

(1972) 04 CAL CK 0010
In the Calcutta High Court
Case No : C.R. No's. 2565 and 2566 of 1968

Monoranjan Routh and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 21-04-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 31B

Land Acquisition Act, 1894 — Section 23(2)

West Bengal Land Development and Planning Act, 1948 — Section 8(2)

Citation : AIR 1972 Cal 487 : 76 CWN 971 : (1972) 2 ILR (Cal) 475

Hon'ble Judges : Sankar Prasad Mitra, J; Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : Amarendra Nath Gupta, S.B. Bakshi, Sunit Ghosh and Krishna Gupta, for the Appellant; Provat Kumar Sengupta and Sudhir Kumar Kar, for the Respondent

Judgement

Sankar Prasad Mitra, J.—The facts of this case have been set out in our Judgment delivered on April 21, 1969. In view of the contentions raised on behalf of the petitioners so far as Clause (b) of Section 8(1) of the West Bengal Land Development and Planning Act, 1948 (hereinafter referred to as "the Act") is concerned we directed the Special Land Acquisition Judge at Alipore to report to us whether the lands in question were in the same state on the date of publication of notification as they were on December 31, 1946. The report of the First Special Additional Land Acquisition Judge is now available. He has stated that the lands were not on the date of the publication of the notification under Sub-section (1) of Section 4 of the Act (that is on the 19th July, 1962), in the same state as they were on the 31st December, 1946 and that substantial improvement or development was made after that date.

2. This report of the First Additional Special Land Acquisition Judge makes the questions that were raised before us on Section 8 (1) (b) purely academic. If the lands on the date of the publication of notification were not in the same state as they were on the 31st December 1946 "the condition" prescribed in the latter

part of Clause (b) of Section 8 (1) of the Act is not attracted to these lands at all. We are not therefore, giving our answers to questions 1 and 2 Which Mr. Amarendra Nath Gupta raised on behalf of the petitioners when the matter was first heard before us. Mr. Sengupta appearing for the State has submitted that the provision in the latter part of Clause (b) of Section 8 (1) should be read as a legal assumption and not a physical or factual assumption. We are unable to accept this contention on the language used in the latter part of Clause (b) of Section 8 (1). This provision speaks of a "condition" and not of any "assumption" either of fact or of law. We, therefore, overrule this contention of Mr. Sengupta.

3. We have, however, to answer question No. 3 of Mr. Gupta mentioned in our judgment of the 21st April, 1969. The question is: "Whether the provisions of Sub-section (2) of Section 8 of the Act relating to Section 23(2) of the Land Acquisition Act, 1894, has reduced and curtailed the quantum of compensation payable under the present Act and is also violative of Article 14 of the Constitution and if so, whether it is saved by Article 31-B of the Constitution and the Ninth Schedule thereto"? This question has to be answered in favour of Mr. Gupta in view of the three Supreme Court decisions which he placed before us. The Supreme Court seems to be of the opinion that the object of these legislations is "acquisition" of lands and the purposes for which the acquisition is made are immaterial. In other words the Supreme Court has chosen to give a restricted meaning to the "objects sought to be achieved" by a particular legislation. Personally we may be of the view that "objects" of a statute should be more liberally construed but these Supreme Court decisions are binding on us and an elaborate discussion of our views on the subject would be wholly immaterial. We, therefore, proceed to refer to the Supreme Court decisions relevant for determining the effect of Sub-section (2) of Section 8.

4. In the Deputy Commissioner and Collector, Kamrup and Others Vs. Durga Nath Sarma, the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act 1955 was considered. The Supreme Court has said that in the State of Assam some land may be taken under Assam Act No. 6 of 1955 for the purpose of works and other measures in connection with flood control and prevention of erosion on payment of nominal compensation while an adjoining land may be taken for other public purposes under the Land Acquisition Act, 1894 on payment of adequate compensation. This differential treatment of land acquired under the two Acts is not permissible under Article 14. The constitutional guarantee of Article 14 requires that all persons shall be treated alike in like circumstances and conditions. The Article permits reasonable classification and differential treatment based on substantial differences having reasonable relation to the objects sought to be achieved. The classification of land acquired for works and other measures in connection with flood control and prevention of erosion and land required for other public purposes has no reasonable relation to the object sought to be achieved viz., acquisition of the land by the State. In either case, the owner loses his land and in his place, the State becomes the owner. And there is unjust discrimination between owners of land similarly situated by the

mere accident of some land being required for purposes mentioned in Assam Act No. 6 of 1955 and some land being required for other purposes. The Assam Act was therefore held to be violative of Article 14.

5. The next case is directly on the point of solatium which has been withdrawn by Sub-section (2) of Section 8 of the Act. This is the case of *Balammal and Others Vs. State of Madras and Others*, . We set out below what Shah. J., speaking for the Supreme Court, has stated in paragraph 7 of this judgment at page 1428. Paragraph 7 runs thus: ".....In our judgment, counsel for the owners are right in contending that Sub-clause (2) of Clause 6 of the Schedule to Act 37 of 1950 in so far as it deprived the owners of the lands of the statutory addition to the market value of the lands u/s 23(2) of the Land Acquisition Act is violative of the equality clause of the Constitution, and is on that account void. If the State had acquired the lands for improvement of the town under the Land Acquisition Act the acquiring authority was bound to award in addition to the market value 15 per cent, solatium u/s 23(2) of the Land Acquisition Act. But by acquiring the lands under the Land Acquisition Act as modified by the Schedule to the Madras City Improvement Trust Act 37 of 1950 for the Improvement Trust which also is a public purpose, the owners are it is claimed deprived of the right to the statutory addition. An owner of land is ordinarily entitled to receive the solatium in addition to the market value for compulsory acquisition of his land if it is acquired under the Land Acquisition Act, but not if it is acquired under the Madras City Improvement Trust Act. A clear case of discrimination which infringes the guarantee of equal protection of the law arises and the provision which is more prejudicial to the owners of the lands which are compulsorily acquired must, on the decisions of this Court, be deemed invalid",

5-A. These observations of the Supreme Court clearly lay down that the solatium prescribed by the Land Acquisition Act cannot be withdrawn by specifying a particular purpose of acquisition in some other Act. The object in both cases, according to the Supreme Court is acquisition for public purposes. And it is discriminatory to provide that solatium shall be given for one land acquired under the Land Acquisition Act and would not be given for a neighbouring land acquired under a different statute although both the lands are being acquired for public purposes.

6. There is one other point we have to consider. The Act we are considering, as amended by West Bengal Act XXIX of 1951 has been included in the 9th Schedule to the Constitution. The provisions as they stood on the date of inclusion cannot, therefore, be challenged in Courts of law. But the protection of the 9th Schedule is not available to Sub-section (2) of Section 8. The reason is that the original Act as amended in 1951 was introduced into the 9th Schedule on the 27th April, 1955. But Sub-section (2) of Section 8 was enacted by another Act being Act 23 of 1955 on September 21, 1955. The amendments subsequent to introduction into the 9th Schedule are not protected by that Schedule. The Supreme Court in *Ramanlal Gulabchand Shah Vs. The State of Gujarat* and

Others, had to deal with the same problem. Their Lordships came to the conclusion that if amendment subsequent to inclusion in the 9th Schedule were to be given protection, it would amount to amendment of the 9th Schedule itself which no State legislature had power to do. On this view of the matter it is apparent that Sub-section (2) of Section 8 without the protection of the 9th Schedule offends against Article 14 of the Constitution.

Our answer to the third question of Mr. Gupta set out above is that the provisions of Sub-section (2) of Section 8 of the Act relating to Section 23(2) of the Land Acquisition Act, 1894 has reduced and curtailed the quantum of compensation payable under the parent Act and is violative of Article 14 of the Constitution. These provisions are not saved by Article 31-B of the Constitution and the Ninth Schedule thereto.

7. The Rules are, accordingly, disposed of. All interim orders made by this Court are vacated. We direct that the records be sent back to the Trial Court expeditiously for being dealt with according to law. There will be no order as to costs. Let the operation of this order be stayed for four weeks.

Sabyasachi Mukharji, J.

8. I agree.