

CIVIL REVISION.

Before Nasim Ali and Khundkar JJ.

1934

July 26, 27.

SARALA DASEE

v.

PRESIDENT, CALCUTTA IMPROVEMENT
TRIBUNAL.*

President, Calcutta Improvement Tribunal—Powers—Duties—Money—Investment in lands, Principles of—Objections—How to be dealt with—Judicial discretion—Land Acquisition Act (I of 1894), s. 32 (1) (a), (b).

The learned President of the Calcutta Improvement Tribunal should hear fully all the objections before he decides that it is desirable or advantageous that money, which has remained invested in G. P. Notes for nearly 10 years without any objection from any body, should be re-invested in view of the facts stated in a petition of objection before him.

The learned President has jurisdiction under section 32 to re-invest the money in the purchase of other lands and in this matter he acts as a judge and has got to exercise his function in a judicial manner.

Where public officers are empowered to do certain things for a third person, the law requires that it shall be done only when the interest of that person calls for the exercise of that power.

The President is to exercise a judicial discretion in making the investment in the interest of the persons for whom the money is held in trust; and he should invest money in purchasing the lands presumably of the same value and income as the land acquired.

Nawab Bahadur of Murshidabad v. Arunchandra Singha (1) referred to.

CIVIL RULE (under section 115, Civil Procedure Code and section 107, Government of India Act) obtained by the objector.

The facts of the case, out of which this Rule arose, appear sufficiently in the judgment.

Sateendranath Mukherji (with *Sateeshchandra Mukherji*) for petitioner: The learned President of the Calcutta Improvement Trust Tribunal has not exercised a sound judicial discretion in rejecting my client's petition of objection without considering whether the proposed re-investment in the purchase of landed property will be beneficial to my client.

* Civil Revision, No. 704 of 1934, against the order of D. C. Ghosh, President of the Calcutta Improvement Tribunal, dated May 7, 1934.

(1) (1930) C. Rev. 1445 of 1930 decided by Suhrawardy and Jack JJ. on 15th Dec.

[NASIM ALI J. The learned President has jurisdiction to make the re-investment in lands. Does the absence of the exercise of a sound judicial discretion affect his jurisdiction?]

1934
Sarda Dasee
 V.
President,
Calcutta
Improvement
Tribunal.

He has acted illegally and with material irregularity in not considering the objections of my client and has not exercised his discretion judicially. I rely on the decision of this Court in *Nawab Bahadur of Murshidabad v. Arunchandra Singha* (1), which lays down the principle on which a sound judicial discretion is to be exercised in such cases. The interest of the objector is the chief and principal consideration.

[NASIM ALI J. We are aware of that decision and will consider our decision.]

No one for the President, Improvement Tribunal, the opposite party.

Cur. adv. vult.

The judgment of the Court was as follows:—

The facts which give rise to this Rule are as follows:—

Premises No. 115-1-1, Cornwallis Street and 7, Pal Lane, in which the petitioner had a Hindu widow's estate, were acquired by the Calcutta Improvement Trust. Under section 32 (1) (b) of the Land Acquisition Act, the compensation money, namely, Rs. 42,515-11-5, was invested in Government Promissory Notes in 1914. Since then the Government Promissory Notes are being held in deposit by the Calcutta Improvement Tribunal and the petitioner had been receiving the interest periodically accruing thereon. On the 2nd March, 1934, a notice was issued by the President, Calcutta Improvement Trust, upon the petitioner calling upon her to show cause why the said notes should not be applied in whole or in part in the purchase of lands under the provisions of section 32 (1) (a) of the Land Acquisition Act. The petitioner, thereupon, appeared

(1) (1930) C. Rev. 1445 of 1930 decided by Suhrawardy and Jack JJ. on 15th Dec.

1934

*Sarala Dasee*v.
*President,
Calcutta
Improvement
Tribunal.*

before the learned President and prayed that the notes in question might continue to remain in deposit as before on certain grounds. The learned President, by his order, dated the 7th May, 1934, rejected her prayer. This Rule is directed against the said order of the President.

It appears from the order of the learned President that he is of opinion that, under the provisions of section 32 of the Land Acquisition Act, as suitable properties are now available, he is bound to change the investment and apply the compensation money in the purchase of lands. It cannot be disputed that the learned President has jurisdiction under section 32 to re-invest the money in the purchase of other lands and that in this matter he acts as a judge and has got to exercise his function in a judicial manner. The statute does not say that the money is to be re-invested in the purchase of land within any particular time. Where the public officers are empowered to do certain things for a third person, the law requires that it shall be done when the interest of that person calls for the exercise of that power. In the case of *Nawab Bahadur of Murshidabad v. Arunchandra Singha* (1), it has been pointed out that, under section 32 of the Act, the President is to exercise his discretion in making the investment in the interest of persons for whom the money is held in trust. It was further pointed out in that case that the President should invest money in purchasing the lands presumably of the same value and income as the lands acquired. The President, while exercising his judicial function, should, therefore, consider whether the re-investment is expedient in view of the allegations of the petitioner. In a matter like this, the primary consideration for the court is the interest of the person for whose benefit the legislature has given him the power. The learned President appears to have made the order in question on the supposition that he is bound to re-invest, since suitable lands are

(1) (1930) C. Rev. 1445 of 1930 decided by Suhrawardy and Jack JJ. on 15th Dec.

now available. It is not exactly clear what is exactly meant by the words "suitable lands". It is not possible for us to find out from his order whether the lands, which are available now, would bring the same income as the lands acquired. Again, it is not clear, from the materials before us, how the learned President has come to the conclusion that suitable properties are now available. It is true that the Land Acquisition Act does not lay down any procedure, which is to be followed in matters like this. But, as observed by Domat in a well-known passage, which is quoted with approval by Sir Barnes Peacock C. J. in his judgment in the case of *Hurro Chunder Roy Chowdhry v. Sooradhonee Debia* (1)—

Since laws are general rules, they cannot regulate the time to come so as to make express provision against all inconveniences which are infinite in number, and that their dispositions should express all the cases that may possibly happen; but it is only the prudence and duty of a law-giver to foresee the most natural and most ordinary events, and to form his dispositions in such a manner as without entering into the details of the singular cases, he may establish rules common to them all by discerning that which may deserve either exceptions or particular dispositions; and next, it is the duty of the Judges to apply the laws not only to what appears to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the express sense of the law, or within the consequences that may be gathered from it.

The learned President, in our opinion, therefore, should hear the petitioner before he decides whether it is desirable or advantageous that the money, which has remained invested in Government Promissory Notes since 1914 without any objection from any body, should now be re-invested in view of the facts stated in the petition of the petitioner before him. The matter does not appear to have been properly dealt with by the learned President.

We, accordingly, make the Rule absolute, set aside the order of the learned President and direct that the petition filed by the petitioner be reheard according to law in the light of the observations made above.

Rule absolute.

G. S.

1934

Sarda Das
v.
*President,
Calcutta
Improvement
Tribunal.*