

(1968) 11 CAL CK 0003
In the Calcutta High Court
Case No : Civil Rule No. 794 (W) of 1963

Syad Abdul Goffar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 13-11-1968

Acts Referred:

Constitution of India, 1950 — Article 25, 26, 31(2)

Citation : 73 CWN 649 : (1969) 2 ILR (Cal) 408

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Swadesh Bhusan Bhunia, for the Appellant; N.C. Chakraborty, Manishi K. Das and Sushil K. Banerjee, for the Respondent

Judgement

D. Basu, J.—The Petitioner is the secretary of a wakf estate created by a registered deed for religious purposes. His complaint is that the acquisition proceedings under the Land Acquisition Act in respect of certain plots of land belonging to this wakf estate are illegal and unconstitutional. It is not disputed that the purpose of the acquisition, namely, the development of an educational institution, is a public purpose but it is contended that land devoted to one public purpose cannot be diverted to another public purpose and that the proposed acquisition would be violative of Article 26 of the Constitution.

2. It would appear from the counter-affidavit and the papers annexed thereto that the objection preferred on the foregoing grounds by the Petitioner as well as by the Commissioner of wakfs was actually heard by the Land Acquisition Collector, and, by his report at annEx. Y, he closely examined the objections in the presence of a lawyer representing the Petitioner. He released certain portions which were actually used for religious purposes but disallowed the objections as regards other plots which lay vacant and which, according to the Collector, were not necessary for the performance of the religious functions. This being a question of fact which the Collector was competent to determine, the Collector's findings cannot be reviewed by this Court.

3. It is, however, contended on behalf of the Petitioner that since the disputed lands appertain to a religious wakf dedicated to the public, Respondents have no power to divert them to some other public purpose. This very question, however, has been dealt with by our Supreme Court in very early cases and has been answered against the Petitioner's contention. The power of Eminent Domain of the State is a sovereign power which overrides all other rights. In the United States, therefore, it has been held that in the absence of any specific constitutional prohibition, there is nothing to bar the taking of land already devoted for a public purpose for another public purpose: *West River Company v. Dix* (1848) 6 How. 507; *Nicholas on Eminent Domain* vol. I, p. 150. The law on the point was also fully discussed by our Supreme Court in the case of *Suryapal v. State of U.P.* (1953) S.C.A. 932 (933, 963) and it was laid down that-

A charity created by a private individual is not immune from the sovereign power to compulsorily acquire that property for public purposes.

4. Accordingly, it is competent for the State to acquire properties appertaining to religious endowments. This decision also repels the contention raised under Article 26 of the Constitution even if the Petitioner were a religious denomination, which he is not, Article 26 enables a religious denomination to acquire, hold and manage property like a private individual, but it has nowhere been said that the religious denomination, so holding property, shall be immune from legal or constitutional limitations to which all other property-owners are subject. Since Article 31(2) does not exempt any kind of property from the power of Eminent Domain, Article 26 must be read along with Article 31(2). Hence, it would not be unconstitutional for the State to acquire property belonging to a religious endowment subject to the obligations under Article 31(2), Article 25 is irrelevant in this context.

5. Nor is para. 12 of the West Bengal Land Acquisition Manual, which contains only executive instructions, of any avail to the Petitioner.

6. But though the Petitioner fails on the main point he should get relief in part as regards the acquisition of C.S. plots Nos. 1249 and 1253 which is sought to be acquired in part without specifying the portion to be acquired by boundaries or other descriptions. It has been held by this Court in various cases that in case of acquisition in part, the authorities cannot proceed without specifying the particular parcel which is sought to be acquired. In that view the Petitioner should get relief in respect of plots Nos. 1249 and 1253.

7. The Rule is accordingly made absolute in part only in respect of C.S. plots Nos. 1249 and 1253. The Respondents can proceed with the land acquisition case in question after excluding plots Nos. 1249 and 1253.

8. There will be no order as to costs.