(1960) 05 CAL CK 0002

In the Calcutta High Court

Case No : Appeal from Original Decree No. 215 of 1958

Sanat Kumar Ganguly APPELLANT

Vs

Gulfan and Others RESPONDENT

Date of Decision : 03-05-1960

Acts Referred:

Bengal General Clauses Act, 1899 — Section 3(23)
Calcutta Improvement Act, 1911 — Section 121, 122, 122(a), 123, 123(a)
Calcutta Thika Tenancy Act, 1949 — Section 30, 30(b), 30(b)(iv), 30(c)
Land Acquisition Act, 1894 — Section 3, 3(a)
West Bengal Premises Tenancy Act, 1956 — Section 3

Citation : 65 CWN 45

Hon'ble Judges : P.B. Mukharji, J;Bose, J

Bench : Division Bench

Advocate : B.C. Dutt, Sudhir Kiumar Bose and Miss M. Dutt, for the Appellant;R.C. Deb and S.C. Deb, for the Respondent

Final Decision : Allowed

Judgement

P.B. Mukharji, J.—This is an appeal from the judgment and decree of G. K. Mitter, J. dismissing the plaintiff''s suit for ejectment on the ground that this Court has no jurisdiction to entertain the suit because of the provisions of the Calcutta Thika Tenancy Act, 1949. The only defence taken in the suit was that the Calcutta Thika Tenancy Act, 1949, applied to the land in suit and, therefore, the suit in this Court was incompetent and the learned trial Judge held in favour of the defendant.

2. The premises concerned are 12, Haldar Lane, Calcutta. The appellant''s case is that the land comprised in the said premises 12, Haldar Lane, was included in Scheme LIII of the Calcutta Improvement Trust (Chittaranjan Avenue to Wellington Street) and was assessed for payment of compulsory betterment fee payable u/s 78A of the Calcutta Improvement Act, 1911, and as such the land was required for carrying out the provisions of the Calcutta Improvement Act, 1911. The appellant, therefore, pleaded that the Calcutta Thika Tenancy Act,

1949, had no application to the land in suit.

3. Section 30 of the Calcutta Thika Tenancy Act provides as follows:

"Nothing in this Act shall apply to-

(a) Government lands:

(b) any land vested in or in the possession of-

(i) the State Government;

(ii) a port authority of a major port; or

(iii) a railway administion or

(iv) a local authority, or

(c) any land which is quired for carrying out any of the provisions of the Calcutta Impment Act, 1911."

4. The only question in this appeal is whether a land within a scheme of the Calcutta Improvement Trust required to pay "betterment fee" is a land "required for carrying out any of the provisions of the Calcutta improvement Act, 1911," within the meaning of section 30(c) of the Calcutta Thika Tenancy Act, 1949. There is no other point involved. The point is a point of law and of construction of the Calcutta Thika Tenancy Act and the Calcutta Improvement Act, 1911. Some evidence was taken but it is immaterial for purposes of this appeal.

5. The significant words of section 30(c) of the Calcutta Thika Tenancy Act, 1949, are "required" and "carrying out any of the provisions of the Calcutta Improvement Act. 1911." It is necessary to emphasise that the word is "required" and not "acquired". The learned Judge came to the conclusion that only land "acquired" by the Calcutta Improvement Trust came within the meaning of this exception. Apparently, the learned Judge was in error in taking these words for the words used in section 78A of the Calcutta Improvement Act, 1911, which contains the expression, land "not required for the execution of the scheme". Land not required for the purpose of "execution" of the scheme is not the only land required for carrying out the "provisions" of the Calcutta Improvement Act, 1911. An analysis of the different provisions of the Calcutta Improvement Act, 1911, shows that there are different kinds of land impressed with different kinds of obligation in a scheme under the Calcutta Improvement Act, 1911. First, there-is the land actually acquired by the Trust for the execution of the scheme. Such land vests in the Trust. See section 69 of the Calcutta Improvement Act, 1911. Secondly, there is the land notified to be acquired but before acquisition it is abandoned u/s 78 of the Calcutta Improvement Act. 1911. Thirdly, there is the land required for payment of what is known as the "betterment fee" u/s 78A of the Act. Fourthly, land which is vested in the Trust or acquired by the Trust but which can be disposed of u/s 81 of that Act.

6. The next significant words of section 30(c) of the Calcutta Thika Tenancy Act,

1949, are, "carrying out any of the provisions of the Calcutta Improvement Act, 1911." Now. clearly, payment of betterment fee is an express provision of the Calcutta Improvement Act, 1911. These provisions were introduced by the Calcutta Improvement (Amendment) Act of 1931. The betterment fee is governed by the group of sections consisting of sections 78A to 78G of the Calcutta Improvement Act. 1911. The main features of these provisions are that when by making any of the improvement schemes any land in the area comprised in the scheme which is not required for the execution thereof will, in the opinion of the Board, be increased in value, the Board in framing the scheme, may, in lieu of acquisition of such land, declare that a betterment fee shall be payable by the owner of the land or any person having any interest therein in respect of the increase in the value of the land resulting from the execution of the scheme. Such betterment fee shall be an amount equal to one-half of the increase in value of the land resulting from the execution of the scheme. The assessment of the betterment fee by the Board has to observe certain procedure laid down in these sections including notice in writing to the person concerned and giving an opportunity of hearing to him. There is then the prevision for settlement of betterment fee by arbitrators. There is another significant provision in section 78A of Act winch makes the payment betterment fee a first charge on the land. Now. these are express and detailed provisions in respect of betterment fee regarding land within the scheme of the Calcutta Improvement Trust.

7. It is contended that even so the land is not required for carrying out any of the provisions of the Calcutta Improvement Act, 1911, within the meaning of section 30(c) of the Calcutta Thika Tenancy Act but only a pecuniary obligation is imposed as a charge on the land which is not really required for the scheme. This argument is based on the fallacy of confusing the word "required" with the word "acquired". This land which is charged with the betterment fee although not acquired by the Trust is still land required to pay betterment fee for the purpose of execution of the very scheme for which other lands within the scheme have been actually acquired. The scheme is a total scheme where some lands are actually acquired and vest in the Trustees and where other lands though not acquired are required to pay a betterment fee for the benefits which the owners of these lands get by reason of the lands being included within the scheme and subsequent execution of that scheme. As payment of betterment fee is an integral part of improvement made by the improvement scheme and as it goes to defray the costs of execution of the scheme, a fair and proper construction would be to hold that such land which is charged with betterment fee is land required for carrying out the "provisions" of the Calcutta Improvement Act, 1911, within the meaning of section 30(c) of the Calcutta Thika Tenancy Act, 1949, and are therefore outside the pale of operation of the Calcutta Thika Tenancy Act, 1949. The language used in section 30(c) of the Calcutta Thika Tenancy Act is not purpose or object of the Act but "for carrying out any of the provisions of the Calcutta Improvement Act, 1911." The financial provisions made in respect of the betterment fee are also in support of this view of the construction. This

betterment fee is imposed and realised to carry out the provisions of the Calcutta Improvement Act, 1911, within the meaning of section 30(c) of the Calcutta Thika Tenancy Act. For instance, reference may be made to section 122(a) of the Calcutta Improvement Act, 1911, which provides that ''''there shall be credited to the capital account all sums (except interest) received by way of special payments or betterment fees in pursuance of sections 78, 78A or 79." This money credited to the capital account is expressly held by the Board in trust and is intended to be applied to meet all costs of framing and executing improvement schemes and housing schemes and for meeting the cost of acquiring land for carrying out any of the purposes of the Act as expressly provided inter alia in section 123(a) and (b) of the Calcutta Improvement Act, 1911. The betterment fee, therefore, is expressly required and applied for the purposes of the Act.

8. Section 78A of the Calcutta Improvement Act, 1911, expressly indicates that, land impressed with the charge of betterment fee under the Act is really "in lieu of providing for the acquisition of such land." Notion-ally, therefore, it is really acquired although actually it is not and what is actually done is a betterment fee is declared in lieu of acquisition. That also supports the view that this is for carrying out the provisions of the Calcutta Improvement Act, 1911, within the meaning of section 30(c) of the Calcutta Thika Tenancy Act. It means only this that even if what is intended by section 30(c) is not for carrying out the provisions as distinct from the purposes of the Act, whatever that distinction between provisions and purposes may be, it is clear that under the Calcutta Improvement Act, the purpose is twofold, (i) land required for the actual execution of the scheme and (ii) land required for paying the betterment fees arising out of the benefits of the scheme. One is acquired and the other is less than acquisition but in either case, the land is required for carrying out the provisions of the Calcutta Improvement Act, 1911.

9. The historical evolution of the law on this point under the Calcutta Improvement Act. 1911, points to the same conclusion. Before the amendment of 1931, there was no actual statutory provision for betterment fee and making it a first charge on the land. What used to happen under the scheme of the Act as then prevailing was that the Trust acquired these lands and then the parts which were not necessary for the actual working or execution of the scheme, were thereafter re-sold at a higher value because the value of such parts or portions had increased by the benefit resulting from the execution of the scheme. What was done by sale at a higher value is now done by the process of betterment fee imposed as a first charge.

10. The scheme of the Calcutta Improvement Act supports the same construction. The preamble of the Statute indicates (1) that it is primarily an Act to provide for the improvement and expansion of Calcutta; (2) opening up congested areas, laying out or altering streets, providing open spaces and acquiring land for the said purposes; (3) other purposes as appearing in the Act and (4) to invest the Board of Trustees with special powers for carrying out the

objects of the Act.

11. The Calcutta Improvement Act was the subject of two important judicial decisions on what was before the amendment known as the recoupment fee. The Privy Council in The Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh (1) 47 I.A. 45, upheld the contention that by section 42(a) of the Calcutta Improvement Act, 1911, the Board of Trustees was authorised in carrying out a scheme under that Act, to acquire compulsorily, for the purpose of recoupment, land which was not required for the execution of the scheme but land which the Trustees thought and were of opinion had increased in value by the scheme. Lord Parmoor at page 53 of the Report after pointing out that the case depended upon the construction of section 42 of the Calcutta Improvement Act, 1911, observed:

Under this section, an improvement scheme may provide for the acquisition by the Board of any land in the area comprised in the scheme which will, in their opinion, be affected by the execution of the scheme. The land of the respondent is within the area delimited on the plan attached to the scheme, but it. was argued on his behalf that it was not land affected by the execution of the scheme.

12. Lord Parmoor negatived that contention and emphaised the definition of land in the Land Acquisition Act, 1894, to include benefits to arise out of land, it being understood that the word "land" u/s 2(g) of the Calcutta Improvement Act has the same meaning as u/s 3(a) of the Land Acquisition Act, 1894.

13. Lord Parmoor in the Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh (1) 47 LA. 45 at page 56 decided as follows:

It was said that to take land for the purpose of recoupment is not to take it in order to carry out any of the purposes of the Act, but only to provide a means whereby such purposes can be carried out. It is difficult to understand the distinction which is suggested. If the Improvement Board is authorised to acquire land affected in value by the execution of the scheme in order to provide funds in case of the public burden, the acquisition of land is directly within the purposes of the Act, and the powers of compulsory acquisition are clearly applicable thereto. Section 81 of the Act confers on the Board wide powers for the holding or disposal of any land vested in them or acquired by them under the Act, amply sufficient for dealing with any land acquired u/s 42 and not required for the actual execution of the street scheme.

14. It is necessary to point out that the word "recoupment" was not even mentioned in the old Calcutta Improvement Act and yet it was held to be within the purposes of the Act and it referred to land not required for the actual execution of the street scheme. A fortiori the same argument would apply on a parity of reasoning to the question of cases of betterment fees when there are today under the present amendments, express provisions relating to betterment fees whereas there was none in the cases of recoupment which the Privy Council was considering.

15. The other authority is the Full Bench decision of this Court in Mani Lal Singh v. Trustees for the Improvement of Calcutta (2) reported in ILR 45 Cal. 343. This Full Bench decision was given two years before the Privy Council decision. The majority of the Calcutta Full Bench held that the Calcutta Improvement Act did authorise the Board of Trustees to acquire land compulsorily for the purposes of recoupment, i.e., by selling or otherwise dealing with the land under s. 81 or by abandoning the land in consideration of a payment of the sum under s. 78 of the Act. The majority of the Full Bench also overruled the previous decision of this Court in Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh (3), reported in ILR 44 Cal. 219. The majority of the Full Bench expressed the view that there was no force in the contention that the principle of recoupment found no place in the preamble as a purpose or object of the Act and therefore could not be sanctioned and they took the view that it was not expected that the principle of recoupment would find place in that manner. They were of the view that what was necessary was to see whether it was one of the special powers with which the Board was invested and by looking into the whole scheme of the Act they came to the conclusion that it was.

16. On a parity of reasoning and with the added strength derived from the express statutory provisions relating to betterment fee introducing s. 78A to s. 78G in the Act by the amendment we have no hesitation in holding that the betterment fee in the present case is certainly within the purposes of the Act as well as the provisions of the Act. In fact Fletcher, J. in the Full Bench decision almost dealt with recoupment and betterment on the same footing. The occasion for his Lordship to deal with the betterment fee, although that was not the subject of the Statute at that time, was his Lordship''s reference to the report of the Select Committee of the House of Lords on Town Improvement (betterment). Richardson, J. in the Full Bench decision at page 411 pointed out that "there are two categories of land, land required for the execution of the scheme, for the acquisition of which provision must be made in the plans, and land affected by the execution of the scheme, for the acquisition of which provision may be made." The preoccupation of the Full Bench was with s. 41 and s. 42 and with the word "affected". But the principle of distinction is equally applicable in the present case because the land on which betterment fee is charged is land which is beneficially affected by the execution of the scheme for which other or adjoining lands have actually been acquired.

17. Richardson, J. also points out to the clanger of not including such recoupment or betterment fee within the provisions of the Calcutta Improvement Act, 1911 by observing at p. 421 of the report:

I do not know what the position is, but it is at least conceivable that without the aid of recoupment the operations of the Board, entailing an expense commensurate with the size and importance of Calcutta, would come to a standstill, so that there would be no improvement and expansion of the city in the interest of the present and future generations of citizens and the Act would be a dead letter. If the construction of the Act is to depend on results, this consideration cannot be entirely neglected.

18. The same view was expressed by Chaudhuri, J. another member of the Full Bench at page 428 of the report.

19. It was contended by Mr. Deb, learned Counsel for the respondent, that the land on which the betterment fee was charged was notified within three weeks under s. 43(1) (c) of the Calcutta Improvement Act and that in any event after the declaration of acceptance by the appellant of the assessment of Rs. 15,000;- as the betterment fee, the land was no longer required for the purposes of the Calcutta Improvement Act. He contends that the acceptance was dated the 30th November, 1953 and the notice of ejectment is dated the 14th June 1954 and the suit instituted on the 24th July 1954. and at those dates the land was no longer required for the purposes of the Calcutta Improvement Act. This argument again begs the question. The assessment of betterment fee, its imposition and its acceptance do not make the land any the less required for carrying out the provisions of the Calcutta Improvement Act, 1911, having regard to the view that we have already taken. Having regard to the view of the construction of the Act, which we have taken, we are unable to uphold this contention.

20. Before concluding it is necessary to refer to one more aspect of this Question of construction. The view taken by the learned trial Judge has for its consequence deletion of the entire provision of s. 30(c) of the Calcutta Thika Tenancy Act, 1949. Land acquired by or vested in the Government is expressly provided in sub-sections (a) and (b) of s. 30 of the Calcutta Thika Tenancy Act, 1949. To construe therefore even S. 30(c) of that Act where the word used was "required" and not acquired to mean again land acquired, is to make the provision of sub-sec. (c) entirely redundant or tautologies and secondly, to make s. 30(b) (iv) exempting land vested in or in the possession of a "local authority" from the operation of the Calcutta Thika Tenancy Act, 1949 superfluous. The question is, can the Trustees for the Improvement of Calcutta be regarded as a "local authority" ? The Calcutta Thika Tenancy Act does not define a local authority. The Calcutta Improvement Act does not define a local authority. But in the Schedule to the Calcutta Improvement Act, clause 1 under the heading "Further modifications in the Land Acquisition Act, 1894" occurs the following with a marginal note "Amendment of section 3":-

"1. After clause (e) of section 3 the following shall be deemed to be inserted, namely,-

(e) the expression ''local authority'' includes the Board of Trustees constituted under the Calcutta Improvement Act, 1911."

21. This amendment obviously has reference to the dictionary of definitions in section 3 of the Land Acquisition Act, 1894 whereby by "local authority" was expressly said to include the Board of Trustees.

22. Our attention has been drawn to the recent Statute of the West Bengal Premises Tenancy Act, 1956 where in explanation to section 3 "local authority" is expressly said to include the Trustees for the Improvement of Calcutta.

23. The really relevant Statute which should define the meaning of local authority for our purposes is the Bengal General Clauses Act, 1899 (Bengal Act I of 1899). Section 3 (23) of that Act defines "local authority" in the following manner:-

local authority shall mean a Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

24. The point then is if the Trustees for the Improvement of Calcutta is an authority entitled to the control or management of a municipal or local fund. Sections 82 to 85 and section 88 of the Calcutta Improvement Act, 1911 provides shares of funds payable to the Trustees for the Improvement of Calcutta. Section 88 particularly and expressly speaks of the contributions of the municipal fund to the Trustees for the Improvement of Calcutta.

25. Having regard to these funds I think it is reasonable to interpret that the Trustees for the Improvement of Calcutta are entrusted with the control and management of a local fund within the meaning of its definition in the Bengal General Clauses Act quoted above.

26. That being so, land actually vested in or in the possession of the Trustees for the Improvement of Calcutta would come under s. 30(b) of the Calcutta Thika Tenancy Act, 1949 and the exemption contained in s. 30(c) of the Calcutta Thika Tenancy Act with the word "required" must be held to denote other than those lands already covered by sub-section (b) (iv) of section 30.

27. In that view of the matter and for the reasons stated, this appeal must be allowed with costs here and below. Certified for two counsel. The judgment and decree of the trial court are set aside. As there is no other point involved or urged by the respondents, a decree in ejectment must follow. There will be a decree for ejectment and possession in favour of the appellant and for ground rent and municipal taxes as claimed in paragraph 7 of the plaint and admitted in paragraph 7 of the written statement for the sum of Rs. 243/6/-. There will be mean profit at the rate of rent from the 1st day of Sravan, 1361 B.S. until delivery of possession and the agreed municipal rates which remain unpaid by the respondent until delivery of possession or which the appellant is obliged to pay.

28. Bose, J.-The point that is raised in this appeal is whether land on which there has been assessment of a betterment fee on the ground that an increase in the value has resulted from the execution of an improvement scheme sponsored by the Trustees for the Improvement of Calcutta can be said to be "any land which is required for carrying out any of the provisions of the Calcutta Improvement

Act, 1911", within the meaning of section 30(c) of the Calcutta Thika Tenancy Act, 1949.

29. The preamble of the Calcutta Improvement Act, 1911 states inter alia that the Statute was enacted to make provision for the improvement and expansion of Calcutta by opening up congested areas, laying out streets, acquiring land for the said purposes and "otherwise as hereinafter appearing". So the primary object of the Act was to provide for the improvement and expansion of Calcutta. Section 2 of the Act defines "improvement scheme" as meaning a general improvement scheme or a street scheme, or both (clause (f) of section 2) and it defines "betterment fee" as meaning the fee prescribed by section 78-A in respect of an increase in value of land resulting from the execution of an improvement scheme (Clause (la) of Section 2). Clause (a) of section 41 of the Act enjoins that every improvement scheme shall provide for acquisition by the Board of any land in the area comprised in the scheme, which will, in their opinion., be required for the execution of the scheme and section 42 provides that an improvement scheme may provide for acquisition of any land affected by the execution of the scheme. So land required for execution of the scheme has got to be acquired and land affected by the execution but not actually required for execution may also be acquired. Section 43 provides inter alia that after an improvement scheme is framed the Board shall have to prepare a notice stating that the scheme has been framed, the boundaries of the area comprised in the scheme and that a map of the area and the statement of the land proposed to be acquired and a statement of the land in regard to which it is proposed to recover betterment fee may be seen at reasonable hours; and such notice has to be published weekly for three consecutive weeks and it should also state the period within which objections will be received. Then u/s 45(1) the Board will have to serve notices on owners whose land is proposed to be acquired or whose land is sought to be made subject to the levy of betterment fee and u/s 45 (2) this notice has to state that the Board proposes to acquire land or to recover betterment fee for the purpose of carrying out the improvement scheme. Thus sub-section (2) of section 45 makes it clear that the realisation of betterment fee is made for the purpose of carrying out the improvement scheme which is the dominant purpose of the Act. Then section 78-A which deals primarily with the imposition of betterment fee provides that land included in the scheme but which is not required for the actual execution of the scheme and which will increase in value as a result of the execution of the scheme may instead of being acquired be declared liable to payment of betterment fee. So the levy of betterment fee is treated as an alternative to the acquisition of such lands by the Board. In subsection (2) of section 78-A the amount that can be levied for betterment fee is indicated. It is to be one-half of the increase in value of the land. Then section 78-B deals with assessment of betterment fees and section 78-C provides for settlement of betterment fees by arbitrators. Sections 78-D and 78-E deal with arbitrators'' fees and the proceedings of arbitrators. Section 78-F enjoins upon the Board the obligation to give notice demanding payment of betterment fee

and section 78-C provides that betterment fee may be charged upon the land in respect of which it is imposed. So the land itself is liable or answerable to meet the claim of betterment fees. Section 79 provides the mode of recovery of betterment fees. The next relevant section is section 122 which provides that the moneys recovered by way of betterment fees shall be credited to the capital account of the Board of Trustees which is maintained u/s 121. The next section which is relevant is section 123 and it enacts that all moneys deposited in the capital account shall be applied to meet all costs of framing and executing improvement schemes.

30. Thus there can be no doubt that the levy of betterment fees and realisation. thereof are made for securing funds for execution of the improvement scheme and it is with this object that an elaborate procedure has been laid down in the Act for assessment and recovery of betterment fees. It may be that the land which is made the subject of levy of betterment fees is not required for actual execution of the scheme, but it is certainly required for implementing the improvement scheme. Such land provides a source for funds necessary for execution of the scheme. The different sections of the Act to which I have referred indicate very clearly that the land which is saddled with the liability of betterment fee is brought within the ambit of and made an integral part of the improvement scheme and instead of acquiring such land and then disposing it of as surplus land u/s 81 of the Act, the Board allows the owners to retain the land subject to the liability to pay the betterment fee in respect of the land and section 79 makes it plain that the liability fastens upon the land and runs with the land and the betterment fee is recovered by a sale of the land even from successors-in-interest of the person originally liable to pay it.

31. In a decision of this Court reported in (4) ILR 50 Cal. 531 (Corporation of Calcutta v. Calcutta Improvement Trust), Sanderson, C.J. and Richardson, J. in construing section 54(1) of the Calcutta Improvement. Act pointed out that land included in an improvement scheme for purposes of recoupment only could not be regarded as required for execution of the scheme but it could be regarded as required for purposes of recoupment, page 542 top-per Sanderson, C.J. and page 543 and page 547-per Richardson, J.). After this decision was given section 54 was amended in 1923. Moreover, it is to be noted that this decision was given before specific provisions dealing with betterment fee were introduced in the Calcutta Improvement Act by the amending Act of 1931. Moreover, the learned Judges had not had to interpret words like ""required for carrying out the provisions of the Act" with which we are concerned. In view of the conclusion to which I have arrived at that the land which is made subject to the levy of betterment fee is required for carrying out the provisions of the Calcutta Improvement Act, it is not necessary to deal with the various other arguments which have been advanced by the parties. I agree that the appeal should be allowed with costs of this Court and of the Court below.

