
(1973) 05 CAL CK 0033

In the Calcutta High Court

Case No : Appeal from Original Order 510 of 1963

Pannalal Roy and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-05-1973

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 6
West Bengal Land Development and Planning Act, 1948 — Section 2(e), 4, 4(1), 4A, 4A(1)

Citation : 77 CWN 830

Hon'ble Judges : B.C. Mitra, J;A.K. Janah, J

Bench : Division Bench

Advocate : Smriti Kumar Roy Chaudhuri and Anil Chandra Sen, for the Appellant;B.K. Roy Chaudhury and P.N. Palit, for the Respondent

Final Decision : Allowed

Judgement

B.C. Mitra, J.—This appeal ought to be allowed. It is directed against a judgment and order dated April 30, 1963. The appellants are the owners of certain plots of land mentioned in paragraph 1 of the petition. On December 23, 1958, a Notification u/s 4 of the West Bengal Land Development and Planning Act, 1948 (hereinafter referred to as "the Act"), was issued relating to 15.33 acres of land in Mouza Hariharpur P.S. Baraset, District 24-Parganas. By another notification dated October 27, 1959, the State Government cancelled the previous notification so as to exclude 3.14 acres of land from the acquisition proceeding. Thereafter, on October 27, 1959, a declaration was published u/s 6 of the Act with regard to 12.19 acres of land in the aforesaid mouza. It was stated in the declaration that the land was acquired for settlement of immigrants. This declaration was followed by another notification dated March 25, 1970, whereby the State Government cancelled the declaration u/s 6 of the Act published earlier on October 27, 1959. An affidavit has been filed on behalf of the State Government affirmed on May 4, 1973, in paragraph 6 of which it is stated that in view of the cancellation of the declaration u/s 6 of the Act making the declaration

under that section void, the Collector has taken up the case afresh from the stage of the notification u/s 4 already published by notification dated December 23, 1958, read with notification dated October 27, 1959. Aggrieved by the issue of the notification and the declaration the appellants obtained a Rule nisi which was discharged by the judgment under appeal.

2. Two points were urged by Mr. S.K. Roy Chaudhury on behalf of the appellants. Firstly, he argued that notified area has been defined by section 2 (e) of the Act to mean an area declared under sub-section (1) of section 4 to be a notified area. He urged that the original notification u/s 4 of the Act dated December 23, 1958 was modified by subsequent notification dated October 27, 1959 so that it could not be said that there was a particular area which was a notified area under that Act. It was argued also that u/s 4(1) of the Act, the Collector was required to cause a public notice of the subsistence of such notification to be given and therefore, the original notification having been modified by the subsequent notification there was no notification in existence of which the Collector could give a public notice u/s 4(1) of the Act. It was further argued on this point that u/s 4A(1) of the Act any person interested in any land within a notified area may within 30 days from the date of issue of notification object to the acquisition of the land in which he is interested. It was submitted that as the original notification u/s 4 of the Act dated December 23, 1958 was modified by the subsequent notification of October 27, 1959 it would be impossible for a party aggrieved by the notice u/s 4 to file his objection within 30 days as required by section 4A (1) of the Act. It seems to us that there is a good deal of force in this contention of the learned Advocate for the appellants. It is to be noticed that a declaration u/s 6(1) of the Act requires, that where a development scheme is sanctioned u/s 5(2) of the Act and the State Government is satisfied that any land as notified in the notified area is needed for the purpose of executing such a scheme, a declaration to that effect will be made. If the notified area itself is from time to time allowed to be changed by the State Government as claimed by the learned Advocate for the respondents, a declaration u/s 6(1) cannot be made because the notified area contemplated by section 6(1) of the Act is not the same as the one with regard to which such declaration can be made after amendment of the notification u/s 4 of the Act. It cannot be overlooked that a declaration u/s 6(1) of the Act can be made only with regard to a notified area which has been defined by s. 2(c) of the Act.

3. The second point urged by the learned Advocate for the appellants was that a declaration u/s 6 of the Act was published on October 27, 1959, with regard to 12.19 acres of land. This declaration was admittedly cancelled by the notification dated March 25, 1970. It was argued that once a declaration has been published u/s 6 of the Act the notification u/s 4 of the Act issued previously exhausted itself and no fresh proceeding could be taken under the notification u/s 4 of the Act. In other words, it was contended that cancellation of the declaration u/s 6 of the Act could not in law revive the notification u/s 4 of the Act. In support of this contention reliance was placed by Mr. S.K. Roy Chaudhury on the decision of the

Supreme Court (1) State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, . That was a case in which acquisition under the Land Acquisition Act, 1894 was under challenge. It is to be noticed however, that the provisions in the Act with which we are concerned in this appeal are *pari materia* with the Land Acquisition Act. In that case it was held that once a declaration u/s 6 of the Land Acquisition Act 1894 was published that a particular land was needed such declaration completed the process of acquisition and the notification under s. 4(1) of the Land Acquisition Act could not be further used thereafter. It seems to us that this contention of the learned Advocate for the appellants must also be upheld. Cancellation of the declaration u/s 6 of the Act, in our view, does not entitle the State Government to proceed u/s 4A(1) of the Act. We are of the opinion that the notification under s. 4 of the Act exhausted itself upon the declaration being published u/s 6 of the Act. Although this declaration was later on cancelled, it cannot have the effect of reviving the earlier notification u/s 4 of the Act.

4. The Learned Counsel for the respondents Mr. B.K. Roy Chaudhury on the other hand, contended that the original notification u/s 4 of the Act, though modified, later on October 27, 1959, remained binding and effective on the parties and the State was entitled to proceed to hear objections under S. 4A of the Act and thereafter publish a declaration u/s 6 of the Act. He argued that in consequence of the objections raised by various parties, various plots of lands had been released by the State Government and the appellants' grievance was only with regard to plot No. 1131 of which they still claim to be in possession. It was also argued by Mr. Roy Chaudhury for the respondents that the declaration published by the State Government u/s 6 of the Act was cancelled with the object of giving a hearing to other parties in compliance with the order of this Court in other proceedings in this Court. We are unable to accept this contention on behalf of the respondents. On the law as it stands, there is no escape from the conclusion that once a declaration has been published u/s 6 of the Act the notification u/s 4 of the Act exhausts its force and no further action can be taken by the Land Acquisition Collector under that notification.

5. The next point urged by the learned Advocate for the respondents was that these points were not urged in the trial court and were not taken in the grounds of appeal. It was argued that the appellants ought not to be allowed to urge these points at this stage since there was no indication either in the writ petition or in the arguments advanced before the trial court that these two points have been argued before us for the first time. But it must be noticed that these are pure questions of law and the respondents had ample notice that the appellants were going to take these points in this appeal. The admitted position being what it is, namely that the section 4 notification was modified by a subsequent notification and the declaration u/s 6 of the Act was cancelled by a subsequent notification, it cannot be said that the appellants cannot on these facts, take the points of law, namely that there was no notified area u/s 4 of the Act having regard to the modification of the original notification and that by virtue of the

cancellation of the declaration under s. 6 of the Act the notification u/s 4 of the Act has exhausted itself. In our opinion, these are questions of law which the appellants are entitled to raise even though these contentions are raised for the first time at the appellate stage. Before concluding we should refer to the decision of the Judicial Committee to which reference was made by Mr. S.K. Roy Choudhury learned Advocate for the appellants, in (2) Nazir Ahmed v. The King Emperor reported in 63 I.A. 372. Reliance was placed on this decision for the proposition that where power was given to do certain thing in a certain way, the thing must be done in that way or not at all. Relying on this decision, Mr. S.K. Roy Chaudhury argued that power was given to the State Government to issue a declaration u/s 6 of the Act in certain circumstances, namely, where there was a notified area, and also where there was a valid and subsisting notification u/s 4 of the Act and that having regard to the modification of the notified area by a subsequent notification and also having regard to the cancellation of the declaration u/s 6 of the Act, it was not open to the State Government to proceed further with the acquisition proceeding u/s 4A(1) of the Act and, thereafter to issue a declaration u/s 6 of the Act. In our opinion, this contention on behalf of the appellants is also well-founded.

For the reasons mentioned above, this appeal is allowed. The judgment and order under appeal are set aside. The Rule is made absolute. Each party do bear its own costs. Let appropriate writ or writs issue accordingly.