

(1964) 11 CAL CK 0021
In the Calcutta High Court

Muneshwar Ram and Others

APPELLANT

Vs

The Second Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 09-11-1964

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 5A, 6, 7

Citation : 71 CWN 78

Hon'ble Judges : Arun K. Mukherjea, J

Bench : Single Bench

Advocate : R.L. Sinha, for the Appellant; B. Das and B.K. Chakravarty for the respondent Calcutta Improvement Trust, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This is an appeal against an order passed by Banerjee, J. dated 18th September, 1963 by which he discharged the rule.

2. The facts are shortly as follows : There are eleven petitioners in this case. They state that they are dwellers in a bustee at 16, Rajendra Mullick Street, Calcutta. This bustee along with several other bustees, was notified for acquisition for the purpose of Scheme No. LXIX of the Calcutta Improvement Trust. The acquisition purported to be in respect of a "Street Scheme". On the 12th 19th and 25th May, 1955 notices were published u/s 43 of the Calcutta Improvement Act of 1911 (hereinafter referred to as the said Act). On the 20th October, 1955 there was an amendment of the said Act as also the Land Acquisition Act. The relevant amendment is the amendment in the Land Acquisition Act as contained in the Schedule to the said Act, the relevant portion of which is as follows :

1A. after Section 6, the following section shall be deemed to be inserted, namely :-

6A. when acquisition is proposed to be made of land comprised within any improvement scheme framed by the Board and published u/s 49 of the Calcutta

Improvement Act, 1911 -

6. the publication of a notice of the Improvement Scheme under sub-section (2) of Section 43 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as publication of a notification in the Official Gazette and giving public notice of the substance of such notification in the locality u/s 4;

(ii) proceedings u/s 45 and sub-section (1) of Section 47 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as proceedings u/s 5A;

(iii) the publication of a notification u/s 49 of the Calcutta Improvement Act, 1911, shall be substituted for and have the same effect as declaration u/s 6.

3. On the 29th December, 1956 sanction to the scheme was given by the Government of West Bengal u/s 48 of the said Act and published in the Calcutta Gazette on the 24th January, 1957 u/s 49. Thereafter, on the 28th March, 1958 an order was made u/s 7 of the Land Acquisition Act. On the 28th March 1960 an award was made by the Second Land Acquisition, Collector. On the 7/10th June, 1961 notice was issued by the Second Land Acquisition Collector for vacating the premises and on the 27th September, 1961 this Rule was taken out by the petitioners inter alia to show cause why there should not be an appropriate writ issued, directing the cancellation or withdrawal or revocation of the notice dated the 7th June, 1961 or 10th June, 1961 and for other reliefs.

4. It appears from the judgment of the Court below, that the first point taken was that Scheme No. LXIX was mala fide because it was described as a "Street Scheme" although it was in reality a "General Improvement Schedule" within the meaning of Section 36 of the said Act. In support of this argument, the petitioners referred to an earlier Improvement scheme in respect of the bustee at Rajendra Mullick Street and other bustees, and stated that this was really an identical acquisition but in a different name and was mooted in order to deprive the petitioners of certain rights. The learned Judge compared the two schemes and found that they were not identical and has come to the conclusion that the scheme which is relevant for our purposes, namely, No. LXIX was a different scheme altogether and a street improvement scheme. Actually, I. Sinha has not added to the argument and besides stating that he was not to be taken as abandoning the point, did not lay any stress on it. We see no reason to differ from the Court below on this point.

5. This leaves us with only one point that has been pressed before us, namely, that the amendment of the Calcutta Improvement Act and the Land Acquisition Act and in particular clause 1A of the schedule is not retrospective in operation and as it is prospective only, it cannot affect the improvement scheme in the present case and therefore the provision of clause 1A dispensing with the issue of notice u/s 4 of the Land Acquisition Act or the proceedings u/s 5A or declaration u/s 6, is not applicable and inasmuch as such notice and declaration have not been issued or proceedings had, in this case, the procedure that has

been adopted is illegal. To start with, I must say that this precise point, namely, that clause 1A should not be taken to have retrospective effect but a prospective one, has neither been taken in the petition nor in the ground including therein, nor does it appear that it was dealt with by the learned Judge below. What was argued is that notwithstanding this amendment, in the facts and circumstances of this case, notice u/s 4 and declaration u/s 6 were necessary. The learned Judge noticed the contents of Section 6A which has been introduced in the Land Acquisition Act, and held that the provision applied to the facts and circumstances of the case and notice u/s 4 and declaration u/s 6 having been dispensed with, it is no longer necessary to issue such notice or declaration or to have proceeding u/s 5A of the Land Acquisition Act. Strictly speaking the argument that the amendment should not have retrospective operation should not be allowed at this stage. The difference, however, in the two arguments is very small and I think it would be better to deal with the argument advanced. What is said is that under the amendment, a General Improvement scheme has been more liberalized and two new kinds of schemes have been introduced. Therefore, it followed as a proposition of law that the entire amendment should be treated as prospective and therefore the improvement scheme in this case could not be governed by it. In other words, the old law will apply and Sections 4, 5A and 6 would have to be followed. In our opinion, the whole argument is misconceived, because there is no question of any retrospective operation in this case. The notice u/s 43 had been issued prior to the amendment, but the sanction u/s 48 of the Calcutta Improvement Act by Government and further steps thereunder were taken after the amendment came into operation. The identical position has been dealt with by me in Matter No. 165 of 1961, (1) Asit Kumar Ghosh and others v. The Trustees for the Improvement of Calcutta and another, (judgment dated 14th May 1964). I have explained there, the method by which an improvement scheme is brought into existence. First of all, a scheme is mooted, then objections are heard and it is then finalized, Government either sanctions the scheme or a modified scheme, and it is only thereafter that compulsory acquisition proceedings of land are taken in hand. It is only when the Government has sanctioned the improvement scheme u/s 48, that u/s 49 the Board proceeds to "execute" the scheme. In other words, the execution of the scheme starts after sanction of Government. Before that, there is only a proposal. Before the scheme is sanctioned by Government, there cannot possibly be a notification u/s 4 of the Land Acquisition Act. I have pointed out that the underlying reason why the provisions of the Land Acquisition Act were amended was that in the old Act there was a duplication. Under Sections 43 to 47 of the said Act, objections were entertained against an Improvement Scheme and then the scheme was finalized. Where the Improvement Scheme involved land, there was no reason why there should be a second set of proceedings by which objection is again entertained, heard and disposed of under the Land Acquisition Act before the land can be acquired. That is why, by the amending Act, a notice u/s 43(2) has been taken to be equivalent to a notification u/s 4 and proceedings u/s 45 and sub-section (1) of Section 47 have been taken to be equivalent to

proceedings u/s 5A and the publication of notification u/s 49 has been taken to be equivalent to a declaration u/s 6. I. Sen has also pointed out that the amended Section 6A of the Land Acquisition Act, itself lays down the point of time at which it should apply, namely, when there has been a proposal for acquisition of land and the scheme has been published u/s 49 of the Calcutta Improvement Act, 1911. Coming to the facts of this case, we find that when that stage came, it was found that by operation of the amended Act itself, no notice u/s 4 was necessary. This was a result of applying the provisions of the Act prospectively and it is not an instance of retrospectively and it is not an instance of retrospective operation. Actually, the sanction of Government u/s 48 came after the amendment. So, strictly speaking, the scheme was a post-amendment scheme. Similarly, and for the very same reasons, the operation of Sections 5A and 6 was no longer necessary. This also follows from the provisions of Section 6A itself. Since the question of retrospective operation was not taken specifically before the Court below, the learned Judge has not dealt with it specifically, but, in effect has held that the procedure adopted is quite in order and that notice u/s 4 or proceedings u/s 5A or declaration u/s 6 was no longer necessary.

6. In our opinion, the judgment of the Court below is correct and should be upheld. The appeal is therefore dismissed. Each party will pay and bear its own costs of this appeal. The operation of this order will remain stayed for a period of two weeks from today.

Arun Mukherjea, J.

7. I agree.