(1959) 04 CAL CK 0001

Calcutta High Court

Case No: Civil Revision Case No. 3720 of 1956

Fayez Sheikh Jangi and Others		APPELLANT
	Vs	
District Magistrate of Nadia, and Others		RESPONDENT

Date of Decision: April 30, 1959

Acts Referred:

- Constitution of India, 1950 - Article 13(2), 14, 31(2), 31B
- Land Acquisition Act, 1894 - Section 23, 4
- West Bengal Land Development and Planning Act, 1948 - Section 2, 2(d), 2(d)(i), 2(d)(i), 4(a)

Citation: 67 CWN 1087

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

Bench: Single Bench

Advocate: Kashi Kanta Moitra, for the Appellant; N.C. Chakarvarty and S.K. Roy Chowdhury, for the Respondent

Judgement

P.B. Mukharji, J.

This is an application by a number of petitioners against the District Magistrate and Special Land Acquisition Officer, Nadia, Krishnagar. The petitioners challenged the notification and declaration in the Calcutta Gazette dated the 12th December, 1956, issued by the Land Development Department acquiring and declaring that the lands of the petitioners are needed for the public purposes of settlement of immigrants who had migrated into the State of West Bengal on account of circumstances beyond their control. Only two points have been urged before me by the learned Advocate for the petitioners. The first point is that no hearing was given to the petitioners to the objections filed by them before the Collector. The second is that the amendment of the West Bengal Land Development and Planning Act of 1948 being the West Bengal Land Development and Planning (Amendment) Act of 1955 is ultra vires the Constitution.

2. The first ground is a question of fact. I have seen the records of the Government which have been produced after the Rule was issued and the records of the Special Land Acquisition Officer in these proceedings. His clear record is that altogether eighty-three objection petitions were filed within the prescribed time. These objection petitions included an objection petition addressed to the Chief Minister and that all these objections were heard and local enquiry was held. In fact, the Special Land Acquisition Officer says in his affidavit that the objectors including the petitioners were heard individually on specific dates, viz., the 31st May, 1956, the 1st June, 1956 and the 2nd June, 1956 at Dhubulia Union Board Office and they were heard after issuing necessary notices on each of them. He also says that after completion of those hearings and the local inspection, the enquiry report along with the recommendations on objections u/s 4(A) (2) of the West Bengal Land Development and Planning Act was submitted to the Government. The report was produced along with the records of this case which confirms this affidavit. I find that the petitioners were informed and all of them were heard either individually or through their authorised agents. I, therefore, must overrule the objection of the petitioners that their objections were not heard or that they had no opportunities to present their case before the Acquiring Authority.

3. The learned Advocate for the petitioners made a subsidiary argument that no scheme was prepared in this case and therefore, the acquisition for that reason would be bad. That argument cannot be upheld. The notification and the declaration in this case clearly set out the public purpose for which the lands in this case were required. The public purpose is the settlement of immigrants who had migrated into the State of West Bengal on account of circumstances beyond their control. That is the language of the public purpose as given in section 2(d) (i) of the West Bengal Land Development and Planning Act. It is one of the many other public purposes appearing in section 2(d) of the Act. u/s 5(1) of the Act, it is provided that,

The State Government may direct the prescribed Authority or, if it so thinks fit in any case, authorise any Company or local authority, to prepare in accordance, with the Rules, a development scheme in respect of any notified area and thereupon such scheme shall be prepared accordingly and submitted together with such particulars as may be prescribed by the Rules, to the State Government for its sanction.

4. Now prima facie this is a permissive provision but even then there is an exception to this provision for making a scheme. That exception appears in the proviso to section 5(1) of the Act which reads as follows:--

Provided that no scheme shall be necessary for acquisition of land for the public purposes specified in sub-clause (i) of clause (d) of section 2.

5. That being so, this particular public purpose of settlement of immigrants does not require a scheme. Therefore, the fact that no scheme was prepared in this proceeding cannot be a valid objection to this proceeding.

6. Lastly, the main argument of the learned Advocate for the petitioners was marshalled against the amendment introduced by the West Bengal Land Development and Planning (Amendment) Act, 1955 (West Bengal Act XXIII of 1955). This amendment is challenged on the ground that it infringes the doctrine of equality before the law or the equal protection of the laws under Article 14 of the Constitution. The point briefly is that (1) by separating this particular type of public purpose as requiring no scheme and (2) by separating this type of public purpose by providing a different principle of compensation, it is argued that the Act has indulged in discriminatory differences and in unreasonable classification. This argument requires examination.

7. It is said that the public purpose of settlement of immigrants cannot be separated from other public purposes mentioned in section 2(d) of the Act such as (1) establishment of towns, model villages and agricultural colonies, (2) the creation of better living conditions in urban and rural areas and (3) improvement and development of agriculture, forestry, fisheries and industries. It is argued that all these public purposes mentioned in section 2 (d) should be treated equally. It is difficult to accent that argument. It is true that there are four classes of public purposes mentioned in section 2(d), the three which I have just mentioned and the fourth one is the settlement of immigrants. I do not see anything unreasonable in saying that one public purpose will be treated differently from other public purposes when there are good reasons for making such difference. I shall illustrate the reasons here. Obviously the establishment of model villages or improvement of better living conditions etc. may not have the same urgency and same type of social problem as the settlement of immigrants. The sudden rush of refugees on an unprecedented scale represents a problem or a situation by itself. It is then said that if it was a case of urgency, then the Government should have invoked the provisions of section 7 of the Act which provides for cases of urgency. That is quite true but the fact that the Government has not acted u/s 7 of the Act but has acted for the purpose of settling immigrants u/s 2(d) of the Act, cannot vitiate the statute itself and make it unconstitutional. Settlement of refugees, I think, can reasonably be classified as a type of public purpose which is different from other types of public purposes mentioned in section 2(d) of the Act. The classification is not, in my opinion, unreasonable. The law, therefore, that no scheme shall be necessary where public purpose is of the settlement of immigrants cannot, therefore, be said to be unconstitutional on the ground of being unreasonable and on the ground of infringing Article 14 of the Constitution.

8. The second ground of this argument on equality of laws or equal protection of laws under Article 14 of the Constitution is that the provision for compensation is different in different types of public purposes. Reference was made to section 8 of the West Bengal Land Development and Planning Act for the argument that in determining the amount of compensation to be awarded for the land, the market value referred to in clause (i) of subsection (1) of section 23 of the Land Acquisition

Act, 1894, shall be deemed to be the market value of the land on the date of publication of the notification under sub-section (1) of section 4 of that Act for the notified area in which the land is included but an exception was made in the case where the land was acquired for the public purpose of settling immigrants u/s 2 (d) (i) by providing that if such market value exceeds by any amount the market value of the land on the 31st day of December, 1946, then on the assumption that the land had been at that date in the state in which it, in fact, was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration. It is, therefore, contended that by wiping out the excess of the normal compensation available to lands acquired for other types of public purposes, the owners of lands whose properties are acquired for this particular kind of public purpose, viz., the settlement of immigrants, are prejudiced and discriminated against.

9. This argument is really an ingenious way of getting out of the prohibition of Article 31(2) of the Constitution which, after the Constitution''s 4th Amendment Act, 1955, now provides that no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate. The substance of this argument is that the compensation provided in the case of acquisition of land for this type of public purpose is less than that provided for other types of acquisitions for other types of public purposes and, therefore, is inadequate by comparison. Although a question of comparison is raised, the essential and substantial point of grievance in this argument is that the compensation is not adequate by such comparison. I am afraid, by phrasing the argument, the constitutional bar cannot be defeated if the substance is hit by the limitation imposed by the Constitution.

10. An attempt was made on behalf of the State to save this amendment from all attacks in the argument by reference to Article 31(B) of the Constitution and saying that in the 9th Schedule of the Constitution is included the West Bengal Land Development and Planning Act, 1948, as amended by Act XXIX of 1951. This argument does not help the State because the amendment that is challenged is not the amendment of 1951 but the amendment of 1955 by the West Bengal Land Development and Planning (Amendment) Act of 1955, (West Bengal Act XXIII of 1955). On this point, the Supreme Court has settled the problem while discussing the Bombay Tenancy and Agricultural Land (Amendment) Act (Act XIII of 1956) in the decision of (1) Sri Ram Ram Narain Medhi Vs. The State of Bombay, . It is decided there that.

It could not be urged that if the cognate provisions of Act 67 of 1948 were immune from attack in regard to their constitutionality on a parity of reasoning similar provisions contained in the impugned Act, though they made further strides in the achievement of the objective of a socialistic pattern of society would be similarly saved. That position however could not obtain because whatever amendments were

made by the impugned Act in the 1948 Act were future laws within the meaning of Article 13(2) of the Constitution and required to be tested on the selfsame touchstone. They would not be in terms saved by Article 31B and would have to be scrutinized on their own merits before the Courts came to the conclusion that they were enacted within the constitutional limitations. The very terms of Article 32B envisaged that any competent legislature would have the power to repeal or amend the Acts and the Regulations specified in the 9th Schedule thereof and if any such amendment was ever made the vires of that would have to be tested.

11. These observations were made by Bhagwati, J., who delivered the judgment of the Supreme Court, at pages 469-470 of the report, and I answer the argument of the State made before me on this branch of the case.

12. Apart from the considerations which are noticed, I think, here the classification can be made and that reasonably. There is no rule of law that compensation has got to be the same or even has to follow the same principles as for lands which are required for other public purposes. If public purposes can themselves be classified and sub-classified, then compensation can also be accordingly classified and need not be the same for all kinds of acquisitions under public purposes. As the public purposes vary, so can the compensations vary. Now, one of the public purposes u/s 2(d) of the Act is establishment oil towns and model villages. Now, when a man''s property is acquired for this purpose, there is no reason why he should not be paid the normal compensation as provided in section 8 of the Act, because, after all, his lands are being taken for the improvement of towns and establishment of model villages. In the case of acquiring lands for the purpose of settling immigrants considerations of social justice may reasonably imply that there shall be some sacrifice by society and the compensation that it shall receive or the members thereof shall receive, shall be a little less than the compensation provided in usual cases of public purposes. It may reasonably be a part of the social responsibility. In any event, reasons can be adduced to justify the exception and classification of this kind of public purpose, and paying a different type of compensation which is less than the compensation payable in cases of acquisitions of land for other types of public purposes.

13. I am, therefore unable to uphold the petitioners'' contention that the Statute (West Bengal Land Development & Planning Act) and its amendments as contained in section 4(a) and the proviso to section 5(1) and section 8(b) are ultra vires the Constitution. I am of the opinion that these amendments as made by the West Bengal Land Development & Planning (Amendment) Act 1955, being West Bengal Act XXIII of 1955, are constitutional. For these reasons, the application must fail and the Rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.