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COLLECTOR OF 24 PARGANAS AND ORS.

v.

LALIT MOHAN MULLICK & ORS.

FEBRUARY 13, 1986

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[M.P. THAKKAR AND V. KHALID, JJ.]

West Bengal Land Development and Planning Act, 1948 - ss. 2(d)(i) and 4 - 'Settlement' of immigrants - Interpretation of - Acquisition of land - For the 'resettlement' of immigrants - Construction of hospital for crippled children - Whether 'Public purpose'. C

Words and phrases - 'Rehabilitation' - Meaning of.

A notification was issued for the acquisition of the land belonging to the respondents under s. 4 of the West Bengal Land Development and Planning Act, 1948 stating that D the land in question was needed for the public purpose for the resettlement of immigrants who have migrated into the State of West Bengal. This was followed by another notification under s. 6 of the Act.

Later, on an inspection of the record of the Special E Land Acquisition Officer, the respondents came to know from two letters, that the acquisition was not for the purpose mentioned in the notification issued under s. 4, but for the Society of Experimental Medical Science for construction of a hospital for crippled children.

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Finding that the real purpose of acquisition was different from the one mentioned in the notification, the respondents approached the Land Acquisition Authority requesting them to cancel the notification and the land acquisition proceedings on the ground that they were made G under colourable exercise of powers.

There being no response the respondents approached the High Court under Article 226 to quash the notification. A Single Judge held that the challenge to the Notification was hopelessly time barred as the Writ Petition was filed after a H

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lapse of more than two years and two months from the date of the Notification issued under s. 6, and since there was no satisfactory explanation for this delay the discretionary powers under Article 226 should not be exercised.

In appeal the Division Bench reversed the judgment, and
B held that the two letters which the respondents came across during the inspection of the land acquisition records, did not even remotely suggest that the purpose of the acquisition was for "settlement of immigrants" but was for the establishment of a hospital for crippled children, and that the acquisition proceedings were consequently in bad faith to deprive the
C respondents of compensation as on the date of Notification.

In appeal to this Court, on behalf of the State - appellants, it was contended that the notification clearly indicated that the purpose of the acquisition was to rehabilitate displaced persons which was a public purpose and
D it was neither proper nor necessary to go behind the Notification in a challenge based on bad faith. On behalf of the respondents, the appeal was contested on the ground that 'settlement' was not 'resettlement' and since the public purpose shown in the notification is 'resettlement' s. 2(d)(i) was not attracted.

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Allowing the appeal, setting aside the judgment of the Division Bench of the High Court and restoring that of the Single Judge.

HELD: 1. Section 2(d)(i) of the West Bengal Land
F Development Planning Act, 1948 makes settlement of immigrants, who have migrated into the State of West Bengal on account of circumstances beyond their control a public purpose. Under s. 8(1)(b) of the Act determination of the amount of compensation to be awarded for the land acquired under the Act is the same as under s. 23 of the Land Acquisition Act, 1894.
G However, distinction is made in the section if the land is acquired for public purpose specified in s. 2(d)(i), viz. compensation should be restricted to the market value of the land on the first day of December, 1946 and not more. [276F-H; 277 A]

H 2. Section 2(d)(i) speaks of 'settlement' of immigrants while the notification under s. 4 speaks of 'resettlement' of

immigrants. The intention of the section is to settle those who migrated to West Bengal from across the border. Whether one uses the word 'settlement' or 'resettlement', the intent is clear, and that is to provide for habitation and to extend other amenities to those who are displaced from across the border. [277 B-D]

3. The real purpose of rehabilitation can be achieved only if those who are sought to be rehabilitated are provided with shelter, food and other amenities of life. [279 B-C]

4. No detailed discussion is necessary to hold that putting up of a hospital, and in particular one for crippled children is one of the important facets of the concepts of 'rehabilitation' of displaced persons and therefore to provide a hospital for disabled and crippled children of such displaced persons comes within the concept of the idea of 'rehabilitation' and consequently of 'settlement' of the refugees. [279 C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 72 (N) of 1972.

From the Judgment and Order dated 6.3.1969 of the Calcutta High Court in Original Order No. 298 of 1968.

D.N. Mukherjee, G.S. Chatterjee and Sukumar Basu for the Appellants.

Sankar Ghose, P.K. Mukherjee for the Respondents.

The Judgment of the Court was delivered by

KHALID, J. This is an appeal, by certificate, against the Judgment of a Division Bench of the Calcutta High Court reversing the Judgment of a learned Single Judge. The matter relates to land acquisition proceedings. The Collector of 24 Parganas and others are the appellants.

Under Section 4 of the West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948) (for short, the Act), a notification dated March 28, 1957 was issued in relation to property, being C.S. Plot Nos. 84 and 86, belonging to the respondents. Declaration, under Section 6 of the

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Act, dated January 4, 1962 followed. The earlier notification stated that the above plots alongwith certain other plots were likely to be needed for a public purpose viz. for the re-settlement of immigrants who have migrated into the State of West Bengal on account of circumstances beyond their control. The area involved in the proceedings is 3.85 acres, in extent. It appears that the respondents in this case; the owner of the land, discovered after receipt of notice of acquisition, on inspection of records at the office of the Special Land Acquisition Officer, Alipore, that the land was required not for the purpose mentioned in the notification but for the Society of Experimental Medical Science (India) for construction of a hospital for crippled children at the expenses of the said Society. They then applied for the copies of the two letters which contained this disclosure. Finding that the real purpose of acquisition is different, from the one made in the notification, they addressed a letter to the Land Acquisition authorities requesting them to cancel the notification and the land acquisition proceedings on the ground that they were made under colourable exercise of powers. There was no response. Hence they moved the Calcutta High Court by writ petition CR No.361(W) of 1964, to quash the notification and the subsequent proceedings, on the ground that the notification and the acquisition proceedings were mala fide, beyond the powers conferred by the Act in fraud of those powers.

The writ petition first came up before a learned Single Judge of the High Court. He held that the challenge to the notification was hopelessly barred by time. The notification under Section 4, was published on 28.3.1957 and the succeeding declaration under Section 6 on 4th January, 1962. The writ petition was filed only on 26.3.1964 - after lapse of more than two years and two months. Since the respondents did not give any satisfactory explanation for this delay the learned Single Judge felt that the discretionary powers under Article 226 should not be exercised in their favour. The learned Single Judge also repelled the contention based on the plea that the acquisition proceedings were mala fide and in fraud or in excess of the powers under the Act.

The respondents took the matter in appeal. A Division Bench of the High Court reversed the Judgment of the learned

Single Judge both on the question of delay and on merits. It was held that the letters, which the respondents came across during the inspection of the records, did not even remotely suggest that the purpose of the acquisition was for "settlement of immigrants" but was for the establishment of a hospital for the crippled children by the Society. It was held that the acquisition was made in bad faith to deprive the appellants of the compensation as on the date of notification. Hence the appeal.

The learned counsel for the appellants pleaded before us that the approach of the Division Bench was totally unwarranted and that the Judgment was based on wrong premises. He contended that the notification clearly indicated that the purpose of the acquisition was to rehabilitate displaced persons which was a public purpose and it was neither proper nor necessary to go behind the notification in a challenge based on bad faith.

We will now examine whether the notification and the land acquisition proceedings are bad as found by the Division Bench of the High Court. The Act that governs these proceedings is not the Land Acquisition Act but the Act mentioned above. Section 2(d) of the Act defines 'public purpose' as under :-

> 2(d) "public purpose" includes -
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> (i) the settlement of immigrants who have migrated into the State of West Bengal on account of circumstances beyond their control,
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> (ii) the establishment of towns, model villages and agricultural colonies,
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> (iii) the creation of better living conditions in urban and rural areas, and
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> (iv) the improvement and development of agriculture, forestry, fisheries and industries;
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> but does not include a purpose of the Union;

Section 8(1)(b) is the other section that has to be taken into account. This reads as follows:

"8(1) After making a declaration under Section 6, the State Government may acquire the land and thereupon the provisions of the Land Acquisition Act, 1894 (hereinafter in this section referred to as the said Act), shall, so far as may be, apply:

Provided that -

(a) .....

(b) in determining the amount of compensation to be awarded for land acquired in pursuance of this Act the market value referred to in clause first of sub-section (1) of section 23 of the said Act 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 for the notified area in which the land is included subject to the following condition, that is to say, if such market value in relation to land acquired for the public purpose specified in sub-clause (i) of clause (d) of Section 2, exceeds by any amount the market value of the land on the 31st day of December, 1946, 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.

(2) ....."

Section 2(d)(i) makes the settlement of immigrants who have migrated into the State of West Bengal on account of circumstances beyond their control, a public purpose. From Section 8(1)(b) quoted above, we note that the determination of the amount of compensation to be awarded for the land acquired under the Act is the same as that under Section 23 of the Land Acquisition Act. However, the section makes a distinction if the land is acquired for a public purpose specified in Section 2(d)(i). When the land is acquired for a

purpose mentioned in that section, the compensation should be restricted to the market value of the land on the 1st day of December, 1946 and not more. It is this restriction on the amount of compensation that is really the moving spirit behind the writ petition and the challenge to the notification.

We may even at the outset reject a contention made by the learned counsel for the respondents on the wording of section 2(d)(i) and the notification. Section 2(d)(i) speaks of 'settlement' of immigrants while the notification under section 4 speaks of 're-settlement' of immigrants. The contention raised is that 'settlement' is not the same as 're-settlement', and since the public purpose shown in this notification is 're-settlement', Section 2(d)(i) is not attracted. We wish to make it clear that this contention is just an empty exercise on words. The intention of the section is to settle those who migrated to West Bengal from across the border. They are to be settled in West Bengal. Whether one uses the word settlement or re-settlement, the intent is clear and that is to provide for the habitation and other amenities to those who were displaced from across the border. Nothing therefore turns, in our view, on the use of the word 're-settlement' in the notification, though a serious attempt is seen made in the affidavit filed by the appellants to explain that what was really meant was 'settlement' and not 're-settlement'.

Now, what remains is the question whether the public purpose mentioned in the notification is different from the purpose to which it is proposed to be utilised, accepting the plea of the respondent that the purpose is the construction of hospital for crippled children by the Society. We will refer to the letters on which strong reliance is placed by the respondents. The first letter is dated 6.9.1962, from the Refugee Rehabilitation Commissioner, West Bengal, to the Assistant Secretary, R.R. & R. Department. The subject is mentioned as "Allotment of land in Mouza Palpara, P.S. Baranagar, Distt. 24 Parganas, to the Society of Experimental Medical Sciences, India, for construction of a hospital for the crippled children." The letter states that an area of 1.10 acres of land out of a total declared area of 3.85 acres has been decided to be handed over to the Society of Experimental Medical Sciences, India, for construction of a hospital for

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crippled children. The rest of the declared area will be handed over to the Society on receipt of the same from the Collector after award. From this letter it is clear that the proposed hospital for crippled children has something to do intimately with the rehabilitation process and that is why the letter is written by the Refugee Rehabilitation Commissioner
B to the Assistant Secretary, R.R. & R. Department.

The second letter is dated 28.11.1962, by the Assistant Secretary to the Government of West Bengal to the Collector, 24 Parganas. This states that the entire land measuring 3.85 acres has been decided to be handed over to the Society for
C the purpose stated above. The heading of the letter is "Government of West Bengal, Refugee Relief and Rehabilitation Department". This letter also shows that the acquisition of the entire land is intimately connected with the activities of the relief and rehabilitation department.

D The learned counsel for the appellant invited our attention to two other letters produced along with the Special Leave Petition. The 1st letter is dated 3.1.1963 from the Under Secretary to the Government of India to the Hony. General Secretary, Society of Experimental Medical Sciences, India, Calcutta, and the subject is: ".... setting up of a
E hospital for crippled children and a general hospital to develop medical facilities in the interest of the displaced persons from East Pakistan." From this letter it is evident that the matter was known to the Government of India also and that the acquisition proceedings related not only to 3.85 acres involved in this acquisition, but to a much larger area,
F for a hospital for crippled children as well as a general hospital. This letter shows that the land will be allotted to the Society on a 99 years lease and that four blocks of 64 tenements in the colony will be allotted to the Society on rental basis for accommodating the hospital staff. All these correspondence taken together show that the State wanted a
G much bigger area for re-habilitation of displaced persons from East Pakistan. The respondents can succeed only if they can establish to the satisfaction of the Court that putting up of a hospital for crippled children is not a public purpose connected with the rehabilitation of displaced persons. To our pointed question to the respondent's counsel whether the
H construction of a hospital for crippled children is a public purpose or not, he admitted, after some hesitation, that it

was a public purpose. The next step is to ascertain whether putting up of such a hospital has something to do with rehabilitation of displaced persons.

In Collins Dictionary of the English Language, the meaning for the word 'rehabilitate' is given as "to help a person (who is physically or mentally disabled or has just been released from prison) to readapt to society or a new job as by vocational guidance, retraining or therepy.....". By rehabilitation what is meant is not to provide shelter alone. The real purpose of rehabilitation can be achieved only if those who are sought to be rehabilitated are provided with shelter, food and other necessary amenities of life. It would be too much to contend, much less to accept, that providing medical facilities would not come within the concept of the word 'rehabilitation'. No detailed discussion is necessary to hold that putting up of a hospital and in particular one for crippled children is one of the important facets of the concept of 'rehabilitation of displaced persons'. Displaced persons are an unenviable section of society. They bring with them not only misery and poverty but ailments also. Their children will be afflicted by manifold ailments. To provide a hospital for the disabled and for the crippled children of such displaced persons, in our Judgment, squarely comes within the concept of the idea of 'rehabilitation' and consequently of settlement of the refugees.

The original object of acquisition proceedings is generally termed as 'resettlement of refugees' which would mean their rehabilitation. It would be for the authorities concerned to think of providing various amenities for the displaced persons in the process of rehabilitation. In this case, after the declaration notification, the authorities concerned thought of a hospital. They may think of providing educational institutions, shopping centres and the like. All these amenities can be conveniently included in the public purpose generally called 'settlement of refugees'.

The respondent's contention can be approached from another angle also. It is a generally accepted principle that persons interested in lands cannot lightly question the validity of a notification under Section 4 or under Section 6 and go behind them. When an acquisition is proposed for a public purpose and the purpose is shown to be a public purpose,

A Courts usually frown upon lighthearted attacks on the validity of the notification. In this case we see an unusual method of fishing out information by looking into the files and discovering two letters in which mention is made of the starting of a hospital for crippled children. How can these letters help the respondents? As we have mentioned earlier, the original notification was on 28.3.1957 and Section 6 notification B was on 4.1.1962. The two letters on which reliance is placed, came into being subsequently. This is because the idea of providing hospital for crippled children must have occurred to the officers concerned subsequently. There may arise further correspondence between the department concerned suggesting starting of schools, providing transport facility etc.. It C would be idle to depend upon such internal communication, which is normally not available to the party whose property is acquired and to contend that the notification is bad.

Our considered view in this matter is that establishment of a hospital for crippled children falls within the idea of D settlement and rehabilitation is displaced persons and the notification cannot be faulted on the ground that the purpose disclosed in the letters is one different from the public purpose disclosed in the notification. The Division Bench of the High Court was in error in quashing the notification.

E In the result, we allow the appeal, set aside the Judgment of the Division Bench of the High Court and restore that of the Single Judge but, in the circumstances of the case, with no order as to costs.

A.P.J. Appeal allowed.