

(1951) 11 CAL CK 0019
In the Calcutta High Court
Case No : Civil Rule No. 1285 of 1951

Nurul Haqu Mali and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 28-11-1951

Acts Referred:

Constitution of India, 1950 — Article 19(1)
West Bengal Land Development and Planning Act, 1948 — Section 1, 6
West Bengal Land Development and Planning Rules, 1948 — Rule 5(2), 8

Citation : AIR 1952 Cal 874 : 56 CWN 183

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Asok Chandra Sen, for the Appellant; Jagmeswar Majumdar, Asst. Govt. Pleader and Smriti Kumar Rai Choudhury, for the Respondent

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for an appropriate writ for cancellation of a Notification dated 13-3-1951 made u/s 6, West Bengal Land Development and Planning Act and another Notification under Rule 8 of the West Bengal Land Development and Planning Rupees. The petitioners are 36 in number and they are cultivators. By a notification dated 17-11-1949, published in the Calcutta Gazette of 24-11-1949 u/s 4, West Bengal Act 21 of 1948, it was declared that certain cadastral survey plots and certain municipal holdings were likely to be needed for a public purpose, viz., settlement of immigrants in the province of West Bengal. By the said Notification one Altra Sainabaya Pally Sanghathan O Grihanirman Samity was authorised to enter upon and survey the lands and do all other acts required or permitted by that Section.

It is alleged in the petition that the petitioners on coming to know of the substance of the said Notification, engaged the services of a lawyer and through him made representations in December 1949, against the plots being acquired by the Government. It is further alleged in the petition that after that the petitioners were kept totally in the dark as to further development in the matter throughout the whole of 1950 and they are not aware of the preparation of any

development scheme, nor were they given any opportunity to make objections or representations against any scheme as they are entitled to do under Rule 5, sub-rule 2 of the West Bengal Land Development and Planning Rules 1948. It is further alleged that they are not aware whether any local enquiry was held as contemplated by IB. 5 (2).

2. Thereafter another notice was given under Rule 8 of the West Bengal Land Development and Planning Rules stating that possession would be taken by the Government on 25-4-1951, of certain lands covered by the Notification No. 2980 L. Dev. dated 13-3-1951. It is stated that thereafter two of the petitioners, namely petitioners Nos. 1 and 6 made representations to the Hon"ble Minister-in-charge but nothing has been done either by the Hon"ble Minister or any other executive officer in relation to these representations. It is further stated in the petition that the procedure for acquisition as contemplated by West Bengal Act 21 of 1948 and the Rules made thereunder has not been complied with and, therefore, the entire proceedings, including the declaration made u/s 6 and the notice given under Rule 8 are bad and, therefore, the said Notification and the Notice must be cancelled by this court.

3. The Special Land Acquisition Collector, one Mr. S. N. Das Gupta, has affirmed the counter-affidavit in this case. In para. 5 of the counter-affidavit, it is stated that on receiving the representation of the parties referred to in para. 3 of the petition, an enquiry was made by the Land Acquisition Officer, Sri P. Gupta, on 20-1-1950, and another enquiry was made on a subsequent date by the deponent himself and it was recommended, that only 36.21 acres of waste land should be acquired and the rest of the lands covering an area of 56.195 acres should be released from such acquisition and so cancellation Notification No. 2982 L. Dev. dated 13-3-1951, was made to that effect.

In para. 6 of the said affidavit with reference to the statements made in paras. 4, 5 and 6 of the petition, the deponent states that the petitions of objection were duly enquired into and certain lands were exempted from acquisition as stated in para 5 and there is a general denial of the contention of the petitioners as stated in paras. 4, 5 and 6 of the petition. It is further denied in para. 6 that the petitioners were kept in the dark or were not aware of any development of the project. At the hearing, Mr. Majumdar, appearing for the opposite parties, has placed before the court the development plan and has stated that the scheme as required by the Act and the Rules has been prepared and an enquiry was held and the petitioners made their representations at such enquiry.

4. There is no affidavit in reply filed on behalf of the petitioners in this case in answer to the statements made in the counter-affidavit. It may be pointed out that it is not at all clear from the counter-affidavit that as a matter of fact a development scheme has been prepared as required by the Act and the Rules or that the petitioners were given any opportunity to make representations against the scheme and the report of Mr. P. Gupta. The extracts of this report have been placed before the court and the relevant paragraph is as follows:

"Akra Samabaya Sanghathan Grihanirman Samity submitted a scheme for acquisition under the Development Act. This has-been duly notified u/s 4 of the Act. Notice was duly served calling for objections, if any from the owners, occupiers and other interested persons. Local enquiry was held on 20th January 1950, and objections were disposed of."

5. The wording of the report itself is not very happy but it is clear that a development scheme has been prepared and some enquiry was held and representations of the petitioners were considered. It is submitted by the learned Advocate for the petitioner that the enquiry that was held was with regard to their representations against the acquisition. No such enquiry, however, is contemplated by the Act or the Rules. Only one enquiry in relation to the scheme is contemplated and such enquiry was held as appears from the report on 20th January 1950 and the representations of the petitioners were considered in such enquiry.

6. It has been contended by Mr. Asoke Sen, the learned Advocate, appearing for the petitioners that Section 5 (2) of the Land Development and Planning Rules required that individual notices should be served upon the persons interested in the acquisition giving them an opportunity of making their representations against the scheme, and these representations should be considered in a local enquiry to be held by the Collector or any other officer authorised by the Collector in this behalf and as no such individual notice was given in this case, the proceedings taken under the Act and the declaration made u/s 6 should be declared as invalid. He further contends that even if it be held that the rule does not require individual notices to be given, it must be held that the absence of any such provision for such individual notices makes the Act and the Rules framed thereunder unreasonable as infringing the fundamental rights of the petitioners under Article 19(1)(f) and as such they are void under Article 13 of the Constitution.

7. It may be pointed out that the scheme of the West Bengal Land Development and Planning Act is very much the same as the scheme of the Land Acquisition Act of 1894. The language of some of the provisions of the Land Acquisition Act is reproduced verbatim in the first few sections of the West Bengal Land Development and Planning Act.

8. It is clear from a perusal of Rule 5, sub-rule 2 that the sub-rule 4 does not expressly require any individual notices be served upon the persons interested. But what, the rule contemplates is some notice, which may be a general or public notice, should be given, but such notice must be a sufficient notice which would enable the persons interested to make their representations against the scheme. If the opportunity, given is a sufficient and reasonable opportunity, then, the spirit of the Rule must be deemed to have been complied with. Mr. Majumdar, the learned Advocate, appearing for the opposite parties, has drawn my attention to Sections 4, 5 (a) and 9, Land Acquisition Act, and points out that it is clear from those provisions that the notice intended to be

given under those provisions to persons in the acquisition is in the nature of a public or general notice. Where individual notice is enjoined, it is expressly provided in the section itself, vide, Section 9(3), Land Acquisition Act, which runs as follows :

"The Collector shall also serve notices to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate."

9. He has also drawn my attention to Rule 8 of the Land Development and Planning Rules which speaks of public notice being given upon a declaration being made u/s 6. It appears to me that there is very good reason why in Rule 5 (2) service of individual notices on persons interested, is not specifically enjoined. It is practically impossible in cases of acquisition of large tracts of lands to trace out all the persons who are interested in the land and the extent of their different interests, so if through inadvertence any one of the persons interested is not served with the notice, then he can come forward and challenge the entire proceedings and have them vitiated. This will make the working out of the provisions and the intention of the act practically impossible. So what is enjoined by the Rule is that sufficient opportunity should be given to the persons interested by a general or public notice so that they may have an opportunity of saying what they have got to say in the matter before the authorities concerned.

10. Mr. Majumdar has also cited certain cases in connection with his submission on this question of individual notice. He refers me to *Ganga Ram v. Secy, of State* 30 Cal. 576 for the purpose of relying on the proposition that even when an individual notice as required to be given u/s 9(3), Land Acquisition Act, is not given to any member individually through mere inadvertence, the proceedings will not be vitiated unless the notice is actually suppressed or not given mala fide or wilfully. He further submits that if it appears that the person interested had somehow knowledge of the proceedings but yet does not take any step in relation to the matter, he is guilty of laches and cannot complain of the want of notice or the invalidity of the proceeding. He relies on *Sukdev Saran Dev v. Nripendra Narayan* 76 Cal. L. J. 430 as also on the earlier case reported in 30 Cal. (11 R.)

11. These propositions cannot be disputed. I have pointed out already that an imperative provision enjoining individual notice to be served in cases of such acquisition would be an unreasonable provision having regard to the scheme and object of the West Bengal Land Development and Planning Act, 1948. It may be pointed out that the Land Development Act, being a legislation which deals with compulsory acquisition of property the application of Article 19(1)(f) is excluded and, therefore, the question of reasonableness of the provisions cannot be gone into in considering the question of the validity of the Act. Assuming it was open to me to go into that question, I would have held that Rule 5 (2) is not an

unreasonable provision for the reasons which I have stated above.

12. In the case of The West Bengal Settlement Kanungoe Cooperative Credit Society Ltd. Vs. Mrs. Bella Banerjee and Others, the learned Chief Justice dealing with Rule 5 (2) made the following observations :

"The rule itself was also attacked on the ground that it did not provide for notices to be sent to the owners. But Rule 5 (2) does provide that the Collector must give all persons an opportunity of making their representations and that he can only do by giving due notice of an enquiry. If due notice is given then every one interested including the owners would have an opportunity of making their representations. They are given a right to make representations against the scheme and it was suggested that that does not mean that they could contend that no scheme was necessary, and therefore, the acquisition of the land was unnecessary. It appears to me, however, that if owners are given the right to make a representation against a scheme, they could in the first place say that no scheme was necessary at all and, therefore, no land should be acquired or in the alternative if a scheme was necessary the scheme proposed went beyond what was necessary or that more land was acquired, than the scheme required. In short, the right to make a representation would involve a right to make a representation against not only the details of the scheme, but also against acquisition of the land at all."

13. It is clear from the observations of the Chief Justice that he interpreted Rule 5 to mean that due notice of the enquiry would be enough. Whether it was a general or a public notice or notice given in any other manner does not matter. But the owners must have sufficient opportunity to make their representations. The Rule does not tie, down the hands of the authorities concerned to serving any particular form of notice provided it is due and sufficient notice. It may be that if the owners are few in number and they are known to the authorities concerned, the authorities may choose to serve individual notices to such persons.

14. As I have pointed out the counter-affidavit filed on behalf of the opposite parties is a very unsatisfactory one. The facts are not stated explicitly and they tend to create a good deal of confusion and do not present the real state of affairs in their proper perspective. But Mr. Majumdar has placed before me the records of the proceedings so far as they are relevant in this case and from the materials placed before the Court, I am satisfied that a development scheme has been prepared in this case and the local enquiry was held and the petitioners did make some representation to the authorities concerned and after considering these representations, a good portion of the land was exempted from the scheme and the acquisition.

15. In the circumstances, the declaration made u/s 6 and the notice served under Rule 8 must be held to have been validly made inasmuch as there has been substantial compliance with the Act and the Rules framed thereunder.

16. In the result, this petition must fail. The Rule is discharged but I make no order as to costs.