
(1952) 12 CAL CK 0021
In the Calcutta High Court
Case No : Civil Rule No. 745 of 1952

Panchkori Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-12-1952

Acts Referred:

West Bengal Land Development and Planning Act, 1948 — Section 6
West Bengal Land Development and Planning Rules, 1948 — Rule 5(2)

Citation : AIR 1953 Cal 568 : 57 CWN 271

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Binayak Nath Bannerjee, for the Appellant; Hemendra Kumar Das and D. Basu, for the Respondent

Judgement

Bose, J.—This is an application under Article 225 of the Constitution for an appropriate writ for cancellation of a declaration made u/s 6, West Bengal Land Development and Planning Act, and for direction upon the respondents to forbear from proceeding further with the acquisition or from taking possession on the strength of the said declaration.

2. The petitioner is the owner of about 2.42 acres of land in Mouza Kodalia in Police Station. Khardah in the District of 24 Parganaas. By a notification dated 8-9-1951 published in the Calcutta Gazette on 11-10-1951, and purported to be issued u/s 4, West Bengal Land Development Act, 1948, it was notified that the petitioner's said lands along with other lands were likely to be needed for the settlement of immigrants. The total area which was notified as likely to be so needed was 284.32 acres. On coming to know of the said notification, the petitioner approached the respondent No. 3 who is the Collector of 24 Parganas, for relief. But it is alleged that no relief was granted to the petitioner. On or about 6-3-1952 a declaration dated 27-2-1952 made u/s 6, West Bengal Land Development and Planning: Act, was published in the Calcutta Gazette, and. It was thereby notified that 174.22 acres of land were needed for a public purpose,

namely the settlement of immigrants who had migrated to West Bengal on account of circumstances beyond their control. The petitioner has challenged the validity of the declaration u/s 6 of the Act on the ground that no opportunity was given to the petitioner to make representations against the development scheme as contemplated by Rule 5(2), West Bengal Land Development & Planning Rules, 1948.

3. In the counter-affidavit which has been, affirmed by Mr. S.N. Das Gupta, the Special Land Acquisition Officer, it is stated that a scheme-known as "Kodialia-Masunda-Agarpur Scheme" in bare outline was proposed and sponsored by the Refugee Rehabilitation Department of the Government. This skeleton scheme comprising an area of about 284,32 acres of land was placed before the Land Planning Committee. A copy of this proposal for development scheme has been placed before me at the hearing, and the forwarding letter accompanying the scheme which appears in print in the body of the prescribed form (Rural "D" Type Scheme) runs as follows:

To The Secretary, Land Planning Committee, Government of West Bengal. Sir,

I have the honour to submit herewith "a proposal for undertaking a development scheme" in accordance with the West Bengal Land Development and Planning Rules 1948 in respect of the area shown in the annexed schedule and plan. The particulars of the "proposed scheme" are furnished below. Government may be requested to issue notification u/s 4 of the Land Development and Planning Act and "direct the prescribed authority to get a development scheme prepared under Rule 5" of the West Bengal Land Development and Planning Rules 1948 or make a declaration u/s 6 read with Section 7, Land Development and Planning Act 1948.

4. It is clear from the aforesaid letter that what was submitted was a proposal for undertaking a development scheme and it was not the development scheme as is contemplated by West Bengal Act, 21 of 1948 and the rules made thereunder. The copy of the letter written by the Deputy Refugee Rehabilitation Commissioner to the Secretary, Land Planning Committee, dated 27-8-1951 also indicates that what was submitted to the Land Planning Committee at the time, was a proposal for a scheme for favour of sanctioning a notification u/s 4 of the Act.

5. It appears further from the said counter-affidavit that tentative scheme was considered by the Land Planning Committee on 31-8-1951, and the Committee decided that a notification u/s 4 of the Act should issue for giving effect to the said proposal for acquisition and the Refugee Rehabilitation Department should submit a detailed scheme and a layout plan. The Government approved the said decision of the Land Planning Committee and a notification u/s 4 of the Act was accordingly drafted and made ready on 8-9-1951. On 21-9-1951 a letter was written by the Assistant Secretary to the Government of West Bengal to the Collector, 24 Parganas the relevant portion whereof was as follows

".....He is requested to cause a local enquiry and submit a report on objections filed if any, under Rule 5(2) of Land Development and Planning Rules ("On receipt of the detailed scheme from the Refugee Rehabilitation Committee who is being requested to prepare the same and submit a copy thereof to him)."

6. On 11-10-1951 the notification u/s 4 was published in the Calcutta Gazette. On 31-10-1951 an order was passed for causing the substance of the notification u/s 4 to be published in conspicuous places in the locality. On 6-11-1951 the substance of the notification u/s 4 was notified and at the bottom of such Notice a statement to the effect "objection invited by 21-11-51" was inserted. The petitioner filed two objections for release of his plots from acquisition and it appears that certain plots were recommended for exclusion as a result thereof. In the counter-affidavit it is further stated that the deponent held the local enquiry as contemplated by Rule 5(2) and submitted his report to the Collector. A copy of the report has been placed before the Court by the respondents at the hearing and it appears from a note at the bottom of such report that the Collector approved the report on or about the 10-2-1952. This report recommended exclusion of 110.10 acres out of the total area of 284.32 which was the subject-matter of the notification u/s 4. This report was sent to the Refugee Rehabilitation Department & thereafter the Refugee Rehabilitation Department forwarded the Collector's report under Rule 5(2), along with detailed development scheme prepared by the said department and the layout plan to the Government for consideration. These were ultimately placed before the Land Planning Committee which approved the Collector's report and the detailed scheme with the layout plan at a meeting held on 22-2-1952, and the Committee recommended to the Government publication of the declaration u/s 6 of the Act.

7. It is thus clear from the facts stated above, that the petitioner did not have any opportunity to make representations against the development scheme as contemplated by Rule 5 (2). The statement in paragraph 11 of the counter affidavit that detailed scheme was shown to the petitioner and, others, is obviously not correct and is inconsistent with the case made in paragraph 8 of the counter-affidavit. I am inclined to accept the case of the-petitioner that only a copy of a plan was shown to the petitioner. But assuming that any. opportunity was given to make objections, such opportunity was given only in respect of the tentative scheme if at all and not the Development scheme as contemplated by the Act and the Rules.

8. The scheme of Sections 5 and Rule 5 with regard to preparation of the Development scheme, appears to be that the Provincial Government, in the first instance, directs the prescribed authority or a company or local authority to prepare a. Development scheme, in accordance with the Rules, and in respect of a notified area. When the prescribed authority is so directed, it has to-prepare and submit the scheme in accordance with the provisions of Sub-rules 2 and 3 of Rule 5. This is enjoined by Sub-rule 1 (a) of Rule 5. When a company or local authority is so directed, then such company or local authority has to prepare-the

scheme in. accordance with sub-rules 2 and 3 of Rule 5 and submit it to the Government through Land Planning Committee. Sub-Rule 3-" of Rule 5 specifies the matters which should find place in a Development scheme. The details which a scheme should contain are enumerated" in Clause (a) to (e) of Sub-rule 3 of Rule 5. Section 5(1) of the Act and Clause (d) and (e) of sub-rule 3 of Rule 5 very clearly indicate that Development scheme has to be prepared after a notified area has come into existence and in relation to such notified area. Sub-Rule 2 of Rule 5 requires that before actually submitting a Development scheme prepared in exercise of the power given in Sub-rule 1, of Rule 5 the Land Planning Committee will cause a local enquiry to be held in respect of the" scheme by the Collector of the District or any duly authorised officer of the Collector, and persons interested, should be given an opportunity of making representations against the scheme. The purpose of this inquiry seems to be to invite the views of persons who will be affected by the scheme and to consider their objections pointing out the defects or infirmities in the scheme. It may also be that as a result of the enquiry some lands will have to be excluded from the scheme or some lands which were not within the scheme have to be brought within the purview of the scheme. It is after such local enquiry is held and the scheme-assumes a final shape that the Development scheme is submitted to the Provincial Government along with the scheme as originally proposed, the report of the local enquiry together with the representations and objections against the scheme and the-recommendations of the Land Planning Committee- and after these documents are placed before the Government the Government sanctions the Development scheme with or without any modification. As has been pointed out by Harries C. J-in -- "West Bengal Settlement Kanungoe Cooperative Credit Society Ltd. v. Mrs. Bella", Rule 5(2) has given avery valuable right to make representation against not only the details of the scheme but also against acquisition of the land at all. The learned Chief Justice observed: "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 The West Bengal Settlement Kanungoe Cooperative Credit Society Ltd. Vs. Mrs. Bella Banerjee and Others, (A)" 1st column." It appears from the documents and materials that have been placed before this Court that in the present case the Development scheme as contemplated by the Act and the Rules, was not prepared till about 19-2-1952. The objections that were invited by the Notice containing the substance of the notification u/s 4 of the Act, was not a notice giving opportunity to persons interested, to make representations against the Development scheme. Such notice by its terms did not refer to any scheme.

9. As in my view the requirements of Rule 5(2) have not been complied with in this case, the declaration No. 3280 L. Dev. dated 27-2-1952 and published in the Calcutta Gazette on 6-3-1952 must be held to be an invalid declaration.

10. In the result this petition succeeds and the Rule is made absolute to the extent that the declaration No. 3280 issued u/s 6 of the Act is cancelled and the opposite parties are directed to forbear from giving effect to such declaration. The opposite parties will however be at liberty to comply with the requirements of Rule 5(2) of the Land Development and Planning Rules and issue a fresh declaration u/s 6 of Act 21 of 1948.

11. The petitioner is entitled to the costs of the present proceedings, hearing fee being assessed at three gold mohurs.