
(1955) 02 CAL CK 0001

In the Calcutta High Court

Case No : Appeal from Original Order No. 79 of 1953

State of West Bengal

APPELLANT

Vs

Panch Cowrie Ghosh

RESPONDENT

Date of Decision : 18-02-1955

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Land Development and Planning Act, 1948 — Section 4, 5, 5(1), 5(2), 5(3)
West Bengal Land Development and Planning Rules, 1948 — Rule 5(1), 5(2), 5(3), 5(5), 5(7)

Citation : 61 CWN 98 : (1957) 2 ILR (Cal) 711

Hon'ble Judges : Chakravartti, C.J.; Lahiri, J

Bench : Division Bench

Advocate : Jogneswar Majumdar, for the Appellant; Arun Kumar Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti, C.J.—This is an appeal by the State of West Bengal against a judgment and order of Bose, J., dated December 19, 1952, by which the learned Judge cancelled a certain declaration made u/s 6 of the West Bengal Land Development and Planning Act, 1948, and directed the Appellant Government and certain of their officers to forbear from giving effect to the said declaration.

2. The learned Judge held the declaration to be invalid, because Rule 5(2) of the Rules framed under the West Bengal Land Development and Planning Act had not been complied with and he held that the said Rule had not been complied with, because no opportunity had been given to the Respondent to make representations against the relevant scheme.

3. The question involved in the appeal is thus one of pure fact. The learned Assistant Government Pleader did not ultimately contend that, even if no opportunity had been given to make representations against the scheme, the

declaration made u/s 6 would be a good and valid declaration. All that he contended was that opportunity had, in fact, been given to the Respondent to make representations against the scheme and that in so far as the learned Judge had held to the contrary, he had been in error.

4. In para. 6 of his petition under Article 226 of the Constitution, the Respondent stated that he had never been given any opportunity of making representations against the scheme, in relation to which the declaration u/s 6 of the Act had subsequently been made. The learned Assistant Government Pleader sought to counter that statement by relying upon a portion of paragraph 8 of an affidavit affirmed by one Sri Satyendra Nath Das Gupta, who had described himself as the Special Land Acquisition Officer and also on para. 11 of the same affidavit. As what paragraph 8 of the affidavit states itself negatives the contention of the learned Assistant Government Pleader I might refer to the relevant portion at once.

5. This is what Shri Satyendra Nath Das Gupta states with regard to the matter in paragraph 8 of his affidavit;

On receipt of the said proposed scheme and after publication of the notification u/s 4 of the said Act, I caused the substance of the said notification to be published at conspicuous places in the localities concerned as hereinbefore stated, inviting objections November 21, 1951, upon which various persons, including the present Petitioner, filed their objections in my office. I went to the localities, inspected the site plot by plot and heard objections on the spot and recommended only those plots of land for acquisition which were found suitable for the purpose.

6. It is not necessary for the present to quote any further from the affidavit.

7. It will be noticed that what the Special Land Acquisition Officer published at conspicuous places in the locality was the substance of the notification u/s 4 and not anything else. If he invited objections, he invited objections to what was proposed by the notification to do. Neither the Act nor the Rules framed thereunder contain any form in which public notice of the substance of the notification u/s 4 is to be given. The only forms which the Rules contain are Forms 1 and 2 which are intended for the notification itself as it is to be published in the Official Gazette and not forms for the publication of the substance of the notification. We were, however, shown the actual notice that had been published in the locality in the present case and we found that it was a notice exactly in Form No. 3 of the forms contained in the Rules framed under the Act. Indeed, it is nothing else than the notification u/s 4 itself bearing the date, September 8, 1951, with only the words "objections if any are invited by 21-11-51" added in manuscript. The text of the notification states that since the land is likely to be needed for public purposes in the villages of Masunda, Kodalia and Agapur, it is notified that 284.32 acres of land, more or less, are likely to be required within the aforesaid villages and that the Collector of 24-Pargands as

also his officers, servants and workmen are authorised to enter upon and survey the land and do all other acts required or permitted by Section 4. Below the notification appears a schedule of properties where the cadastral survey numbers of the plots intended to be acquired are set out in accordance with Note 2 in Form 2 of the statutory forms. The only other statement which appears in the notification is that "a plan of the land may be inspected in the office "of the Collector, 24-Pargands." That statement also is a part of Form 2.

8. It is thus clear that all that the public are informed by this notice is that a certain number of cadastral survey plots measuring, more or less, 284.32 acres are likely to be required for public purposes, that a plan of the land may be inspected in the office of the Collector and that objections, if any, are to be filed by November 21, 1951. There is no trace in this notice of any reference to any scheme. The objections which were invited clearly were and could only be objections to the acquisition of the particular plots set out in the schedule of the properties, without any reference of any kind to any scheme, existing or contemplated. According to the affidavit on which the learned Assistant Government Pleader relied, this was the notice by which opportunity was given to the Respondent to make his representations against the scheme. It passes my comprehension how it could possibly be said that this notice had any concern of any kind with any scheme framed or contemplated by any authority or that by it anybody was given any opportunity to lodge objections to any scheme.

9. The learned Assistant Government Pleader strenuously contended that the plan of the land which was offered for inspection at the Office of the Collector by the last printed sentence contained in the notice, was the scheme or at least a part of it. If it was only a part of the scheme, I do not see how it would serve his purpose, because what Rule 5(2) enjoins is that opportunity should be given to persons interested to make representations against the scheme and not merely to any part or fraction of the scheme. But it seems to me that to speak or think of any scheme in relation to the plan of the land referred to in the notice is as unreal as it is wholly beside the point. As I have pointed out, the notice is in the exact language of Form No. 2, which is a form for the notification u/s 4. Section 4 does not require or contemplate that any public notice of any scheme should be given and, indeed, at the stage of Section 4, there is no scheme in existence of which it is possible to give any notice. When, therefore, the form for the notification u/s 4 refers to "a plan of the land" which may be inspected at the office of the Collector, it quite clearly refers only to the site plan, that is to say, the plan setting out the geographical position of the plots likely to be acquired or intended to be acquired. It cannot possibly mean anything else, for the obvious reason, as I have already pointed out, that at the stage of the notification u/s 4, there can be no question of giving any notice of any scheme. Not only does a scheme come into existence later, but also a graphical representation of the lay out of the plots intended to be acquired is not a scheme such as is contemplated by the Act and the Rules. On his own showing, therefore, what Sri Satyendra Nath Das Gupta did was to take the notification u/s 4, dated September 8, 1951,

in its entirety and append to it in manuscript the words, "objections "if any are invited by 21-11-51," and then persuade himself that he was giving opportunity under Rule 5(2) of the Rules to make representations against the scheme which, unfortunately for him, had not yet come into existence or at least to which no reference of any kind was made in the document by which he was inviting objections. It is thus clear, although I am but repeating myself, that the objections which Sri Satyendra Nath Das Gupta invited, were objections to the acquisition of these plots and what he heard were also objections of that kind but no other objections and certainly no objections against any scheme.

10. Indeed, it appears to me that the dependent on whom the learned Assistant Government Pleader was relying and who is a Special Land Acquisition Officer, was throughout thinking and acting in terms of the Land Acquisition Act and not in terms of the West Bengal Land Development and Planning Act at all. It is well known that under the Land Acquisition Act, immediately after a notification u/s 4 of that Act is published, a right arises in persons interested to come forward and lodge objections. No such provision for taking exception to the intended acquisition itself is, however, to be found in Section 4 of the West Bengal Land Development and Planning Act. That Act provides objections at a much later stage. It appears to me to be fairly clear that although the officers of the Appellant Government were required to administer and apply Act XXI of 1948, what they were actually doing at the stage, at least, to which Sri Satyendra Nath Das Gupta was referring in that passage of his affidavit which I have already quoted, was that they were applying Act I of 1894.

11. I may pause here for a moment to notice briefly one argument of the learned Assistant Government Pleader which he advanced before us with a certain amount of persistence. He said that, in any event, a plan of the land, likely to be acquired, must be a part of the scheme. Therefore, when the plan was shown, at least a part of the scheme was shown. I have already answered that argument from one point of view. I may point out further that what a scheme is, has been described in Sub-rule (3) of Rule 5 of the Rules framed under the Act. It is said that the scheme "shall contain such maps and descriptive matter as may be "necessary sufficiently to illustrate the proposals involved "therein" and then the Rule proceeds to say that the scheme may, in particular, contain various matters. Those various matters, to my mind, are only illustrations of "the descriptive "matter", to which the main clause of Sub-rule (3) refers. It will thus be clear that a mere map cannot constitute a scheme and that in order that there may be a scheme, there must, at least, be some descriptive matter as will illustrate the proposals involved, namely, the constructions, excavations, road-layings and other works intended to be carried out on the lands and the manner of their intended disposition. What, however, was referred to in the notice relied upon by the learned Assistant Government Pleader, was merely a plan of the land and not also any descriptive matter illustrating any proposals of any kind. It seems to me, therefore, to be wholly impossible for anybody to contend that opportunity was given to the Respondent to make representations against the scheme.

12. The finding of the learned Judge on this matter is expressed in the following language:

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 6(2). The statement in para. 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 para. 8 of the counter-affidavit. I am inclined to accept the case of the Petitioner that only 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 rule.

13. Before dealing with a particular point sought to be made by the learned Assistant Government Pleader, I may refer to what his deponent stated in paragraph 11 of his affidavit. After stating in specific terms what he had actually done by way of giving an opportunity to make representations against the scheme, he proceeded towards the end of his affidavit to make certain general statements in paragraph 11 and expressed himself as follows:

With reference to the allegations made in para. 7 of the petition I state that the plan referred to in the said paragraph was an integral part of and was supported by the detailed scheme hereinbefore mentioned and all the said papers were duly produced and shown to everybody concerned including the Petitioner who had visited my office. The allegations that the Petitioner was only shown a plan of the lands under acquisition and that the said Petitioner failed to have any knowledge or information of the scheme in question are manifestly false and the said allegations are categorically denied.

14. The learned Judge, as I have already pointed out, has found that the truth was spoken not by the spokesman of the Appellant Government but by the Respondent. For the reasons I have already given, there cannot be two opinions about the correctness of that finding. The learned Judge, however, proceeded to add that even assuming that any opportunity was given to make representations against the scheme, such opportunity had been given only in respect of a tentative scheme and not the development scheme framed u/s 5(2) as contemplated by the Act. The learned Assistant Government Pleader invited us to construe, for the benefit of the Appellant Government, Section 5 of the Act and to say whether a tentative scheme, framed at the stage of proposals prior to the notification u/s 4, could do duty for the development scheme contemplated by Section 5. We do not see that that question arises in the present case, because it would have arisen only if there were any room for the assumption made by the learned Judge. Apparently, the learned Judge had had no opportunity of seeing the actual notice issued by Sri Satyendra Nath Das Gupta and, therefore he made a concession to the argument advanced on behalf of the Appellant Government by assuming an alternative state of facts. In view of the definite-and concrete facts spoken to by Sri Satyendra Nath Das Gupta, to which I have

already referred, no room is left for making any assumption that some opportunity at least for making representations against some scheme of some kind might have been given. That being so, there is no need whatever for our embarking upon a construction of Section 5 of the Act. What Das Gupta actually did is stated by him in concrete terms in paragraph 8 of his affidavit and the general statements, of which he delivered himself subsequently in paragraph 11, are obviously incorrect and were added merely under the impetus of having to refute the Respondent's case.

15. What I have stated up till now is sufficient for the disposal of the appeal, because we have expressed our agreement with the finding arrived at by the learned Judge and given our reasons for the same. Since, however, there was a protracted argument on behalf of the State Government and strong reliance was placed on para. 8 of the affidavit of Satyendra Nath Das Gupta till the last stages of the learned Assistant Government Pleader's submissions, I may refer briefly to what that paragraph reveals. I may say that although the learned Assistant Government Pleader began by relying almost solely on para. 8 of the affidavit of Satyendra Nath Das Gupta, he became increasingly unhappy as the argument proceeded and ended by repudiating the affidavit altogether and inviting us to see for ourselves what the records contained. I do not see why we should, at the appellate stage, go behind an affidavit affirmed by a person who holds the position of a Special Land Acquisition Officer and was himself responsible for doing the alleged acts by way of giving an opportunity for representations on which the Appellant Government's case rests. He must be taken to have known what he had done and the lawyer on Government's panel who drafted the affidavit must be taken to have verified the statements which he put into the mouth of the Special Land Acquisition Officer. I shall not be long, but I might refer to only one or two statements. Paragraph 8 spends about twenty lines in reaching the stage of the notification u/s 4. I do not wish to refer to what happened prior to that notification. What happened after or about the time of the notification is described by Satyendra Nath Das Gupta in the following words. Before quoting him, I may mention that, prior to the notification, there had been a proposal in the shape of a tentative scheme upon which the decision to issue the notification had been taken. To quote now Satyendra Nath Das Gupta, he stated as follows:

A copy of the said proposed tentative scheme was sent to the Land Acquisition Collector's office, 24-Paragands, by the Government with a direction for submitting a report under Rule 5(2) of the Land Development and Planning Rules after hearing objections against the said proposed scheme and acquisition in respect of the said scheme.

16. It is thus said that after or about the time when the notification u/s 4 was published, the Government sent a copy of the tentative scheme to the Land Acquisition Collector's office and directed the Land Acquisition Collector to submit a report under Rule 5(5) of the Rules. The Act, however, says by Section

5 that, after a notification has been issued, the State Government may direct the prescribed authority to prepare, in accordance with the Rules, a development scheme in respect of the notified area and Rule 5(7)(a) and Rules 5(2) and 5(5) describe the procedure in accordance with which the prescribed authority must prepare the scheme. There is no question at all of the Government sending any tentative scheme to the Land Acquisition Collector and their asking the Land Acquisition Collector to make a report under Rule 5(2). What the Act contemplates is that the State Government will ask the prescribed authority, that is to say, the Land Planning Committee to frame a scheme and the prescribed authority shall, as the Rules to which I have referred provide, do so and in the course of so doing, cause a local enquiry to be made by the Collector under Rule 5(2) and then submit a report with its own recommendations. If what is stated by Satyendra Nath Das Gupta is correct, the provisions of Section 5(1) and Rules 5(1)(a), 5(2) and 5(3) were completely ignored by Government. Then as to what happened after he had finished his enquiries, Satyendra Nath Das Gupta stated as follows:

I submitted my report under Rule 5(2) to the Collector, 24-Paraganas, who with his approval thereof sent it to the Refugee Rehabilitation Department recommending on the basis of my report exclusion of 110.10 acres more or less out of the total area of 284.32 acres and the remaining area of 174.22 acres of land was recommended for declaration u/s 6 of the Act. Thereafter the Refugee Rehabilitation Department forwarded the Collector's report under Rule 5(2) along with their detailed development scheme prepared by the said department and layout plan to the Government for consideration.

17. One will look in vain in the Act or in the Rules for any provision, authorising or empowering or requiring the Collector to submit his report to the Relief and Rehabilitation Department or authorising that Department to forward the Collector's report under Rule 5(2) to Government for any purpose at all. The affidavit, however, proceeds to say that, at long last, the Collector's report under Rule 5(2) and some detailed scheme prepared by the Relief and Rehabilitation Department were placed before the Land Planning Committee for its scrutiny and that Committee considered the scheme and made its recommendations with certain modifications. Till then, it seems, the Land Planning Committee had been kept on one side and the matter had been dealt with by the Government, the Land Acquisition Collector and the Relief and Rehabilitation Department and all sorts and conditions of men in complete disregard of what the Act and the Rules thereunder provide. Till then, the prescribed authority was not in the scene at all and it never got any chance of framing a scheme or causing any enquiry to be made under Rule b(2). What surprises one all the more is that in a list of dates handed up to us by the learned Assistant Government Pleader, it is stated that Government sent copy of the scheme, apparently a tentative scheme, and certain particulars in a printed form to the Collector for an enquiry under Rule 5(2) on September 8, 1951, which would be before the publication of the notification u/s 4. If this was what actually happened, nothing could be more

extraordinary. In fairness to the learned Assistant Government Pleader, I must state that he made no attempt to conceal that he was himself feeling staggered as the consequence of what Satyendra Nath Das Gupta had sworn began to be revealed. He invited us then to refer to the original records and satisfy ourselves that what had actually taken place was something far different. As I have stated, we do not consider that it is open to the Appellant Government to make a complete change of case at the appellate stage and, in any event, it is not necessary for us to undertake any such enquiry, as the single point on which Bose, J. rested his decision and with regard to which we have agreed with him, is sufficient for the disposal of the appeal.

18. Before concluding, I should like to observe that, during the course of the argument, it astonished me to find that the spokesmen of the Appellant Government appeared to attach little importance to the Respondent being afforded an opportunity to make representations against the scheme and indeed hardly to know what such representation meant. It was said again and again that all that the Respondent was concerned about was whether his land should or should not be acquired and since he had been able to submit that, his land should not be taken, he had in substance got all the opportunity to make representations that he needed. That submission betrayed a complete misunderstanding of the plan of the Act. The Act does not, as the Land Acquisition Act does, provide for the filing of objections immediately a notification u/s 4 is published or the substance of the notification is notified. What it does is that it requires the Government, after a notification u/s 4 has been published, to ask the prescribed authority to prepare a development scheme in respect of the area notified and cause that scheme to be taken to the locality by the Collector so that the persons likely to be affected by the proposed acquisitions in furtherance of the scheme may make their representations against it. After representations have been made, the Collector has to send them to the prescribed authority with a report, if he desired to make one and the prescribed authority has then to make its recommendations, after considering the representations and the report. It is clear that although a scheme in its final shape, as recommended by the prescribed authority, can come into existence only after a local enquiry has been held, representations have been made and they have been considered, still the prescribed authority must begin with a proposed scheme and must have one ready before it directs a local enquiry with a view to inviting objections under Rule 5(2). It would be meaningless to invite representations against a scheme unless there is a scheme in existence indeed it appears quite clearly from the provisions of Rule b(4)(m) that even initially there must be a scheme, because that Rule says that the papers which the prescribed authority must forward to Government in the end must include the "scheme as originally proposed". That scheme would show at least the proposals and may also show such details as the number of schools or hospitals proposed to be established and their location and the various other features set out in Rule 5(3). The representations contemplated by Rule 5(2) are representations against the

proposals. The persons interested may submit that some of the proposals are extravagant and are not appropriate to the particular locality or that the location of a particular proposed school or hospital ought to be altered or that a canal of the proposed width is not required-all with a view to securing the release of some of the lands proposed to be acquired. An opportunity for making representations against the proposed scheme is thus of vital importance to the owners of the lands included in the notified area. The duty of providing that opportunity is not discharged by publishing the substance of the notification u/s 4 and inviting objections. Nor are the Act and the Rules complied with if instead of the prescribed authority, Government ask the Collector to hold an enquiry under Rule 5(2), if what the Collector takes with him is not any scheme framed or adopted by the prescribed authority after the notification u/s 4 but some proposals submitted to Government prior to the notification and forwarded by Government to him, if the Collector reports not to the prescribed authority But to the Relief and Rehabilitation Department, if that Department takes it upon itself to forward the Collector's report to Government and if the prescribed authority being by-passed at every stage, is allowed only in the end to consider certain tentative proposals forwarded to the Collector by Government and the report made thereon by the Collector after holding a local enquiry at Government's direction. A sequence of such proceedings is a travesty of the procedure prescribed by the Act and the Rules.

19. For the reasons given above, this appeal is dismissed with costs, the hearing-fee being assessed at three gold mohurs.

Lahiki, J.

20. I agree.