
(1963) 09 CAL CK 0005
In the Calcutta High Court
Case No : Matter No. 294 of 1961

Muneshwar Ram

APPELLANT

Vs

The Second Land Acquisition Collector

RESPONDENT

Date of Decision : 18-09-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 26, 39, 4, 5A, 6

Citation : 71 CWN 292

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : S. Roy, for the Appellant; M.N. Sen and B.K. Chakravorty, for the Respondent

Judgement

Banerjee, J.—The petitioners are eleven in number. They say that they are dwellers in a Bustee at No. 16, Rajendra Mullick Street, Calcutta, and some of them have their shops in certain premises in the said Bustee. In the affidavit-in-opposition, affirmed by the respondent Second Land Acquisition Collector, it is however, denied that petitioners Nos. 2 and 4, are in any way interested in any of the premises in the said Bustee. The Bustee at No. 16, Rajendra Mullick Street, Calcutta along with several other Bustees was notified for acquisition, for the purposes of Scheme No. LXIX of the Calcutta Improvement Trust, and, on May 12, 1955, the following notice, u/s 43 of the Calcutta Improvement Act, was published in the Calcutta Gazette:

Scheme No. LXIX (widening of Madan Chatterjee Lane).

The Board of Trustees for the Improvement of Calcutta hereby give notice that a Street Scheme viz. Scheme No. LXIX (widening of Madan Chatterjee Lane) has been framed in Wards Nos. 21 and 25 of the Calcutta Municipality in the area bounded as follows * * *.

Objection to the Scheme will be received up to 29th June, 1955.

S. K. Gupta

CHAIRMAN

2. Thereafter, on January 24, 1957, the sanction of the Governor to Scheme No. LXIX, under sections 48 and 49 of the Calcutta Improvement Act, was published in the Calcutta Gazette.

3. It appears that Calcutta Improvement Trust had an earlier improvement scheme in respect of the Bustee at Rajendra Mullick Street and other Bustees and had, on October 4, 1945, published the following notifications, u/s 43 of the Calcutta Improvement Act, in the Calcutta Gazette:

"Bustee Improvement Scheme No. 1.

The Board of Trustees for the Improvement of Calcutta hereby give notice that a Bustee Improvement scheme for widening of Rajendra Mullick Street and Baranashi Lane to 30 feet and construction of several 8 feet passages between blocks of buildings, viz. Scheme No. 1, has been framed in Ward No. 6, of the Calcutta Municipality for the areas bounded as follows:

* * * * *

Objection to the scheme will be received up to 21.12.1945.

J. A. Parks

CHAIRMAN

Under the aforesaid Bustee Improvement Scheme, it appears from the particulars in paragraph 6 of the petition, the following premises were sought to be acquired:

Madan Chatterjee Lane - Premises Nos. 1, 3 and 20.

Rajendra Mullick Street- " " 3, 5 and 7.

Under Scheme No. LXIX, it appears from the particulars in para. 6 of the petition, the following premises are to be acquired:

Upper Chitpore Road-Premises No. 58 (portion)

Dwaraka Nath Tagore Lane- " " 5

Madan Chatterjee Lane- " " 22

Pratap Ghosh Lane- " " 6

Rajendra Mullick Street- " " 16, 18, 18/1, & 20.

Singhee Bagan Lane- " " 1 (C.C).

4. The petitioners allege that Scheme No. LXIX has been mala fide described as a Street Scheme, for the purpose of improving existing means of communication.

They say that the scheme is in reality a general improvement scheme, within the meaning of section 36 of the Calcutta Improvement Act, and this, they say, will appear if the Bustee improvement scheme of 1945 and scheme No. LXIX of 1955, covering the indentical area be read together. They further say that the Scheme has been purposively misdescribed as a Street Scheme, by the Calcutta Improvement Trust, in order to avoid its responsibilities u/s 39C of the Calcutta Improvement Act, under which the Board of Trustees for the Improvement of Calcutta are obliged to frame a housing scheme for the re-housing of displaced bustee dwellers and to re-house them before displacement. They also say that no notification u/s 4 of the Land Acquisition Act was made, no proceeding u/s 5A of the Act was resorted to and no declaration u/s 6 of the Act was made before the acquisition was effected. The premises of the petitioners it is alleged, were illegally purported to be acquired, on payment of a small amount as cost of removal. They say that under the garb of widening Madan Chatterjee Lane, other roads, namely Rajendra Mullick St., Singhibagan Lane, Saha Lane, Maharshi Lane are illegally going to be widened, in order to effect a general improvement of the area. They make the grievance that they have been served with a notice of delivery of possession on the basis of the illegal acquisition and contend that the respondents should be restrained from taking away possession from them. They say that they demanded justice from the respondents but justice has been refused to them.

5. With the grievances aforesaid, they moved this court, under article 226 of the Constitution, praying for a Writ of Mandamus upon the respondent No. 1, directing him to cancel or revoke the notice for delivery of possession or alternatively to re-house the petitioners before displacing them from the premises now occupied by them for a Writ of Certiorari quashing the Scheme and the award and for a Writ of Prohibition upon the respondents restraining them from giving effect to the Scheme and obtained this Rule.

6. It is necessary for me to determine first of all whether the Bustee improvement scheme of 1945 and Scheme LXIX of 1955 are identical Scheme. In the affidavit-in-opposition affirmed by Deputy Chief Valuer of the Board of Trustees for the Improvement of Calcutta, it is stated as follows:

(para. 8) With reference to paragraph 6 of the said petition I deny that the said Bustee Improvement Scheme No. 1 of 1945 and the present Street Scheme No. LXIX are of the same area and cover the said premises as alleged therein. From the particulars given in the said paragraph 6 of the petition it will be found that whereas under the said Bustee Improvement Scheme certain premises of Rajendra Mullick Street were acquired under the present Scheme No. LXIX, certain other premises of the said street are proposed to be acquired.

(para. 11) I deny that the said Scheme and the Bustee Improvement Scheme No. 1 covered the same area as alleged or at all or that it will be shown from the Plans that it is a General Improvement Scheme. The said Bustee Improvement Scheme No. 1, has been carried out and completed some time ago and the same

will appear from the plans of the said Scheme.

(para. 14) the widening of Madan Chatterjee Lane is a nomenclature given to the Scheme to show that that is the principal object of the said Scheme and for purposes of convenience and identification. The said Scheme in fact provides mainly for widening of Madan Chatterjee Lane and only a small portion of Singhibagan Lane and Saha Lane are being widened. I deny that the said Scheme includes any laying out of any park or other amenities of Bustee Improvements as alleged therein. I deny that the said Scheme No. LXIX is a General Improvement Scheme within the meaning of section 26 of the said Act or that it is intended for the purposes of clearance and better development or re-development of the area or for any other purpose as mentioned in the said paragraph. The said Scheme No. LXIX is a Street Scheme under sec. 39 of the said Act, and all allegations in the said paragraph that it is a General Improvement Scheme are denied.

(para 16) It was at one time thought that Madan Chatterjee Lane would be widened up to the crossing of Madan Chatterjee Lane and Rajendra Mullick Street. But after the said Bustee Improvement Scheme No. 1 was executed and a good portion of Madan Chatterjee Lane from the above crossing was widened, it was decided that Madan Chatterjee Lane should be widened up to the Upper Chitpur Road to enable the public to enter the said Lane from Chittaranjan Avenue to the well-known house of Tagore at Jorasanko, which will soon be made "Rabindra Bharati". This was one of the main objects for which the said Scheme No. LXIX was so framed by the Board.

7. In view of the denial contained in the affidavit-in-opposition and taking into consideration the particulars of the two schemes given by the petitioners themselves, in the paragraph 6 of the petition, hereinbefore set out, I hold that the Bustee Improvement Scheme of 1945 and Scheme No. LXIX are different Schemes. The extent of Scheme LXIX appears in detail from the sanction given u/s 48 of the Calcutta Improvement Act (annexed to the petition); that document makes it clear that widening was not limited to Madan Chatterjee Lane alone. The Scheme was labelled as "widening of Madan Chatterjee Lane" merely as a convenient form of description and from that label only it cannot be assumed that the widening was intended to be limited to Madan Chatterjee Lane alone. I, herefore, hold that Scheme LXIX was not misdescribed as a Street Scheme but was in reality a Street Scheme for the widening of Madan Chatterjee Lane and other streets.

8. Now, if the Bustee Improvement Scheme of 1945 and Scheme LXIX of 1955 are not identical, and I hold that they are not, then Scheme LXIX is only a Street Scheme, as defined in section 39 of the Calcutta Improvement Act. Section 39 is quoted below:

Whenever the Board are of opinion that, for the purpose of-

(a) providing building sites, or

(b) remedying defective ventilation, or

(c) creating new, or improving existing, means of communication and facilities for traffic, or

(d) affording better facilities for conservancy, it is expedient to lay out new streets or to alter existing streets (including bridges, causeways and culverts), the Board may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as they may think fit.

9. A general improvement scheme is a different scheme and this will appear from the definition of general improvement scheme in section 36 of the Calcutta Improvement Act, which is set out below:

Whenever it appears to the Board, whether upon official representation made u/s 37 or without such representation,-

(a) that any buildings in any area which are used as dwelling places are unfit for human habitation, or

(b) that danger to the health of the inhabitants of any area or of a neighbouring area is caused by -

(i) the narrowness, closeness and bad arrangement and conditions of streets or buildings or groups of buildings in such area, or

(ii) the want of light, air, ventilation or proper conveniences in such area, or

(iii) any other sanitary defects in such area, or

(c) that any area is undeveloped or has been developed without a satisfactory plan or design and that it is necessary to develop or re-develop it on a better plan after incorporating all or some of the improvements mentioned in section 35C.

10. The Board may pass a resolution to the effect that a general improvement scheme ought to be framed in respect of such area and may then proceed to frame such a scheme.

11. The liability to make provision of re-housing arises only in cases of general improvement scheme and housing accommodation scheme and this appears from the language of section 39C of the Calcutta Improvement Act, which I set out below:

(1) When a general improvement scheme mentioned in section 36 or a housing accommodation scheme mentioned in section 39A or a combination of both, is likely to involve displacement of persons dwelling in a bustee, provisions for rehousing such persons shall be made either in the same scheme or by another scheme and the scheme or schemes, as the case may be together with a statement of the rent or rents proposed to be charged for such rehousing, shall be submitted to the State Government for its approval before any steps are

taken u/s 43.

(2) In considering the scheme or schemes submitted under sub-section (1), the State Government shall have regard to the rent or rents indicated in the said scheme or schemes for accommodation to be provided for the displaced bustee dwellers, and may, if necessary, give financial aid to the Board in order that the rent may be such as, in the opinion of the State Government, is reasonable, and also lay down the conditions for giving such aid before the scheme or schemes is or are sanctioned u/s 48.

(3) The Board shall be entitled to proceed to execute u/s 49 any scheme referred to in sub-section (1) provided that no bustee dwellers are displaced until arrangements for rehousing them have previously been made.

12. Since there is no liability to make provision for rehousing of displaced bustee dwellers, when framing or executing a street scheme, I do not make much of the grievance that the petitioners were not re-housed before acquisition of their premises for a street scheme.

13. I now turn to the other branch of the argument advanced on behalf of the petitioner, namely, the procedure prescribed in sections 4, 5A and 6 of the Land Acquisition Act was not followed in that matter of the acquisition and that made the acquisition bad. This argument, is misconceived. By West Bengal Act XXXII of 1955, the Schedule to the Calcutta Improvement Act was amended and a new section, namely section 6A was introduced in the Land Acquisition Act, which reads as follows:

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-

(i) the publication of a notice of the improvement scheme under subsection (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 a declaration u/s 6.

14. The amendment came into force from October 20, 1955. The notification u/s 43 of the Calcutta Improvement Act, in the instant case, was published on May 12, 1955 and that notification by reason of the amendment came to take the place of notification u/s 4 of Land Acquisition Act. It is not the case of the petitioners that the procedure prescribed in section 6A of the amended Land Acquisition Act was not followed in this case. What they say is that the procedure

as in sections 4, 5A and 6 of the Land Acquisition Act was not followed. After the amendment that procedure became inappropriate and therefore the acquisition was made under the new procedure prescribed under the amended Act.

15. In the view I take I find no substance in this Rule. The Rule is accordingly discharged.

16. No order as to costs. Interim order, if any, will stand vacated.