose and Suproakash Banerjee for State, R. Bhattacharjee and D.K. Chakraborty for Port Commissioners, for the Respondent

Judgement

D. Basu, J.—In this Rule the petitioners who are 42 in number have challenged the validity of the notification u/s 4 of the Land Acquisition Act, dated January 25, 1965, which is at annexure "A" to the petition and the subsequent declaration u/s 6 dated 16th July, 1966, which is at annexure "B" to the petition. Though there are several grounds stated in the petition, one of them has been concluded by a judgment of the Supreme Court, reported in (1) AIR 1968 SC 768-870 (Ishwarlal v. State of Gujrat), where it has been held that the word arable as used in section 17 of the Land Acquisition Act includes not only those which are fit for cultivation but also those which have been actually brought under cultivation. The second point on the merits urged on behalf of the petitioners is that there are certain plots said to be acquired in part of which no proper description has been given either in the notification u/s 4 or in the declaration u/s 6. So far as the defect in the declaration u/s 6 is concerned, it might have been good enough for giving the petitioners relief on this ground but for the fact that no less than 31 of the petitioners appear to have applied for compensation in the proceeding u/s 9 which has culminated in an award which is subsisting and out of these persons one, namely, petitioner No. 15, Bhriguram Bhunia, has already obtained compensation, in pursuance of that award.

2. The principle upon which relief is given in case of a part acquisition without proper description is that unless such description is given, the persons affected might not be appraised of the particular portion of which they are to deliver possession and also to claim compensation under the law. But in the instant case it appears that quite a good number of the joint petitioners fought out the matter at the compensation proceedings so that they had no doubts as to what portion was going to be acquired. Apart from that, it has been held by this Court in a decision reported in (2) 65 CWN 909 (Ganesh Nayak v. L. A. Collector) that in a case where a joint petition is made by several petitioners if the claim of one is attended by some defects on his part, no relief can be granted to the rest.

This principle rests on the reasoning that the claim of the petitioners being joint, the Court cannot make any apportionment if one fails because of his conduct. In the instant case the facts are more serious than those in the reported decision in 65 CWN 909, inasmuch as, it is not one but as many as 31 petitioners who pursued the matter in the compensation proceeding resulting in an award. It has been pointed out in the decision reported in 65 CWN 909, that once an award has been made in the presence of a person aggrieved by the proceeding under sections 4 and 6 of the Land Acquisition Act, his further remedy would be against the award u/s 18 of the Land Acquisition Act, and the like. He cannot thereafter turn round to claim to reopen the entire land acquisition proceedings on the ground of defects which might have been available if the award had not been made. It may be mentioned that at the hearing the learned Advocate for the respondents also drew my attention to the fact that a large number of petitioners in fact raised an objection u/s 5(A) to the notification and u/s 4 of the said Act a grievance has been made by the petitioners that there was no due service of the extract of the notification in the locality. But I am satisfied from the papers produced as well as from annexure "B" to the counter-affidavit that the said notification was not only published in various offices near about the disputed land but also in the market place at the locality.

3. The learned Advocate for the petitioners, however, said that the original of the said application for objection u/s 5(A) is not before the Court and also that some of the petitioners are illiterate and cannot even sign their names. The suggestion was that the copy of the application for objection u/s 5(A) relied upon by the respondents is not genuine.

In case the petitioners are sure that the said application has been got up and their alleged signatures and thumb impressions are forged, it would be open to the petitioners to pursue their proper remedy in a competent Court against such misconduct on the part of the public officials, if true.

4. This disposes of the points raised in the objection. Nevertheless, it appears that there are certain plots belonging to the petitioners which are not included in the notification under sec. 4 or 6 even, namely, plots Nos. 35 and 68. It can only be said in this proceeding that the petitioners' interest if any in these lands still remains unaffected by the impugned notification and declaration.

5. Subject to these observations, this Rule is discharged without any order as to costs. As prayed for on behalf of the petitioners, let the operation of this order be stayed for one week in respect of the plots discharged in this Rule, with a cost of 5 Gold mohurs.