
(1968) 03 CAL CK 0019
In the Calcutta High Court
Case No : Matter No. 343 of 1965

Ram Lakhan Sarma and another	Vs	APPELLANT
The Second Land Acquisition Collector and Others		RESPONDENT

Date of Decision : 27-03-1968

Acts Referred:

Calcutta Improvement Act, 1911 — Section 36, 39, 39A, 39B, 39C

Citation : 73 CWN 239

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Advocate : Ajoy Ghosh, for the Appellant; B.K. Chakraborty, for the Respondent

Judgement

B.C. Mitra, J.—The petitioners reside in a Bustee at premises no. 20, Rajendra Mallick Street, Calcutta, as tenant. A scheme was framed by the respondent no. 2 (Trustees for the Improvement of Calcutta) being scheme no. LXIX under the Calcutta Improvement Act, 1911, (hereinafter referred to as the Act) for widening a street namely Madan Chatterjee Lane and also for providing building sites. The respondent No. 3 (the State of West Bengal) by a Notification dated December 25, 1956 sanctioned the said scheme. In this scheme was included the said premises no. 20, Rajendra Mallick Street, along with several other Bustees for acquisition of the same under the scheme. In the petition it is alleged that the said scheme has been wrongfully and malafide described as a street scheme, though in fact it is a general improvement scheme. This was done, it is alleged, for avoiding the obligation imposed u/s 39C of the Act, to make provision for re-housing of Bustee dwellers. This very scheme however was the subject-matter of a previous Writ petition in this Court in (1) Muneshwar Ram Vs. The Second Land Acquisition Collector, and Banerjee, J. held that the scheme was not a general improvement scheme but a street scheme under the Act and therefore the petitioner in that case was not entitled to be re-housed u/s 39C of the Act. This decision was taken up in appeal, and the Court of appeal upheld the judgment and order of Banerjee, J. As this scheme has been held by this Court to be a

street scheme, Mr. Ajoy Ghosh, learned counsel for the petitioner did not contend that it was a general improvement scheme and for that reason the petitioners were entitled to be re-housed u/s 39C of the Act, but he wanted to have it recorded that he was not giving up this point. He, however, contended that section 39B read with section 47(2) (f) of the Act imposed a mandatory obligation upon the respondent no. 2 for construction of dwellings, shops etc. for persons who had been displaced by reason of execution of an improvement scheme. I shall presently come to the provisions of section 39B and section 47(2) (f) of the Act. The main grievance of the petitioners is that no scheme for re-housing of Bustee dwellers had been framed under the said scheme or under any other scheme, and no such scheme had been submitted to the respondent no. 3 for approval. It is contended that as no re-housing scheme has been framed and approved the respondents are not entitled to proceed with the execution of the said scheme no. LXIX. It is also contended that the said scheme is also invalid and contrary to law. On these grounds the petitioners obtained a rule nisi on a Writ petition on October 13, 1965 and also obtained an interim order restraining the respondents from taking possession of the said premises no. 20, Rajendra Mallick Street.

2. It is necessary briefly to refer to the relevant provisions of the Act regarding improvement schemes, and also the conditions imposed upon the respondent no. 2 for framing and executing such scheme. Section 36 deals with general improvement scheme. Section 39 deals with street schemes, and provides that Board may frame a street scheme after passing a resolution to that effect for: (a) providing building sites, or (b) remedying defects, ventilation, or (c) creating new, or improving existing, means of communication and facilities for traffic, or affording better facilities for conservancy. Section 39A deals with housing accommodation scheme, with which I am not concerned in this application. Section 39B is as follows:

39B. "The Board may frame schemes (in this Act called re-housing schemes) for the construction, maintenance and management of such and so many dwellings, shops and other classes of accommodation as they may consider ought to be provided for persons who -

(a) are displaced by the execution of any improvement scheme sanctioned under this Act, or

(b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the State Government for sanction under this Act.

Section 39C provides that when a general improvement scheme prescribed by section 36 or a housing accommodation scheme prescribed by section 39A or a combination of both is likely to cause displacement of persons dwelling in a Bustee, provision for re-housing of the Bustee dwellers shall be made either in the scheme itself or by another scheme and such scheme with statement of the

rent proposed to be charged shall be submitted to the State Government for its approval before any step is taken u/s 43. Section 47(1) provides that the Board shall consider objections and representations from persons interested in or affected by a scheme and after hearing such objections, a Board may either abandon the scheme or apply to the State Government for sanction of the same with such modification as the Board may consider necessary. Section 47 (2) (f) provides that every application submitted under sub-section (1) shall be accompanied by a statement of the arrangement made or proposed for the rehousing of persons who are likely to be displaced by the execution of a scheme.

3. Relying upon the above provisions in the Act Mr. Ghosh contended that the word "may" in section 39B must be construed and interpreted to mean "must". It was argued that this section created a mandatory obligation upon the respondent no. 2 for construction and maintenance of dwellings for the petitioners, who would be displaced if the scheme was executed. In support of this contention he relied upon a passage in Craies on Statute Law, 6th Ed. page 285. It was argued that sec-39-B read with section 47 (2) (f) of the Act made it quite plain that the respondent no. 2 must make provision for rehousing of the petitioners, before they were allowed to execute a scheme and that as the said scheme made no provision for such rehousing it must be quashed and set aside. Mr. Ghosh also relied upon a decision of the Supreme Court in 1(a) State of Uttar Pradesh v. Jogendra Singh, A. I. R. (1963) S.C. 1619 for the proposition that the word "may" is capable of meaning "must or shall".

Appearing for the respondent no. 2 Mr. B. K. Chakraborty submitted that the word "may" in section 39B of the Act must be held to be directory only and not mandatory. In support of this contention reliance was placed on a decision of the Supreme Court in (2) Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, for the proposition that whether the provision in a Statute was mandatory or directory would depend upon the true intention of the Legislature which was the determining factor. Reliance was also placed on the observations of Cotton L.J. in In re (3) Baker. Nichols v. Barker 44 Ch.D. 262 as follows:

I think that great misconception is caused by saying that in some cases "may" means "must". It never can mean "must", so long as the English language retains its meaning; but it gives a power, and then it may be a question in what cases, where a judge has a power given him by the word "may", it becomes his duty to exercise it". Similar observations were made by Lindley, L.J. at page 273 of the report. Reliance was next placed on a decision of the Supreme Court in (4) Thakur Pratap Singh Vs. Shri Krishna Gupta and Others, for the proposition that the substance in a statute must take precedence over form and some rules go to the root of the matter and they would not be broken; while others were directory and a breach of them could be overlooked provided that there was substantial compliance with the Rule read as a whole and that when the Legislature did not state which Rules go to the root of the matter, it was for the Judge to sort out one class from the other along broad based, commonsense lines. Reliance was

also placed on another decision of the Supreme Court in (5) Seth Bikhraj Jaipuria Vs. Union of India (UOI), for the proposition that where a Statute required that a thing should be done in the prescribed manner or form but did not set out the consequence of non-compliance, the question whether the provision was mandatory or directory had to be adjudged in the light of the intention of the legislature and as disclosed by the object, purpose and scope of the Statute. Reliance was next placed on a Bench decision of this Court reported in 92 C.L.J. 160. In that case it was held that the mere fact that the word "shall" had been used did not justify a conclusion that the mandate was imperative and that the legislature did not want its main object of legislation to be defeated by breaches of comparatively unimportant minor provisions and in spite of the fact that the provisions appeared in the form of command with the use of "shall" or "must" it was Court's duty to find out in each case whether the legislature intended that disobedience of the command would nullify the other connected acts or whether it would have no such effect. Reliance was also placed on the definition "may" in Stroud's Judicial Dictionary, 3rd Ed. volume 3 page 1756. Reliance was also placed by Mr. Chakraborty on a decision of the English Court of Appeal in (6) Bank View Mills Limited and Ors. v. Nelson Corporation and Anr., (1943) 1 KB 337 for the proposition that where a Statute merely conferred a power to do a thing, it could not be construed to have imposed a duty to do that thing.

4. The next contention on behalf of the respondent was that the petitioners had accepted compensation for the loss they would suffer by reason of execution of the scheme. It was argued that as the petitioners accepted compensation and thereby accepted the benefit of the scheme, it was not open to them to contend that the same scheme should not be given effect to because provision for their re-housing had not been made.

5. Appearing for the respondents Nos. 1 and 3 Mr. Soumen Bose supported Mr. Chakraborty, and contended that the provision in section 47 (2) (f) of the Act was complementary to and counterpart of section 39B of the Act. It was argued that section 39B was not mandatory in its effect and did not impose a duty on the respondent No. 2 to construct dwellings for displaced persons. It was further argued that as there was no liability or obligation to make any provision for re-housing of displaced persons in a street scheme, there was no obligation to furnish a statement for re-housing of displaced persons as prescribed by section 47(2) (f) of the Act.

6. On a plain reading of the sections to which I have already referred, I have no doubt that the respondent No. 2 has no obligation cast upon them to make provision for re-housing of displaced persons in a street scheme. The Statute has made provision for different types of schemes, and has created and imposed special obligation with regard to particular schemes. Section 39B of the Act creates and confers a power upon the Board for construction of dwellings for persons who are displaced by execution of any improvement scheme. This section merely creates and confers a power to construct dwellings for displaced

persons, and does not impose any obligation upon the Board. Section 39C on the other hand, imposes an obligation upon the Board to make provision for re-housing of persons who are displaced or are likely to be displaced either by a general improvement scheme or housing accommodation scheme or a combination of both. If it is held, as was argued by learned counsel for the petitioners, that section 39B creates the obligation to construct dwellings for persons who are displaced by any improvement scheme, the provision in section 39C becomes redundant and altogether superfluous. Quite plainly the legislature selected a particular group or class of displaced persons, namely, those who are so displaced in consequence of a general improvement scheme, or a housing accommodation scheme, or a combination of both, to be the persons who would be entitled to the benefit of a provision for their re-housing. If it was the intention of the legislature that all persons displaced by the execution of any improvement scheme should be entitled to a provision for their re-housing, there could be no point in selecting the particular class or group of displaced persons in section 39C for such benefit. The word "may" in section 39B cannot in my view, be construed to mean "must" and to impose an obligation or duty upon the respondent No. 2 to construct dwellings for persons who are displaced or are likely to be displaced by the execution of a street scheme. Section 39B quite plainly creates and confers a power and does not impose any obligation.

7. The provision for a statement regarding arrangement made for rehousing of displaced persons in section 47 (2) (f) of the Act must be held to mean a statement for such re-housing, in those cases where a mandatory obligation has been imposed by the Statute upon the Board to make provision for such re-housing, namely in the case of a general improvement scheme or housing accommodation scheme or a combination of both. Section 47 of the Act is in no way concerned with a provision for re-housing of displaced persons. This section deals with abandonment of improvement scheme or application to State Government to sanction it. Subsection (2) of the section provides that in the event of an application being made to the State Government for sanction of a scheme with such modification as the Board may suggest, such an application should be accompanied by various statements and descriptions. Clause (f) of the sub-section requires that the application should be accompanied by a statement of arrangements made for re-housing of displaced persons. Section 47(1) and (2) therefore merely prescribes the manner, mode and method of an abandonment of improvement scheme or application by the Board to the State Government for sanction of a scheme and statements and documents to be forwarded along with the application. The provision therein neither creates nor imposes any obligation to make provision for rehousing of displaced persons.

8. There is, one other matter regarding interpretation of statutes which has to be considered. In the Act there is a general provision for rehousing of persons displaced by improvement schemes. This provision has been made by section 39B of the Act. There is also a special provision for re-housing of Bustee dwellers in the case of certain schemes namely a general improvement scheme or a

housing accommodation scheme or a combination of both. This special provision has been made for the benefit of Bustee dwellers who are or are likely to be displaced by execution of certain specific schemes namely those mentioned above. It is a well established rule of construction that if in a statute there is a general and a special provision, the latter will be given effect to and will prevail over the former in so far as the provisions in the latter are inconsistent and not in conformity with the provision of the former. In other words, the special provision in the statute should be given effect to although there is no warrant for that purpose in the general provision in the statute. The learned counsel for the petitioners referred to a decision of the Supreme Court in (7) C. Rajagopalachari Vs. Corporation of Madras, , where the Supreme Court quoted with approval its earlier decision in (8) The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, in which it was held that it was settled law that a special provision should be given effect to the extent of its scope leaving the general provision to control cases where the special provision did not apply. Learned counsel for the petitioners sought to distinguish this decision on the ground that there was neither general nor special provision for Bustee dwellers in any particular schemes. I cannot accept this contention. The Rule mentioned above is well settled and section 39C makes a special provision for re-housing Bustee dwellers who are displaced by execution of special schemes. Applying the rule of interpretation mentioned above the special provision in section 39C of the Act must be given effect to in the case of Bustee dwellers who are likely to be displaced by reason of execution of the improvement schemes mentioned in that section, the provisions for re-housing of displaced persons by improvement schemes generally in section 39B of the Act notwithstanding. The result is that the petitioners who are Bustee dwellers affected by a street scheme cannot claim the benefit, as displaced Bustee dwellers, prescribed by section 39C of the Act, which is strictly confined to Bustee dwellers affected or likely to be affected by execution of the particular improvement schemes mentioned in section 39C of the Act.

9. Before concluding I must observe that this very scheme was, as I have noticed earlier, the subject-matter of a writ petition in this court, and it was held that the liability to make provision for re-housing arose only in cases of general improvement scheme and housing accommodation scheme and there was no liability to make provision for re-housing of displaced Bustee dwellers when framing or executing a street scheme. An appeal was preferred against the judgment of Banerjee, J. and the court of appeal in its judgment reported in 71 CWN 78, upheld the judgment of Banerjee, J. and dismissed the appeal. The contentions now raised on behalf of the petitioners were agitated in that case, though learned counsel for the petitioners argued that the contentions raised by him regarding section 39B and section 47 (2) (f) were not raised either in the trial court or in the court of appeal. But accepting that to be the true position, namely, that the submissions made by learned counsel for the petitioners before me regarding section 39B and section 47 (2) (f) of the Act were not canvassed

either before Banerjee, J. or before the court of appeal, on the grounds discussed earlier in this judgment, I see no reason to come to a different conclusion. For the reasons mentioned above this application must fail and is dismissed. The Rule is discharged. Each party will pay its own costs.