1960

August 29.

THE STATE OF WEST BENGAL AND OTHERS

v.

NABA KUMAR SEAL.

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Acquisition of land—Settlement of immigrants—Development scheme—If necessary in cases of acquisition under emergency—Absence of development scheme—If infringes fundamental rights—West Bengal Development and Planning Act, 1948 (21 of 1948), s. 7—Constitution of India, Arts. 14, 19(1)(f), 31(2).

By a notification under s. 4 of the West Bengal Land Development and Planning Act, 1948, the Government declared that certain plots of land belonging to the respondent were needed for the settlement of immigrants from East Pakistan and for improving living conditions in the locality. Thereafter a second notification was issued by the Government under s. 6 read with s. 7 of the Act declaring that the plots covered by the previous notification were needed for the same purpose as stated therein. When the Government started to erect structures on the land thus acquired the respondent moved the High Court under Art. 226 of the Constitution challenging the vires of the Act and impugning the legality of the proceedings taken under the Act. The petition was heard by a judge of the High Court sitting singly who negatived all the contentions of the petitioner and discharged the rule. On appeal by the respondent under the Letters Patent, a Division Bench of the High Court held that the Act did not infringe the provisions of Arts. 19(1)(f) and 31(2) of the Constitution. The High Court further held that it was incumbent on the State Government to frame a development scheme after possession of the land had been taken even though the Government was entitled to deal with the land on an emergency basis under s. 7 of the Act, which runs thus:—

"In cases of urgency, if in respect of any notified area the State Government is satisfied that the preparation of a development scheme is likely to be delayed, the State Government may, at any time, make a declaration under s. 6, in respect of such notified area or any part thereof though no development scheme has either been prepared or sanctioned under s. 5".

The High Court allowed the respondent's appeal and directed a writ of mandamus to issue to the Government requiring them to proceed to frame a development scheme in terms of the Act. On appeal by the State of West Bengal on a certificate granted by the High Court,

Held, that the High Court was in error in issuing the mandamus against the appellants. Section 7 of the Act completely dispensed with the statutory necessity of preparing a scheme of development as envisaged in s. 5 of the Act in cases where the Government had taken the decision that it was necessary to proceed further with the acquisition proceedings without waiting for a development scheme.

No discrimination was implicit in the provisions of s. 7 of the Act and no fundamental right of the appellant was infringed either under Art. 14 or Arts. 19(1)(f) and 31(2) of the Constitution.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 212/55.

Appeal from the Judgment and Decree dated July 7, 1953, of the Calcutta High Court in Appeal from Original Order No. 157 of 1952, arising out of the Judgment and Decree dated March 28, 1952, of the said High Court in Civil Rule No. 1409 of 1951.

B. Sen and *P. K. Bose* for the appellants.

P. K. Ghosh for the respondent.

S. C. Mazumdar for the Intervener (Gopalpur Land Development Society, Ltd.).

1960. August 29. The Judgment of the Court was delivered by

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SINHA C. J.—The only substantial question that arises for determination in this appeal, on a certificate granted by the Calcutta High Court under Art. 133 (1)(c) of the Constitution, is whether the Government of West Bengal was bound to frame a development scheme under the provisions of the West Bengal Land Development and Planning Act, 21 of 1948, which hereinafter will be referred to as the Act, when it exercised its power of emergency under s. 7 of the Act.

The facts of this case lie within a very narrow compass and are as follows: The respondent was the owner of about 18 bighas of land in a certain village in the district of 24 Parganas. By a notification dated January 6, 1950, and published in the Calcutta Gazette dated January 12, 1950, under s. 4 of the Act, the Government declared that the cadastral survey

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plots, particulars whereof were given in the notification, were likely to be needed for the settlement of immigrants and for creation of better living conditions in the locality. Thereafter a notification was issued under s. 6 read with s. 7 of the Act and published in the Calcutta Gazette dated April 27, 1950, declaring that the plots covered by the notification under s. 4 aforesaid were needed for the very same purposes as stated in the notification under s. 4. On or about December 16, 1950, possession of those plots, except three, was taken by the Government. When the Government started to erect certain structures on the land thus acquired and stored building materials nearabout, the respondent moved the High Court under Art. 226 of the Constitution challenging the vires of the Act and impugning the legality of the proceedings taken under the Act. The matter was heard by H. K. Bose, J., sitting singly. Before him the grounds urged in support of the petition were that the release of the three plots from the acquisition proceedings rendered the entire proceedings bad in law; that there was no urgency for the Government to take steps under s. 7 of the Act, and for issuing the notification under s. 6; and that the provisions of the Act infringed the fundamental rights of the respondent, petitioner in the High Court, enshrined in Art. 19(1)(f) of the Constitution. The learned Judge, by his judgment dated March 28, 1952, negatived all those contentions and discharged the rule issued by the High Court on the Government of West Bengal and others under Art. 226 of the Constitution.

The respondent preferred an appeal under the Letters Patent. The appeal was heard by a Division Bench consisting of G. N. Das and Debabrata Mookerjee, JJ. By their judgment dated July 7, 1953, it was held that the Act did not infringe the provisions of Art. 31 (2) of the Constitution and that therefore it became unnecessary to express any opinion with respect to the provisions of Art. 19(1)(f). But the Bench also examined the provisions of the Act in the light of Art. 19(1)(f) of the Constitution and came to the conclusion that there was no infirmity in the Act,

even on that score. Having decided all the points raised on behalf of the appellant before it, the High Court allowed the appellant to raise another controversy, which had not been raised before the learned single Judge, namely, whether it was incumbent on the Government to frame a development scheme, after possession had been taken by it, of the land in question. Ordinarily, such a controversy should not have been allowed to be raised for the first time in the court of appeal. Be that as it may, it came to the conclusion that even though the Government was entitled to deal with the land on an emergency basis under s. 7 of the Act, it was incumbent on the State Government to frame a development scheme after possession had been taken. The main reason for this conclusion as given by the High Court is that though s. 7 had armed the Government with the power to take possession of the property before framing a scheme of development, the section does not, in terms, dispense with the necessity of framing a development scheme, after the emergency had been declared and possession taken. In that view of the matter, the court of appeal allowed the appeal in part and directed a writ of *mandamus* to issue to the respondents before it, requiring them to proceed to frame a development scheme in terms of the Act. The State of West Bengal and other officials who had been impleaded as respondents in the High Court applied for leave to appeal to this Court from the said judgment of the appeal court. The High Court granted the leave prayed for, on condition that the appellants paid for the representation of the respondent before this Court by a junior Advocate of this Court. That is how the matter comes before this Court.

It was argued on behalf of the appellants that the appeal court had misapprehended the scope and effect of ss. 4, 5, 6 and 7 of the Act; that the Act contemplated two categories of acquisition proceedings, namely, (1) acquisition under s. 6, after compliance with the provisions of s. 5 and (2) acquisition in case of an emergency under s. 7 read with s. 6 of the Act; that the condition precedent laid down in s. 5 necessitating

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the framing of a scheme before a declaration under s. 6 of the Act was made, is specifically excluded in cases of emergency once a declaration of emergency under s. 7 is made. The High Cout was, therefore, in error in insisting upon the framing of a development scheme under s. 5 of the Act, when that section had not been made applicable to the case of an emergency acquisition. Once the property has been acquired it vests in the Government and thereafter the original holder of the property has no say in the matter, except on the question of amount of compensation. Mr. Sen, for the appellants, finally contended that if the High Court was right in insisting upon a scheme of development being framed, the whole purpose of declaring an emergency would be defeated.

The learned counsel for the respondent has not made any serious attempt to meet the contentions raised on behalf of the appellants, but has attempted to show that the provisions of the Act, in so far as they give special powers to Government to declare an emergency and then to proceed with the acquisition without the necessity of framing a scheme of development, were unconstitutional, both in view of the provisions of Art. 31(2) and Art. 19(1)(f). He also made a very feeble attempt to rely upon the provisions of Art. 14 of the Constitution and to suggest that the respondent was being discriminated against in the application of the emergency provisions of the Act to his case.

In our opinion, the contentions raised on behalf of the appellants are manifestly well-founded and the High Court was clearly in error in issuing the *mandamus* against the appellants.

Before dealing with the contentions raised on behalf of the parties, it is convenient, at this stage, to set out the relevant provisions of the Act. The Act replaced the West Bengal Land Development and Planning Ordinance, II of 1948, which was in similar terms. The Act and the Ordinance, which it replaced, were enacted apparently as a result of the emergency created by the continual exodus of Hindus from East Pakistan on a mass scale and the consequent immigration of a very large population into West Bengal, as a result of the

partition. The Act was enacted "to provide for the acquisition and development of land for public purposes". It adopts the definitions of "land", "Collector" and "company" as in the Land Acquisition Act, I of 1894, to which it is, in its terms, supplementary. In the definition section 2, "development scheme" means a scheme for the development of land for any public purpose; and a "notified area" has been defined as an area declared as such under sub-s. (1) of s. 4. "Public purpose" has been defined in cl. (d) of s. 2 as including (i) the settlement of immigrants who have migrated into the State of West Bengal on account of circumstances beyond their control, (ii) the establishment of towns, model villages and agricultural colonies, (iii) the creation of better living conditions in urban and rural areas, and (iv) the improvement and development of agriculture, forestry, fisheries and industries; but does not include a purpose of the Union. Section 3 authorises the State Government to appoint the "prescribed authority" for carrying out the purposes of the Act. Section 4 is, in terms, analogous to s. 4 of the Land Acquisition Act and authorises the State Government by notification in the Official Gazette to declare any area to be a notified area on being satisfied that that specified area is needed or is likely to be needed for any public purpose. The Act was amended in 1955 by the West Bengal Act, XXIII of 1955, and one of the amendments made by that Act was to add s. 4A making provision for objections to be taken by any person interested in any land within the notified area, for an opportunity of being heard and for an enquiry being made on the merits of such objections, and finally for submission to the State Government of a report on the objections raised. We are not concerned in this case with s. 4A, because it was inserted into the Act after the decision of the case by the High Court. Section 5, with which we are mainly concerned in this case is in these terms :—

"5(1). 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

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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 :

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

(2). A development scheme submitted to the State Government under sub-section (1) may, after taking into consideration any report submitted under sub-section (2) of section 4A, be sanctioned by it either without any modification or subject to such modifications as it may deem fit."

The proviso to s. 5 was added by the same amending Act (West Bengal Act XXIII of 1955) and is likewise inapplicable to this case. Section 6 again is, in terms, analogous to s. 6 of the Land Acquisition Act, which provides for the declaration to be published in the Official Gazette to the effect that the State Government was satisfied that any land in a notified area, for which a development scheme has been sanctioned under s. 5(2) of the Act, is needed for the purpose of executing such a scheme, unless there already has been a declaration made under s. 7 of the Act. Section 7, which is another section, the construction of which is involved in this case, is in these terms :—

" In cases of urgency, if in respect of any notified area the State Government is satisfied that the preparation of a development scheme is likely to be delayed, the State Government may, at any time, make a declaration under section 6, in respect of such notified area or any part thereof though no development scheme has either been prepared or sanctioned under section 5."

Section 8 makes the provisions of the Land Acquisition Act applicable to acquisition proceedings taken in pursuance of the declaration made, either under s. 6 or s. 7 of the Act, subject to certain reservations made in pursuance of the provisos to s. 8, relating to taking possession, determination of the amount of compensation, and of market value. The other sections of the Act are not relevant to the point in controversy in this case and, therefore, need not be adverted to.

It will be noticed that s. 7 is in the nature of a proviso to s. 6. Section 7 provides that in cases of urgency, if the State Government is satisfied that the preparation of a development scheme is likely to be delayed, it may make a declaration under s. 6 that the land was needed for a public purpose, even though no development scheme has either been prepared or sanctioned under s. 5. The section, therefore, in clear terms, authorises the State Government to issue the necessary declaration under s. 6, which puts the machinery of land acquisition proceedings into motion, if it is satisfied that the public purpose necessitating the acquisition of the land in question would be subserved without the preparation of a development scheme. The Act itself came into existence in circumstances of great urgency. Naturally, therefore, in suitable cases, where the preparation of a development scheme would cause delay, the Government was authorised to proceed with the acquisition of land after making the necessary declaration under s. 6. As already indicated after that declaration has been made by Government in the Official Gazette and the necessary enquiry made about compensation and the making of the award, the property becomes vested in the Government. The question naturally arises whether there is anything in the Act which makes it obligatory on the State Government to prepare a scheme of development thereafter. The High Court has recognised the need for taking speedy action to meet the emergency created by the heavy influx of immigrants. The High Court has observed that s. 7 does not, in terms, dispense with the framing of a development scheme and that it merely says that the Government may issue a declaration under s. 6, even though no development scheme has been framed. But the High Court has further observed that even after taking possession of the property under r. 8, framed under the Act, within three days, there is no reason why the normal process envisaged in the Act should not be gone through. The argument proceeds further that the Act itself contemplated land planning and development and therefore the framing of a development scheme was an essential part of the

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process. Hence, in the view of the High Court the framing of a development scheme was necessary in the normal course, before the declaration under s. 6 is made by the Government, and in the case of urgency under s. 7, after taking possession of the land in question. In our opinion, such a construction of the provisions of the Act is not warranted by the terms of the Act. The addition of the proviso to s. 5, quoted above, makes it clear that the Legislature has recognised the necessity in special circumstances of not framing a scheme in the case of the public purpose contemplated in cl. (d)(i) of s. 2, namely, for the purpose of settlement of immigrants. On a fair reading of the relevant provisions of the Statute, it becomes clear that the Act contemplated acquisitions of two distinct classes, namely, (1) where the Government had first considered and sanctioned a development scheme under the provisions of s. 5 and then made a declaration that the land in a notified area was needed for the purpose of executing the particular development scheme and (2) where the notification under s. 6 is made without any development scheme being prepared and sanctioned under s. 5. Once the declaration is made under s. 6, the machinery of the Land Acquisition Act, 1 of 1894, comes into operation, of course subject to the reservations contained in the provios to s. 8, as aforesaid. The Land Acquisition Act itself does not contemplate the preparation of any such scheme of development. In other words, s. 7 completely dispenses with the statutory necessity of preparing a scheme of development as envisaged in s. 5 of the Act in cases where the Government has taken the decision that it is necessary to proceed further with the acquisition proceedings without waiting for the preparation of a scheme. To insist upon the preparation of a development scheme would amount to rendering the provisions of s. 7 otiose. There is no justification for the observation made by the High Court that the Legislature did not intend that the State Government should proceed with the land acquisition proceedings under the Act without framing a scheme of development.

The High Court has recognised the legal position that it is open to the Government to take possession of the land under acquisition within three days after the making of the declaration of urgency under s. 7, but has insisted that, even after taking possession as a measure of urgency, the Government was bound to prepare a scheme of development. If that were so, the question naturally arises: to what use the land so taken possession of was to be put. The taking of possession in cases of urgency would itself predicate the use of the land thus taken possession of by the Government. But if the Government were to wait for the preparation and sanction of the scheme before putting the land acquired to any use, the very purpose of declaring the urgency and the taking of possession would be defeated. It is clear, therefore, that the Legislature did not mean to insist upon the preparation of a scheme of development in cases of land acquisition brought within the purview of s. 7 of the Act.

That disposes of the appeal. But the learned counsel for the respondent appealed to the provisions of Arts. 14, 19(1)(f) and 31(2) of the Constitution in aid of his contention that s. 7 of the Act was *ultra vires*. Apparently, there is no discrimination. As already indicated, there are two classes of cases into which the land acquisition proceedings envisaged by the Act fall. The two classes can be easily identified and the purpose of the classification is based on a rational consideration, having due regard to the purpose and policy underlying the Act, namely, to acquire land for the public purpose, *inter alia*, of resettling immigrants who had to leave their hearth and home on account of circumstances beyond their control. Such cases of urgency, as come under s. 7, are clearly meant to serve the main purpose of the Act. In our opinion, therefore, there is no substance in the contention that discrimination is implicit in the provisions of s. 7.

The attack on the Act based on Arts. 19(1)(f) and 31(2) of the Constitution is futile in view of the provisions of Art. 31B, which is in these terms :—

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"Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amended it, continue in force."

The Act in question is the last entry (serial number 20) in the Ninth Schedule. Article 31B, quoted above, which renders the Act immune from all attacks based on the provisions of Part III of the Constitution relating to fundamental rights, makes it unnecessary to discuss with reference to the provisions of the statute that, even if the question were open, the Act does not suffer from any such infirmity, as is attributed to it.

In view of the considerations set out above, we allow this appeal, set aside the judgment under appeal with costs here and in the High Court. The respondent's petition questioning the vires of the Act is dismissed.

Appeal allowed.