

Nilkantha Padma Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Aug. 26, 1965

Acts Referred: Constitution of India, 1950 " Article 226

Land Acquisition Act, 1894 " Section 4

West Bengal Land Development and Planning Act, 1948 " Section 2(c), 4, 4(1), 4A, 5

Citation: 69 CWN 1061

Hon'ble Judges: Banerjee, J

Bench: Single Bench

Advocate: Ranjit Kumar Banerjee, Shaktinath Mukherjee and Bidyut Kumar Banerjee, for the Appellant; N.C. Chakrabarti and Bireswar Bhattacharjee, for the Respondent

Judgement

Banerjee, J.

The West Bengal Land Development and Planning Act, 1948, is an Act to provide for the acquisition and development of

land for public purposes. Section 4 of the Act provide for declaration of a notified area in the following language:-

4(1) The State Government may, by notification in the Official Gazette, declare any area specified in the notification to be a notified area if it is

satisfied that any land in such area is needed or is likely to be needed for any public purpose and the Collector shall cause public notice of the

substance of such notification to be given at convenient places in the locality in such manner as he may think fit.

(2) * * * *

Section 2 (c) of the Act defines notified area as:-

Notified area means an area declared under sub-section (1) of Section 4 to be a notified area.

2. In exercise of the powers vested in it u/s 4 of the Act, the respondent State Government published the following notification in the extraordinary

issue of the Calcutta Gazette, dated November 9, 1962.

Hooghly.-No. 14396L, Dev. 9th November, 1962,-Whereas it appears to the Governor that land is likely to be needed for a public purpose viz.,

for the settlement of immigrants who have migrated into the State of West Bengal on account of circumstances beyond their control in the village of

Kotrang, jurisdiction list No. 8, police station Uttarpara, district Hooghly, it is hereby notified that for the above purpose a piece of land comprising

cadastral survey plots (plots numbers omitted) and portions of cadastral survey plots (plots numbers omitted) and altogether measuring more or

less 72.878 acres, is likely to be required within the aforesaid village of Kotrang.

This notification is made under the provisions of Section 4 of the West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI

of 1948) to all whom it may concern.

* * * * *

3. The petitioner alleges to be the owner of three of the plots of land mentioned in the notification. He finds fault with the notification on the theory

that the notification is not in accordance with the provisions of section 4 of the Act, in that there has been no declaration of a "notified area" made

by the notification. With the aforesaid grievances, the petitioner has moved this Court under Article 226 of the Constitution, praying for a Writ of

Mandamus directing the respondents to withdraw and to cancel the notification and has obtained this Rule.

4. The point raised in this Rule is technically attractive. Section 4 of the Act requires the State Government to "declare any area specified in the

notification to be a notified area". What the impugned notification has done is that it has specified an area in the notification but has not expressly

declared the area specified to be the notified area. This is technically not in strict compliance with the language of Section 4 of the Act.

5. Mr. Ranjit Kumar Banerjee, learned Advocate for the petitioner, argued that since hearing of objections u/s 4A, preparation and sanction of

development schemes u/s 5, declaration of acquisition of land needed for development schemes u/s 6 of the Act have all to be made with reference

to the "notified area", absence of declaration as to "notified area" made further proceedings under the notification unworkable. He, therefore,

argued that such a notification should not be allowed to stand.

6. I have already expressed opinion that the impugned notification is not in strict compliance with the language of Section 4 of the Act. I can think

of one reason why it is not so. The impugned notification is of the type issued u/s 4 of the Land Acquisition Act, 1894, which, however, is couched

in a different language as set out below:-

(1) Whenever it appears to the appropriate Government, that land in any locality is needed or is likely to be needed for any public purpose, a

notification to that effect shall be published in the Official Gazette and the Collector shall cause public notice of the substance of such notification to

be given at convenient places in the said locality.

(2) * * * * *

7. There is no question of declaration of an area as the ""notified area"" u/s 4 of the Land Acquisition Act. Since Section 8 of the West Bengal Land

Development and Planning Act attracts the provisions of the Land Acquisition Act, subject to the special provisions contained in the first mentioned

Act, the authorities, out of abundance of respect for the ancient statute, may have prescribed the form of notification under the Land Acquisition

Act for the purposes of the West Bengal Land Development and Planning Act as well, but thoughtlessly without necessary adaptations.

8. Be that as it may, the question for my consideration is whether the notification as made is a nullity, regard being had to the lacuna in the language

used. I am of the opinion that this is not so. With areas specified in the notification, by description, the notified area is reasonably clear. The

impugned notification expressly states that the same has been made u/s 4 of the West Bengal Land Development and Planning Act, 1948. The

purpose of a notification u/s 4 being the declaration of a ""notified area"", there can be little doubt that the area that was specified by the impugned

notification was so done in order to declare the same to be the ""notified area"". Use of clearer language in the notification was certainly desirable but

the defective language used in the notification is not So bad as to prove fatal to the notification.

9. No other point was urged in support of this Rule.

10. In the view taken I overrule the only point urged by Mr. Banerjee and discharge this Rule.

11. I, however, make no order as to costs. Let copies of this judgment be at once sent to Mr. A.N. Chakrabarty, Legal Remembrancer, and Mr.

S.N. Bagchi, Secretary, Judicial Department, so that they may take notice of the view expressed in this judgment and advise introduction of

necessary changes in the form of notification if they so desire.