

(1975) 05 CAL CK 0001

In the Calcutta High Court

Case No : A.O.D. No's. 1021 to 1025 of 1973

Mrinalini Roy and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-05-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 166(3)
Land Acquisition Act, 1894 — Section 3, 4, 5A, 6

Citation : 81 CWN 685

Hon'ble Judges : Sudhamay Basu, J; S.K. Mukherjea, J

Bench : Division Bench

Advocate : N.C. Chakrabarti, Samir Kumar Mukherjee and Nirmal Kumar Manna, for the Appellant; P.K. Sengupta and Suprakash Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Sisir Kumar Mukherjea, J.—This is an appeal from an order passed by Chittatosh Mookerjee J, on September 19, 1973 by which his Lordship discharged a Rule. By the Rule, the petitioners who are the appellants before us challenged a Notification dated the 14th May 1956 u/s 4 and a Declaration dated the 5th January 1961 u/s 6 of the Land Acquisition Act. The petitioners are the owners of a fishery in Dhapa. The said plot along with other adjoining plots were notified for acquisition for the purpose of reclamation of Southern Salt Lake area. The only point for consideration in the Rule, as the learned Judge observed, is whether the acquisition of the petitioners fishery for the said purpose was valid or not.

2. Mr. N. C. Chakravarti, learned advocate appearing on behalf of the appellants, sought to content, relying on a decision of a Division Bench of this Court, presided over by B. C. Mitra J., in Pasupati Roy Vs. State of West Bengal and Others, , that no fishery can be acquired under the Land Acquisition Act having regard to the definition of "land" given in the Act. B. C. Mitra, J., in delivering the judgment of the Court said :

"A fishery does not come within the purview of the Land Acquisition Act 1894 as the definition of land in that Act does not include a fishery as such".

Section 3 of the Land Acquisition Act defines "land" as follows :--

"The expression "land" includes benefits to arise out of land and, things attached to the earth or permanently fastened to anything attached to the earth."

3. It will be seen at once that this is an inclusive definition. It cannot, as indeed it does not exclude, expressly or by necessary intendment land covered with water.

4. We are unable to agree that the definition of "land" in the Act does not include a fishery. It was contended before the Division Bench that fishery should be construed to be a benefit arising out of land and is therefore covered by the definition of land. The learned judges rightly rejected that contention, but the rejection of that contention of itself was not enough to dispose of the controversy. What was sought to be acquired was not fishery rights, but the fishery itself. With utmost respect, it seems to us that the learned Judges overlooked the fact that the definition of "land" in the Land Acquisition Act is an inclusive and not an exhaustive definition.

5. In *Nalinaksha Bose vs. Secretary of State*, 5 C.L.J. 62(n) a Bench of this Court presided over by Rampini J. held that "land" in Land Acquisition Act does not mean merely firm land but also land covered with water. In *Reg. vs. Leeds & Liverpool Canal Co.* 7 Ad & E. 671 it was held that for the purpose of imposition of rates, land includes a canal. We are of opinion that in the contemplation of Land Acquisition Act, a fishery is not the less land for being covered with water.

6. As in our opinion, the point was not correctly decided by the Division Bench, *Pasupati vs. State of West Bengal*, (Supra) we would have referred the case for decision by a larger Bench but we do not-propose to do so for a variety of reasons. Mr. Chakravarty, with his usual fairness, conceded that the point was not correctly decided by the Division Bench. The point was not taken in the petition and does not appear to have been urged in the court below. Moreover, in the case decided by the Division Bench, the fishery was acquired not under the Land Acquisition Act but under West Bengal Fisheries (Requisition and Acquisition) Act 1965. The definition of "land" in the Land Acquisition Act was therefore not directly in issue. The question arose only collaterally, in deciding whether acquisition of a fishery under the Act of 1965 offends against Article 14 of the Constitution. For all these reasons, we do not feel oppressed by the decision of the Division Bench and we do not, therefore, propose to refer the case to a larger Bench.

7. Learned advocate appearing on behalf of the appellants strongly relied on a decision of B. C. Mitra J. in *Sri Sri Kubereshwar Mahadev Thakur & Anr. v. State of West Bengal* (C.R. 6367 (W) of. 1968). In that case a fishery was sought to be acquired under the provisions of the Land Acquisition Act for reclamation of the

Northern Salt Lake Area. The petitioners challenged the notification u/s 4 and declaration under Section-6 on the ground that the real purpose of the acquisition was not what it was purported to be but was something else. The learned Judge found that according to the affidavit filed on behalf of the State Government, the fishery was required for preparing building sites, which were proposed to be leased out to members of the public for building purposes. The said purpose was not the purpose mentioned in the notification u/s 4 and the declaration u/s 6 of the Act, namely reclamation of the Northern Salt Lake Area. The real purpose was something entirely foreign to the purpose set out in the said notification. B. C. Mitra J. observed that preparation of building sites would no doubt be a public purpose but the petitioners were never invited to file their objections u/s 5A of the Act against the said object and purpose. Thus the statements about the purpose of the acquisition in the notification and the declaration were misleading, and owners and occupiers of the fisheries had been deprived of the statutory opportunity to file objections under Sec. 5A. The learned Judge further held that the State Government had never applied its mind to the requirements of the Salt Lake Area for preparation of building sites and the said question was never considered by the State Government. The State Government could therefore never have been satisfied about the public purpose disclosed in the affidavit-in-opposition. Therefore the condition precedent to the declaration u/s 6 of the Act was not satisfied. In those circumstances the learned Judge discharged the Rule.

8. Chittatosh Mookerjee, J. has distinguished the present case from the one decided by B. C. Mitra, J. On the ground that here the petitioners had no misapprehension about the real object and purpose of the proposed acquisition, which is reclamation of the fishery for its development on scientific lines as a part of a development scheme. The learned Judge found that there is no inconsistency between the object mentioned in the notification and the declaration and the real object of, acquisition.

9. In the present case, by the impugned notification, it was notified that the land was likely to be needed for a public purposes, namely for reclamation of Southern Salt Lake Area

10. In Encyclopedia Britannica Land reclamation has been described as the process of improving lands to make them suitable for a more intensive use. In the Oxford English Dictionary the term "reclamation" has been defined to mean the making of land fit for cultivation. It connotes claiming back land for human use or for better human use. Reclamation is not an end in itself. It is done for the purpose of making some use of the land after the land has been reclaimed. In the case decided by B. C. Mitra J., the notification and the declaration disclosed that the purpose of acquisition of the Northern Salt Lake area was reclamation. It did not disclose that after reclamation, the land was going to be used as building sites by members of the public. The notification and the declaration did not, as they need not, disclose in full the ultimate purpose of the

proposed acquisition. Be that as it may, we do not see any inconsistency between reclamation of land and using the land for building purposes. Reclamation, is only a step towards the ultimate use to which the land is to be put. We are therefore unable to agree that in the case decided by B. C. Mitra J. the real purpose of acquisition was entirely foreign to or inconsistent with the purpose set out in the notification u/s 4 and declaration u/s 6.

11. In the present case, it is contended that the real purpose of the acquisition is to rehabilitate the displaced fishermen of the Northern Salt Lake area in the fishery which is sought to be acquired.

12. Prova Ranjan Ganguli, the Special Land Acquisition Officer stated in paragraph 12 of his affidavit that the purpose of acquisition of the Southern Salt Lake Area is. to reclaim and develop the area and to provide for improved pisciculture in a part thereof as a part of the development scheme. In developing the fishery facilities for gainful employment may be given to fishermen likely to be displaced as a result of execution of the North Salt Lake Scheme as well as to the fishermen of" the South Salt Lake Area.

13. The entire records relating to the acquisition of the Northern Salt Lake as well as the Southern Salt Lake area were placed before us. Learned Advocates appearing in the case were invited to inspect the files which they did,

14. In Memo No, 588/1 dated March 17, 1960 submitted by the Fisheries Dept., it is said "the real object of Government is reclamation of the Southern Salt Lake Area by executing the fishery development scheme and other development schemes in this area, and so "reclamation" of the "Southern Salt Lake Area" was cited in the previous notifications as the object of land acquisition. Again, not only the fishermen displaced from the northern Salt Lake will have the means of earning their livelihood by participating in the Co-operatives which may be formed to run this Government fishery on stipulated terms, the present fishermen in this part of the Southern Salt Lake, who will lose their means of livelihood will also be offered the same opportunity in the newly developed fishery."

The Memo fully corroborates the statement made in paragraph 12 of the affidavit of Prova Ranjan Ganguly.

15. Having gone through the records of the case, we are satisfied that in the present case, there is no colourable exercise of power under the Land Acquisition Act. The purpose is "reclamation" of the fishery for further development, one of the objects of such development being rehabilitation of fishermen from the Northern as well from the Southern Salt Lake, which is clearly a public purpose. As in our opinion, there is no inconsistency between reclamation of a fishery and development of a fishery on scientific lines, we are unable to uphold the contention that the petitioners are entitled to prefer fresh objections u/s -5A of the Land Acquisition Act.

16. It was argued that the fishery is already well developed and therefore, there can be no question of its reclamation. Without going into the question whether it is or it is not, it can hardly be argued that there is no scope for further development of the fishery. In these matters, there is no limit to the scope for improvement. In the case of Sri Sri Kubareshwar Mahadev Thakur & Anr. v. State of West Bengal, B. C. Mitra J. recognised that acquisition of a fishery, for its development is acquisition for a public purpose. It was contended. before us that under the Rules of Business framed under Art. 166(3) of the Constitution, the relevant notification and declaration should have been placed before the Minister in Charge of Land & Land Revenue and the acquisition should have been sanctioned by him. This was not done. It appears from the records that the notifications and declarations, as also the scheme in all its details have been, considered not only by the Minister in Charge of Land & Land Revenue but by the cabinet as a Whole. On a perusal of the records we are satisfied the requirements of the Rules of business: have been fully met. In these circumstances, the decisions in Bejay Laxmi Cotton Mills Ltd. Vs. The State of W.B. and Others, and Bejoy Lakshmi Cotton Mills Ltd. Vs. State of West Bengal and Others, on which reliance was placed at the Bar have no application.

In the result, the appeal fails and is dismissed. There will be no order for costs.

Sudhamay Basu, J.

I agree.

The judgment and order in this appeal will govern the connected appeals being Appeals from Original Orders Nos. 1022 to 1025 of 1973, the facts involved in those appeals and the question of law raised by them being similar.