

(1965) 03 CAL CK 0008

In the Calcutta High Court

Case No : Civil Revision Case No. 34 (w) of 1963

Krishna Kumar Mukherjee and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 23-03-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4, 4(1), 6, 6(1)

West Bengal Land Development and Planning Act, 1948 — Section 2, 4, 4(1), 4A, 6

Citation : 69 CWN 1067

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Amarendra Nath Gupta, for the Appellant; Susil Kumar Biswas, for the Respondent

Final Decision : Allowed

Judgement

D. Basu, J.—This case, under Art. 226 of the Constitution, has been debated on a short question of interpretation. After issuing a notification u/s 4 of the West Bengal Land Development and Planning Act, 1948 (hereinafter referred to as the "West Bengal Act"),-which is at Annexure A to the Petition,-that certain lands were likely to be needed for a public purpose namely, the settlement of immigrants into the State of West Bengal, the Governor has issued the impugned declaration u/s 6 of that Act, which is at Annexure B, with respect to the disputed lands, of which the petitioner's claim to be the owners. The relevant recital in the declaration is as follows:-

Whereas it appears to the Governor that land is needed for a public purpose, namely, for the settlement of immigrants.....it is hereby declared that for the above purpose pieces of land comprising cadastral survey plot.....are required.....

This declaration is made under the provisions of section 6 of the West Bengal Land Development and Planning Act, 1948.

2. The order is signed "by order of the Governor, B. Chakravarty, Dy. Secy."

3. S. 6(1)-(1a) of the Act is in these terms-

6(1) When a development scheme is sanctioned under sub-section (2) of section 5 and the State Government is satisfied that any land in the notified area for which such scheme has been sanctioned is needed for the purpose of executing such scheme, a declaration to the effect that such land is needed for a public purpose shall, unless already made in pursuance of section 7, be made by the State Government.

1(a) When the State Government is satisfied, after taking into consideration any report submitted under sub-section (2) of section 4A, that any land in the notified area is needed for the public purpose specified in sub-clause (i) of clause (d) of section 2, a declaration to the effect that such land is needed for the said purpose shall, (unless already made in pursuance of section 7), be made by the State Government.

4. On behalf of the petitioners it is contended that the "satisfaction" of the State Government not having been recited in the impugned declaration, it is ultra vires section 6 of the Act so that the declaration and all subsequent proceedings are invalid. On behalf of the Respondents, it has been urged in paragraph 4 of the counter-affidavit that the words "it appears to the Governor" in the impugned declaration "have the same connotation as the words in section 6 which speaks of satisfaction of the State Government."

5. This, then, is the only point for determination in the instant case,-namely, whether it is necessary, in order that a declaration made u/s 6 may be valid, that it must state that the Governor is "satisfied instead "of "it appears to the Government". The identity of the Governor with the State Government has not been questioned in view of the provisions of the General Clauses Act and the decision of this Court in (1) Gouripada Bandopadhyaya and Others Vs. S. Banerjee, Secy. to the Govt. of West Bengal and Another, . The question is, whether the words "it appears" comply with the requirement of section 6 of the West Bengal Act.

6. Before entering into that question, a legislative change in the Land Acquisition Act, 1894, on which the West Bengal Act professes, in the main, to be modelled, has to be noticed. The words "it appears" are used in s. 4(1) of that Act. S. 6(1) of that Act, prior to 1923, also used the words "it appears", but the word "satisfied" was substituted by Act 38 of 1923, along with other words which are relevant,-

when the appropriate Government is satisfied, after consideration of the report, if any, made u/s 5A, sub-section (2), that any particular land is needed....

7. This substitution was necessary in view of the introduction of section 5A, by the same Amending Act, which provided for an inquiry and hearing of objections to the proposed acquisition, if any, by the Collector. The change in section 6(1)

was, thus deliberate. It was intended to make it clear that whereas the notification u/s 4(1) could be made on a tentative assumption that lands in a locality were needed or even likely to be needed for a public purpose, in order that preliminary steps in that behalf might be started, the declaration u/s 6(1) could be made only after the Government had applied its mind not only as to the specific public purpose but also as to the need of acquiring, for that purpose, the particular plot or plots specified in the declaration, upon a consideration of the report of inquiry made by the Collector u/s 5A. A duty of so being satisfied was thus cast upon the Government before making a declaration u/s 6(1). The difference between the two provisions was thus explained by the Madras High Court, in (2) Secy. of State v. Gopala, AIR 1930 Mad. 798-

The difference between Ss. 4 and 6 is that whereas the former section refers to land in a particular locality the latter contemplates a particular land and again under S. 4 it must only appear to the Government that the land is needed or is likely to be needed for a public purpose; under S. 6 it must be finally satisfied that it is so needed. It is only when the second stage referred to in S. 6 is reached that the Government is to make a declaration as provided in the section.

8. The duty of being satisfied after overruling the objections laid u/s 5A has also been brought out by the Supreme Court in the case of (3) Babu Barkya Thakur Vs. The State of Bombay and Others, and (4) Somawanti v. State of Punjab, AIR 1963 S.C. 151 (162). In the latter case, the Court observed-

Then there is section 4 which enables the State to publish a preliminary notification whenever it appears to it that land in any locality is needed or is likely to be needed for a public purposes..... After notification under sub-sec. (1) of S. 4 is published a person interested in the land is entitled to object to the acquisition. The objection may be raised on any ground as for instance that the land is not in fact needed at all for any purpose or that it is not suitable for the purpose for which it is sought to be acquired or that the purpose is not a public purpose.....Then follows Section 6 which enables the Government to make a declaration provided that it is satisfied that a particular land is needed for a public purpose..... (See also at p. 171, *ibid*).

9. On behalf of the Respondents my attention has been drawn to the conclusive evidence clause in sub-section (3) of section 6 which attaches to the declaration u/s 6(1), and certain passages in the decision in (4) Somawanti's case in that context. But the conclusiveness under sub-section (3) can attach only to a declaration which is *intra vires* sub-section (1) of section 6. No body can suggest that even though a declaration is not in terms of sub-section (1), still sub-section (3) shall be attracted. The duty of satisfaction as a condition precedent of making the declaration under sub-section (1) has been emphasised by the Supreme Court, several times, before applying the conclusive evidence clause. Thus, at p. 152, *ibid*, it is observed-

The Government has to be satisfied about both the elements contained in the

expression needed for a public purpose, Where it is so satisfied, it is entitled to make a declaration. Once such a declaration is made, sub-sec. (3) invests it with conclusiveness.

10. It is thus clear that it is only where the requirements of sub-section (1) of section 6 are complied With that the conclusive evidence clause is attracted." The need for a strict compliance with the statutory requirements in proceedings for the compulsory deprivation of property under the Land Acquisition Act and similar enactments has been emphasised by the High Courts in cases such as (5) *Roghunath v. Collector*, (1910) 11 C.L.J. 612 (614); (6) *Maneklal Amratlal Vs. Collector of Ahmedabad*, ; *Venkata v. State of A.P.*, AIR 1961 A.P. 98 (101).

11. We must keep the above background in view when advertng to the provisions of the West Bengal Act. Broadly speaking, ss. 4 and 6 of this Act corresponds to ss. 4 and 6 of the Land Acquisition Act, with some improvements. Thus, the word "satisfied" is introduced not only in sub-sections (1) and (2) of section 6, but also in sub-sec. (1) of section 4 of the West Bengal Act. The other improvement is in s. 6, sub-s. (1) & (1a) of which deal with two situations. Sub-s. (1a) corresponds to sub-s. (1) of the Central Act & deals with the case where the State Government makes the declaration on a direct consideration of the report of the officer hearing objections u/s 4A. Sub-sec. (1), on the other hand, deals with a case where a scheme has already been framed with the sanction of the State Government itself. Since the Government has had to consider the inquiry officer's report at that stage, a fresh consideration of that report is not required at the time of making the declaration under sub-sec. (1), of section 6, but, nevertheless, the Government must be satisfied before making the declaration under sub-sec. (1) of section 6 of the Bengal Act that the particular land sought to be acquired "is needed for the purpose of executing the scheme" sanctioned earlier.

12. It is not apparent from the declaration at Annexure B. whether it has been made under sub-sec. (1) or sub-sec. (1a). Assuming that it has been made under sub-section (1), the Government cannot issue the declaration without being satisfied that the petitioners' lands are needed for the executive of the scheme sanctioned. This becomes all the more necessary inasmuch as the declaration has, in the instant case, been made some seven years after the issue of the notification under s. 4. No scheme, however, is mentioned either on the face of the declaration or the counter-affidavit. If we assume that it is sub-sec. (1a) of section 6 under which the impugned declaration has been made, the State.-Government has to consider the report of the officer made u/s 4A. But there is no inkling of any such thing either in the impugned declaration or in the counter-affidavit.

13. The question is whether it is necessary to recite the fact of satisfaction in the declaration itself or it can be proved aliunde. Of course, where there is a recital or it is established otherwise, the reasonableness of the satisfaction is not open to judicial review. But the question before me is whether the State Government

was actually satisfied as to the conditions specified in section 6 before making the declaration. In this context, reference may be made to the provisions of section 3 of the Preventive Detention Act, 1950 which enable the Government or a specified authority to make an order of preventive detention of a particular person on being satisfied that such order is necessary for preventing him from acting in any manner prejudicial to the security of India and the like. There are observations of the Supreme Court in (8) Naresh Chandra Ganguli Vs. The State of West Bengal and Others, to the effect that the fact of such satisfaction must, in order to comply with section 3(1), be recited in the order itself:

Section 3 of the Act requires the authority making an order of detention, to state the fact of its satisfaction that it is necessary to make the order of detention.....

14. If that be so, the impugned declaration in the instant case is patently ultra vires, because the fact of satisfaction of the State Government has not been recited. The plea of the Respondents is that the words "it appears" are equivalent to "is satisfied", or, are in substantial compliance with the requirement of Sec. 6. In support of this plea, sole reliance has been placed upon the following observation in (1) Gouripada Bandopadhyaya and Others Vs. S. Banerjee, Secy. to the Govt. of West Bengal and Another, -

In the first place it is contended that although the section speaks of the State Government, the notification recites "whereas it appears to the Governor.".....The executive authority of the State Government is vested in the Governor, and therefore the use of the word "Governor" in the notification means "the State Government"..... The words "it appears to the Governor", in my opinion, have the same connotation as the words in s. 4 which speaks of the satisfaction of the State Government.

15. It is clear at once that the question before their Lordships was whether the satisfaction of the Governor complied with the statutory requirement of satisfaction of the State Government. The observation as to the connotation of the words "it appears" was made in connection with the whole expression "it appears to the Governor". Their Lordships do not appear to have applied their mind specifically to the question whether the words "it appears" mean the same thing as "is satisfied". The decision in (1) Gouripada Bandopadhyaya and Others Vs. S. Banerjee, Secy. to the Govt. of West Bengal and Another, is, therefore, no authority on the question before me.

16. Even assuming that in the absence of a recital of satisfaction in the declaration itself, the factum of satisfaction may be established by the records or other evidence, it must be held that no such attempt has been made in the instant case and, as already stated, even the counter-affidavit does not say so. The only contention is that "it appears" has the same meaning. Once this plea is rejected, it cannot but be held that the impugned declaration is ultra vires, and that this petition must succeed. In the result, the Rule be made absolute but without any order as to costs. Let an order in the nature of mandamus do issue

restraining the Opposite Parties from proceeding further for the acquisition of the disputed lands in pursuance of the declaration u/s 6 of the West Bengal Land Development & Planning Act, 1948, dated May 19, 1962, which is at Ann. B to the Petition. Opposite Parties shall, however, be at liberty to proceed afresh in accordance with law.