Sm. Hemlata Basu Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Sept. 23, 1970

Acts Referred: Constitution of India, 1950 â€" Article 226
Land Acquisition Act, 1894 â€" Section 12, 12(2), 18, 18(2), 4

Citation: 75 CWN 94

Hon'ble Judges: Sabyasachi Mukharji, J; Arun Kumar Mukherjea, J

Bench: Division Bench

Advocate: Nirmal Chandra Chakraborty, for the Appellant; Arun Kumar Janah, for the Respondent

Judgement

Sabyasachi Mukharji, J.
This is an appeal arising out of an order and judgment of B. C. Mitra, J. dated 15th July, 1969. In the application

under Article 226 of the Constitution, the petitioner challenged the legality and validity of notice u/s 4 and declaration u/s 6 of the Land Acquisition

Act, 1894, in respect of certain plots of land intended to be acquired by the Government. The learned Judge came to the conclusion, following his

own decision in respect of other similar matters, that both the notice u/s 4 and the declaration u/s 6 of the Land Acquisition Act were invalid. The

learned Judge also came to the finding that declaration u/s 6 did not specify the area of the land with proper description so as to identify it. On this

finding the petitioner was entitled to have her Rule made absolute but the learned Judge came to the finding that because of her conduct the

petitioner has disentitled herself for any relief under Article 226 of the Constitution. What had happened in this case was that the petitioner did not

receive any notice u/s 9 of the Land Acquisition Act. The Government stated that the Govt. was not aware of the interest of the petitioner.

However, on coming to know of the proceedings, the petitioner filed a claim before the Collector on the 20th December, 1968 u/s 9 of the said

Act. On 31st December, 1968, an award was made which was communicated to the petitioner u/s 12 (2) of the said Act on 3rd January, 1969.

Thereupon the petitioner moved this application under Article 226 of the Constitution and obtained a Rule nisi on the 5th February, 1969. In the

said petition in paragraph 18 thereof the petitioner craved leave to file claim or reference u/s 18 of the Land Acquisition Act otherwise her claim or

references might become barred by limitation. On the 6th February, 1969, the petitioner made an application of objection and asked for reference

to the Court u/s 18 of the Land Acquisition Act, 1894. It has to be remembered that u/s 18(2) such application has to be made within six weeks

from the receipt of the notice of the Collector u/s 12 or within six months of the award of the Collector whichever is earlier. The learned Judge has

upon those facts come to the finding that the petitioner has adopted the acquisition proceeding and as such is not entitled to challenge the said

proceedings in an application under Article 226 of the Constitution. Reliance was placed by the respondents before the learned Judge and the

learned Judge has referred to a Bench decision of this Court in the case of (1) Tincori Das v. Land Acquisition Collector, Alipore and others, 70

OWN 1100. There Sinha, C.J. sitting with my Lord came to the conclusion that the acquisition proceeding was not invalid, because of colourable

exercise of the power. The Court also came to the conclusion that there was a public purpose in the industrial development of the village Gopalpur.

In addition to that the Court came to the conclusion that the petitioner in. that case had applied for a reference u/s 18 of the Land Acquisition Act

and thereafter made an application to this Court under Article 226 of the Constitution. The said facts would appear from the judgment of the

learned Chief Justice at page 1102 of the report. It was observed in the said judgment at page 1107 that there was no explanation as to why the

appellant had claimed compensation and was pursuing the quantum of it and had not ceased to do so. Upon those facts in the said case the Court

was of the opinion that the petitioner had adopted the land acquisition proceedings and as such the petitioner was not entitled to any relief in an

application under Article 226 of the Constitution.

2. Relief under Article 226 of the Constitution is discretionary in the sense that the Court must take into consideration the conduct of the petitioner

but the Courts are not guided by any rules of technicality nor are they guided by any plea of estoppel or limitation as such. The principle upon

which a Court refused to grant a relief is the similar to though not identical with, the exercise of discretion by the Court of Chancery. For this

reliance may be placed upon the judgment of the Supreme Court in the case of (2) N. S. R. T. Corpn. v. B. R. M. Service, AIR (1969) SC 329

at 335. If it is evident from the conduct of the petitioner that the petitioner has unequivocally accepted one remedy and has pursued the claim for

benefit under that remedy the petitioner would not normally be permitted to challenge the proceedings under which he got the previous remedy.

The correct position seems to be that nobody should be permitted to take an inconsistent position. But it is not possible in this case, in our opinion,

to come to the conclusion that the petitioner was taking an inconsistent position. There is no inconconsistency in the position of a person who says

that the proceedings under Land Acquisition Act is invalid in law but if they are held to be valid he is entitled to obtain lawful compensation under

the said Act. In this case it has to be remembered that the petitioner before moving this Court frankly stated all these facts in the petition. The

petitioner further stated that she moved this Court before making the application under Sect on 18 of the Land Ac-quisition Act. Furthermore,

unlike the facts in the case of (1) Tincori Das v. Land Acquisition Collector, reported in 70 CWN 1100 there was no undue delay in making this

application. In the petition under Article 226 of the Constitution the petitioner has stated that the petitioner was reserving the right to make an

application u/s 18 of the Act so as to prevent the claim being barred by limitation. The petitioner in this case has not accepted my money as yet. In

that view of the matter, we are of opinion that it is not possible to say that the petitioner has unequivocally expressed an intention to adopt the land

acquisition proceedings. It s not also possible to say that the petitioner has taken an inconsistent attitude. The conduct of the petitioner in this case

has not been such as to disentitle her to any relief under Article 226 of the Constitution It has to be remembered that the facts of this case are

distinctly different from the facts of the aforesaid case. In that case, as noted above, the application u/s 18 had been made before making an

application to this Court. Furthermore, as the learned Chief Justice has observed that there was no explanation as to why that application was

made in spite of the fact that the petitioner was pursuing his remedy under Article 226 of the Constitution.. Therefore, in this case, in our view, it is

not possible to say that the conduct of the petitioner has been such as to disentitle her to any relief under Article 226 of the Constitution.

3. Reliance was placed by Mr. Chakraborty, appearing for the appellant, on the observation of Lord Blackburn in the case of (3) Benjamin Scarf

v. Alfred George Jardine, 1882 AC 345 at page 361 for the proposition that where once there has been an election to do one of the two things,

you can not retractit and do the other thing. Election, it was contended, once made is anal, but Mr. Chakraborty contended there must be evidence

of an unequivocal election between the two remedies. Mr. Chakraborty also relied on the decision of the Supreme Court in the case of (4) Raja

Anand Brahma Shah Vs. State of Uttar Pradesh and Others, . There on the facts disclosed it appears that there was a prior application under Sect

on 18 of the Land Acquisition Act and in spite of the fact in view of the invalidity of the acquisition proceedings the Supreme Court set aside the

acquisition proceeding. But we are in agreement with the learned trial Judge that this decision cannot be made use of by the appellant because this

point was not discussed or canvassed before the Supreme Court.

4. Mr. Janah, appearing for the respondents, relied on the decision of the Supreme Court in the case of (5) C. Beepathumma and Others Vs. V.S.

Kadambolithaya and Others, . That was also a case which enunciated the principle of election and stated that the doctrine of election is that a

person who accepts a benefit under a deed or will or other instrument must adopt the whole contents of the instrument, must conform to all its

provisions and renounce all rights chat are inconsistent with it, in other words, a person can not approbate and reprobate the same transaction.

Reliance was also placed on by Mr. Chakraborty in the case of (6) Bhanu Ram v. Baijnath, AIR (1961) SC 1327 where the Supreme Court held

the statutory right of appeal cannot be presumed to have come to an end because the appellant had in the meantime abided by or taken advantage

of something done by the opponent in the decree. In our opinion, in this case no question of election arises. Here so far as the question of the

conduct of the petitioner is concerned, it is such that it is nor possible to say that the petitioner has unequivocally adopted or taken the benefit

under the Land Acquisition proceeding. As mentioned hereinbefore, we do not find any inconsistency in the stand taken by the petitioner specially

in view of the fact that she came to this Court prior to the making of the application u/s 18 of the Land Acquisition Act. The conduct of the

petitioner must be considered in its totality. In that view of the matter, we are of the opinion that the learned Judge did not take into consideration

this aspect of the matter fully in exercising his discretion in refusing the prayer, of the petitioner. As such, we are unable to sustain the judgment and

order of the learned trial Judge.

5. The appeal is, therefore, allowed. The judgment and order of B. C. Mitra, J. dated 15th July, 1969 are set aside. The Rule is made absolute.

Let a writ in the nature of Mandamus issue directing the respondents not to give effect to the notice u/s 4 and the declaration u/s 6 of the Land

Acquisition Act so far as the petitioner is concerned and the respondents are further restrained by an injunction from acting in pursuance of the said

notification and declaration so far as the petitioner is concerned. There will be also an injunction restraining the respondents from taking any further

steps in the proceedings.

6. There will be no order as to costs.

Arun K. Mukherjea, J.

I agree.