(1977) 05 SC CK 0010

Supreme Court of India

Case No: Civil Appeal No''s. 579-580 of 1976

The Trustees for the Improvement of Calcutta		APPELLANT
	Vs	
Chandra Sekhar Mallick and Others		RESPONDENT

Date of Decision: May 6, 1977

Acts Referred:

- Calcutta Improvement Act, 1911 - Section 137(3), 39, 78A, 78G, 86
- Constitution of India, 1950 - Article 14

Citation: AIR 1977 SC 2034 : (1977) 3 SCC 448 : (1978) 1 SCR 136 : (1977) 9 UJ 394

Hon'ble Judges: M. Hameedullah Beg, C.J; Y. V. Chandrachud, J; V. R. Krishna Iyer, J; S. Murtaza Fazal Ali, J; P. S. Kailasam, J; P. N. Bhagwati, J; N. L. Untwalia, J

Bench: Full Bench

Advocate: P.K. Chatterjee, G. S. Chatterjee and D.P. Mukherje, for the Appellant; P.K. Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

P.N. Bhagawati, J.

These appeals by certificate are directed against a judgment of a Division Bench of the Calcutta High Court striking down Section 78-B to Section 78-G of the Calcutta Improvement Act, 1911 as invalid on the ground of excessive delegation of legislative power as also contravention of Article 14 of the Constitution and declaring Rules 11 to 21 of the rules framed by the Government under Sub-section (3a) of Section 137 as ultra vires the provisions of the Act. The facts giving rise to the appeals lie in a very narrow compass and may be briefly stated as follows.

2. The respondents in Civil Appeal No. 579 of 1976 are the owners of a building bearing No. 35 situate at Lower Circular Road, Calcutta while the respondents in Civil Appeal No. 580 of 1976 are owners of a building bearing No. 1/A situate in Mcleod

Street, Calcutta. There was a street known as Fire Lane connecting the Lower Circular Road on the east to Mcleod Street on the West. In or about November 1954 the Board of Trustees for the Improvement of Calcutta (hereinafter referred to as the Board) acting in exercise of the power conferred u/s 39, Clause (c), passed the necessary resolution and proceeded to frame a Street Scheme for the area which included Fire Lane as also the buildings belonging to the respondents. The notice containing the requisite particulars was published by the Board on 24th November, 1954 as required by Section 43. The respondents submitted their objections against the Street.Scheme on 7th December, 1954 but the Board, after Hearing the respondents, rejected the objections and applied to the State Government for sanction u/s 47 and the Street Scheme was ultimately sanctioned by the State Government u/s 48 on 17th December, 1956. The Board was of the opinion that as a result of the making of the Street Scheme, lands of the respondents which were comprised in the Street Scheme would increase in value and the Street Scheme, therefore, contained a declaration that a betterment fee shall be payable by the respondents in respect of the increase in the value of their respective lands resulting from the execution of the Street Scheme. The Board gave notice of the proposed assessment of the betterment fee to the respondents under Sub-section (1) of Section 78-B and then, proceeded under Sub-section (2) of that Section to assess the betterment fee payable by the respondents. The betterment fee was assessed at Rs. 2,15,441/- in the case of the Lower Circular Road property and at Rs. 4,241/- in the case of Mcleod Street property and notice of this assessment was given to the respondents. The respondents in each case dissented from the assessment made on them and the matter was thereupon referred for determination by arbitrators as contemplated under Sub-section (4) of section 78-B. The arbitrators were appointed according to the procedure set out in Section 78C and after hearing the parties, the arbitrators made their1 award on 23rd September, 1964 determining the betterment fee payable in the case of Lower Circular Road property at Rs. 1,25,000/- and in the case of Mcleod Street property at Rs. 4,241/-. The respondents thereupon filed a writ petition in each case challenging the validity of the award made by the arbitratOrs.

3. The principal ground on which the validity of the award of the arbitrators was impugned in the writ petitions was that Section 78A to Section 78G of the Act were ultra vires and void and Rules 11 to 21 of the rules were also invalid. There were also certain other subsidiary grounds taken in the writ petitions but they have not formed the subject-matter of debate before us and hence we need not refer to them. Though the writ petitions were filed as far back as 1964 immediately after making of the Award by the Arbitrators, they unfortunately could not reach hearing before the High Court until July 1971 and then also, the hearing took considerable time and it concluded only on 17th August, 1971. It appears that during the hearing of the writ petitions, it was brought to the notice of the High Court that the question as to the constitutional validity of Section 78A of the Act was also raised in another

case, namelv, Civil Rules No. 2156 of 1969 and that case had already been heard by another Division Bench of the High Court and was pending for judgment. The High Court, therefore, decided to hold back the preparation of the judgment in the writ petitions and to await the judgment of the other Division Bench in Civil Rule No. 2156 of 1969. We do not know when the judgment was delivered in Civil Rule No. 7156 of 1969 but it appears that the Division Bench which heard that case did not pronounce upon the constitutional validity of Section 78A and disimposed of that case on other grounds. The result was that the High Court had to decide the question of constitutional validity of Section 78A to Section 78G in the present writ petitions and it proceeded to deliver its judgment in 1st December, 1972 striking down Section 78-B to Section 78G and Rules 11 to 21 as invalid. We are constrained to observe that the judgment to the High Court visibly bears marks of superficiality and lack of proper consideration which are inevitable when a judgment is delivered fifteen months after the conclusion of the arguments. The correctness of this judgment is impugned in the present appeals preferred by the trustees for the Improvement of Calcutta after obtaining certificate from the High Court

4. We have gone through the judgment of the High Court with the due care and attention which every judgment of a High Court demands of us but despite our utmost anxiety and effort we have not been able to appreciate the reasoning which led the High Court to strike down Section 78-B to Section 78G and Rules 11 to 21 as invalid. Section 78A to Section 78G were not in the Act as originally enacted but they were introduced in the Act by the Calcutta Improvement (Amendment) Act, 1931. These sections contain a fasciculus of provisions relating to betterment fee, where, by the making of any improvement scheme, any land in the area comprised in the scheme which is not required for the execution thereof, is increased in value. Chapter III of the Act deals with improvement schemes and Section 35-D provides that an improvement scheme may be of one of four types, namely, a general improvement scheme, a street scheme, a housing accommodation scheme and a re-housing scheme. We are concerned in these appeals with a Street Scheme and hence we shall refer only to those provisions which relate to a street scheme. Section 39 provides that whenever the Board is of opinion that for the purpose inter alia of creating new or improving existing, means of communication and facilities for traffic, it is expedient to lay out new streets or to alter existing streets, the Board may pass a resolution to that effect and shall then proceed to frame a street scheme for such area as may think fit. When any street scheme has been framed, Section 43, Sub-section (1) requires that the Board shall prepare a notice stating the fact that the scheme has been framed, the boundaries of the area comprised in the scheme and the place at which the particulars of the scheme, a map of the area comprised in the scheme and a statement of the land which is proposed to be acquired and the land in regard to which it is proposed to recover a betterment fee may be seen at reasonable hours. Sub-section (2) of Section 43 provides for publication of this notice with a statement of the period within which objections may be received. The

Board is also required by Section 45, Sub-section (1) to serve a notice on every person whose name appears in the Municipal assessment book as being primarily liable to the owner''s owner''s share of the consolidated rate or the rate on the annual value of holdings, in respect of any land in regard to which the Board proposes to recover a betterment fee. Sub-section (2) of Section 45 provides that such notice shall require such person if he dissents from the recovery of betterment fee, to state his reasons in writing within a period of sixty days. Section 47, Sub-section (1) then provides that the Board shall consider any statement of dissent received u/s 45, Sub-section (2) and after hearing all persons making such dissent who may desire to be heard, the Board, may either abandon the scheme or apply to the State Government for sanction to the scheme with such modification, if any, as the Board may consider necessary. When the Board applies for sanction of the scheme to the State Government, the Board is required under Sub-section (2) of Section 47 to send inter alia a list of the names of all persons who have dissented u/s 45 from the proposed recovery of the betterment fee and a statement of the reasons given for such dissent. Sub-section (3) of Section 47 provides that when any application has been submitted to the State Government for sanction, the Board shall cause notice of the fact to be published for two consecutive weeks in the official Gazette and in the local newspapers. The State Government may then u/s 48 either sanction the scheme with or without modification or refuse to sanction the same.

5. It will be seen from these provisions! that a detailed and elaborate machinery is provided by the Legislature for the purpose of framing a street scheme. When a street scheme is framed, the area comprised in the street scheme would include lands of two categories, one cate-gory, being of lands which are necessary to be acquired for the purpose of execution of the street scheme and the other being category of lands which are not required for the execution of the street scheme but which would increase in value as a result of the making of the street scheme. Since the latter category of land would increase in value and the owners of such lands would be benefited by the making of the street scheme, Section 78A empowers the Board, in framing the street scheme, to declare that a betterment fee shall be payable by the owners of such lands "in respect of the increase in the value of the land resulting from the execution of the schemes". What shall be the quantum of the betterment fee is laid down in Sub-section (2) of Section 78A which says that it shall be "an amount equal to one-half of the increase in the value of the land resulting from the execution of the scheme" to be calculated in the manner there provided. Section 78-B provides for assessment of betterment fee by the Board after giving an opportunity to the person concerned to be heard and if such person dissents from the assessment made by the Board, the matter is required to be determined by the arbitrators in the manner provided by Section 78C. That section lays down in meticulous detail the machinery for selection and appointment of arbitrators and the making of an award by them determining the amount of

betterment fee. The fees to be paid to the arbitrators are provided in Section 78-D and Section 78E declares that the proceedings of the arbitrators shall be governed by rules to be made in this behalf u/s 137, provided that every party to such proceedings shall be entitled to appear before the arbitrators either in person of by his authorised agent. Section 78F provides for giving of notice by the Board to persons liable to pay the betterment fee determined by the Board or the arbitrators, as the case may be and Section 78G makes provision in regard to payment of betterment fee. The question is whether Sections 78A to 78G are ultra vires and void as suffering from the vice of excessive delegation of legislative power, or contravention of Article 14 of the Constitution.

6. We will first examine the validity of Rules 11 to 21. These rules form part of the rules made by the State Government claiming to act in exercise of the power conferred under Clause (3a) of Section 137. This clause was added in Section 137 by the Amending Act of 1931 at the same time when Section 78A to Section 78G were enacted and it empowered the State Government to make rules inter alia for determining the qualifications and disqualifications of, the conditions and mode of election, selection or appointment of, an arbitrator and for regulating the proceedings of arbitrators u/s 78C. This power was conferred on the State Government in addition to that given to it u/s 86. Now, Rule 1 contains definitions, while 2 to 11 provide for the qualifications and disqualifications of and the conditions and mode of election, selection and appointment, of arbi-tratOrs. It is indeed difficult to see how Rule 11 could be struck down by the High Court as invalid. It provides the machinery for appointment of arbitrators in a case where the objectors fail to elect an arbitrator. That would fall fairly and squarely within the terms of Clause (3a) of Section 137. Rules 12 to 21 lay down the procedure regulating the proceedings of arbitrators and they are clearly covered by the latter part of Clause (3a) of Section 137, which speaks of rules "far regulating the proceedings of arbitrators u/s 78C". With the great respect to the learned judges of the High Court, we think impossible to contend that Rules 11 to 21 are outside the rule making power of the State Government under Clause (3a) of Section 137. The High Court seems to have relied on a passage from the Calcutta Improvement Trust Manual published under the authority of the State Government which states that "the Rules were framed by the Government u/s 137 of the Calcutta Improvement Act, 1911 regarding the nominations of arbitrators for settlement of betterment fee in the Local Self Government Department Notification-dated 5th May, 1934. That indicates that the rules for regulating the proceeding of an arbitrator u/s 78C are not within the purview of these rules, Yet Rules 11 to 23 in the rules framed u/s 137 cover a field which is much beyond the subject of nomination of arbitrators for settlement of betterment fee" and on the basis of this statement, held that "Rules 11 to 21 are outside the region of the purpose for which the State Government has exercised its power u/s 137". This is indeed strange logic for striking down Rules 11 to 21 as ultra vires Clause (3a) of Section 137. The validity of these rules has to be

judged by reference to the question as to whether they fall within the scope of the rule making power conferred under Clause (3a) of Section 137 and not on the basis of some opinion expressed by the author of the Calcutta Improvement Trust Manual. When it is clear beyond doubt that Clause (3a) of Section 137 empowers the State Government to make rules for regulating the proceedings of arbitrators u/s 78C and Rules 11 to 21 are plainly rules falling within this category, we fail to see how they can possibly be condemned as outside the rule making power conferred in the State Government. The State Government has deliberately and avowedly exercised its rule making power under Clause (3a) of Section 137 and made Rules 11 to 21 for regulating the proceedings of arbitratOrs. The High Court has also made reference to Section 86 and struck down Rules 11 to 21 as invalid on the ground that they do not purport to have been made u/s 86 under which alone, according to the High Court, rules could be made for carrying out the purposes of Section 78A to Section 78G. But the reference to Section 86 seems to be clearly misconceived, since that section confers power on the State Government to make rules for carrying out "the purposes of this Chapter" and Section 86 being in Chapter V, the words "this Chapter" can have reference only to Chapter v. and not to Chapter IV which contains Sections 78A to 78G. Obviously, therefore, no rules could be made u/s 86 for carrying out the purposes of Section 78A to Section 78G. The High Court was, in the circumstances, clearly in error in taking the view that Rules 11 to 21 were ultra vires the Act. This was a wholly indefensible view and even the learned Counsel appearing on behalf of the respondents found it difficult to support it.

7. That takes us to the question of the constitutional validity of Section 78A to Section 78G. The view taken by the High Court on this point also is difficult to understand. The High Court appears to have thought that these Sections suffer from the voice of excessive delegation of legislative power because "for determining what land shall bear the burden of that fee" (that is betterment fee) "arbitrary and uncontrolled power has been given to the Trust or its engineers either to include or not to include within the scheme lands which are not required for the execution thereof" and "it leaves to the Trust and/ or its employees to determine arbitrarily what shall be the extent of the area comprised in the Scheme by enabling them to include in the scheme lands which are not required for execution of the scheme." This reasoning is clearly based on an erroneous premise. It is not correct to say that it is left to the unfettered and unregulated discretion of the Board and/or its employees to decide what lands to include'' in the scheme, apart from those required for the execution of the scheme. Section 39, to which we have already referred, lays down the factors which would guide the Board in deciding what area should be included in the scheme. It is only when the Board finds that for carrying out any of the four purposes set out in Section 39, it is expedient to lay out new street or to alter existing street, that the Board can proceed to frame a scheme for such area as it thinks fit and the selection of the area by the Board would, therefore, be guided by the purpose for which the scheme is to be framed. Then again, the

decision of the Board in regard to the lands to be included in the scheme is not final. Where, by reason of the making of the scheme, the value of any land included in the scheme has, in the opinion of the Board, increased in value and a betterment fee is, therefore, payable by the owner of the land, an opportunity is given to him to dissent from the recovery of such betterment fee and to state his reasons why he so dissents and the Board is then required to give him a hearing and ultimately, if proper case is made out, the Board may modify the scheme by excluding such land and even if the Board is not inclined to make any such modification, the State Government, while giving its sanction, may still take into account the dissent made by the owner of the land and consider the reasons given by him and if satisfied, exclude such land from the scheme at the time of giving sanction. It will, therefore, be seen, that not only is guidance given to the Board in selecting the lands to be included in the scheme, but there are also safeguards provided with a view to ensuring that lands are not arbitrarily or capriciously included in the scheme. Even after the scheme is sanctioned by the State Government, it is open to the owner of the land to show that in fact the land would not increase in value by reason of the making of the scheme. The betterment fee being co-related to the increase in the value of the land, the Board assessing the amount of battement fee u/s 78-B would have to determine objectively whether there is any increase in the value of the land and if so, assess the amount of betterment fee on that basis. If the owner of the land dissents from the assessment made by the Board, he can have the matter referred to arbitrators and the arbitrators would then determine the amount of betterment fee and while doing so, they would naturally have to find out whether there is any increase in the value of the land at all an dif there is, then what is the quantum of such increase. The owner of the land is given an opportunity under the scheme of Section 78A to Section 78G to have this question determined by a body of two independent arbitrators who would objectively determine whether there is any increase in the value of the land on account of the making of the scheme. These being the relevant provisions, it is difficult to see how Section 78-B to Section 78-G could be regarded as suffering from the vice of excessive delegation of legislative power. The attack against the validity of these sections on the basis of infraction of Article 14 of the Constitution must also fail since the challenge under Article 14 is only another facet of the challenge on the ground of excessive delegation of legislative power. We are, there-ftxre, of the view that Section 78-B to Section 78G are valid and the High Court was wrong in striking them down as ultra vires and void.

8. We cannot part with this case without making one final observation. The unarguably small dimension of the constitutional question raised, here is apparent from what we have said. This Court has dual responsibility to the country. It has to decide the cases brought before it justly and satisfactorily and at the same time, liquidate arrears of pending cases. Both bear upon the credibility of the judicial system. But because of Article 144A brought in by the Forty Second Amendment Act,

seven judges of tins Court have to sit and hear every case where the constitutionality of an Act, rule, bye-law or even a small notification is challenged. Processual pragmatism in the light of actual experience of the working of this Court, will easily convince any one that, in the context of the current docket explosion and long pendency of cases, the insistence on this inconvenient plurality which requires mere than half the full strength of the Court to sit to hear such cases, is a decisive step in the negative direction. Many questions of constitutional importance have already been covered by the rulings of this Court so that he who runs and reads may resolve them. To require seven judges to perform such jobs is surely supererogatory. The present appeal itself is a striking illustration. Where really important issues arise for consideration, any bench of this Court would certainly refer, where necessary, such matters for consideration or reconsideration by a large bench-less or more than seven, according to the requirement of the situation. To prescribe arithmetically is to petrify unimaginatively. We do not say anything about the validity of Article 144A one way or the other but merely highlight the paralysing impact on the highest court and the long-term cause of justice, flowing from the numerical rigidity newly inserted by the Forty Second Constitution Amendment Act. We hope and trust that this matter will receive urgent attention of Parliament

9. We accordingly allow the appeals and dismiss the writ petitions of the respondents. The respondents will pay the costs of the appellant throughout.