
(2002) 04 CAL CK 0049
In the Calcutta High Court
Case No : M.A.T. No. 202 of 2000

Bengal Peerless Housing Development Co. Ltd.	APPELLANT
Vs	
Gopeswar Prasad Agarwal and Others	RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 3(1), 4
West Bengal Land (Requisition and Acquisition) Rules, 1948 — Rule 3

Citation : (2002) 2 CALLT 473 : (2002) 2 CHN 552

Hon'ble Judges : Malay Kumar Basu, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Prasenjit Basu and Somnath Ghosh, for the Appellant;A.N. Banerjee and Ziaul Islam for the State and P.K. Roy, A.K. Chatterjee and Nilesh Chowdhury for Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

A. Kabir, J.—Claiming to be a co-owner by purchase, the respondent No. 1 filed a writ petition, being W. P. No. 19158 (W) of 1998, challenging the Requisition and subsequent Acquisition of R.S. Plot No. 462, pertaining to Khatian No. 276 of Mouza - Mandalganthi, P.S. Rajarhat, District - 24 Parganas (North) on several grounds.

2. It was firstly contended that the requisition and acquisition proceedings in respect of the plot in question had been commenced and completed without notice to the petitioner, who was one of the co-owners therein. It was also contended that the requisition and acquisition of the plot in question was not for any public purpose within the meaning of Sections 3 and 4 of the West Bengal Land (Requisition and Acquisition) Act, 1948, hereinafter referred to as "Act II of 1948".

3. The third ground taken on behalf of the writ petitioner was that the order of requisition was bad since the object of such requisition was of a permanent and perennial nature, although, the aforesaid Act was enacted to meet only a

temporary need. It was contended that the Acquisition proceedings following the requisition was wholly mala fide and amounted to a fraud upon the statute.

4. It was lastly contended that the requisition and acquisition proceedings had been taken without any notice to the respondent Nos. 5 and 6 who had been appointed by this Court as Joint Receivers in the aforesaid plot in Suit No. 190 of 1991, although the said Joint Receivers had taken possession of the plot on or about 29th March, 1991. It was submitted that interference with the possession of the Joint Receivers was, in fact, interference with the possession of the Court and amounted to a deliberate and wilful act of contempt.

Before the learned single Judge it was contended on behalf of the appellant herein that there was nothing fraudulent either in respect of the requisition made u/s 3 of the above Act or the subsequent acquisition u/s 4 thereof. It was urged that the matter had been decided by the Hon''ble Supreme Court in West Bengal Housing Board Vs. Brijendra Prasad Gupta and others, wherein requisition of land by the State Government for a housing scheme for poor and middle-class people with the help of a joint sector company was held to be neither arbitrary nor irrational but in the public interest. Incidentally, in the said case both the West Bengal Housing Board and the Bengal Peerless Housing Development Co. Ltd. the appellant herein, were the main contesting parties in the writ proceedings before the High Court.

5. It was also urged that the requisition and acquisition for the purpose of meeting the acute housing accommodation problem had been held by the Hon''ble Court in the case of Nripati Ghoshal, First Land Acquisition Collector and others, etc. Vs. Pramavati Kapur (Dead) by LRs. and others, , to be lawful and when the acquisition is for a public purpose it cannot said to be mala fide.

6. On the question of service of notice it has been urged that notice had been duly served on the owners and occupiers of the land in the manner indicated in Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules, 1948, which prescribes four different modes of service, including service by affixing a copy of the order under Sub-section (1) of Section 3 in some conspicuous portion of the land to which the order relates and also in some conspicuous place in the office of the collector. As far as the Joint Receivers were concerned, it was submitted that the State Government and its authorities had no knowledge of the appointment of such Joint Receivers and that there was no indication on the plot that the Joint Receivers were, in fact, in possession of the same. It was also urged that if the Joint Receivers were in possession of the land, then they too must be deemed to have been served with the order u/s 3(1) of Act II of 1948 upon affixation of such order on a conspicuous portion of the said plot.

7. In this regard reliance was placed on the decision of the Hon''ble Supreme Court in State of West Bengal and others Vs. Samarendra Nath Paul and others, wherein service of the order by affixation on a conspicuous portion of the land in question was held to be in compliance with Rule 3(d) and the proceedings could

not be said to have been vitiated on the ground of non-service of notice.

8. The learned single Judge came to the conclusion that since notice of requisition as also acquisition had not been given to the Joint Receivers, the same amounted to Interference with the Court's possession, and as such the same was invalid. The learned single Judge also observed that notice of both the requisition and acquisition had been addressed to the erstwhile owners and no attempt was made to serve the existing co-owners, although, notice for receiving compensation had been addressed to one of the co-owners. The learned single Judge also disbelieved the story of affixation of notice and held that both the requisition and acquisition proceedings without service of notice were illegal and set aside the same.

9. Appearing for the appellant company, Mr. Prasenjit Basu submitted that in order to meet the scarcity of housing, the West Bengal Housing Board, under powers vested in it under the West Bengal Housing Board Act, 1972, as amended from time to time, entrusted the scheme of constructing a large number of dwelling units to the appellant company, which was incorporated as a joint sector company in collaboration with the West Bengal Housing Board. Mr. Basu submitted that such a course of action had been approved by the Hon'ble Supreme Court in West Bengal Housing Board's case (supra) for the purpose of construction of a housing project known as "Anupama Housing Complex" on behalf of the State and the West Bengal Housing Board.

10. Mr. Basu urged that with a similar object in view, the State Government took steps to Requisition 18.88 acres of land in Mouza -Mandalganthi, under Rajarhat Municipality, 24 Parganas (North), u/s 3 of the Act II of 1948, for the purpose of creating "better living conditions in rural and urban areas by constructing or reconstructing of dwelling units for the people of different sections of the society."

11. Out of the said 18.88 acres of land, the land in dispute comprises an area measuring only 0.29 acres in plot No. 462. On 15th November, 1991, the order of requisition u/s 3(1) was issued. On the very next day the notice of such order was served upon all the owners and occupiers of the land in question by affixation of a copy of the order on a conspicuous portion of the land and also in the Collector's office, which was one of the prescribed modes of service contained in Rule 3(d) of the West Bengal Land (Requisition and Acquisition) Rules, 1948. Pursuant to such requisition, possession of the land was made over to the Housing Department of the State Government on 7th August, 1992. According to Mr. Basu, by the end of 1996, the entire land, including the disputed portion measuring 0.29 acres, stood vested to the State upon publication and gazette notification u/s 4(1a) of Act II of 1948. As far as the disputed land is concerned, such notification was issued on 2nd September, 1996, and was published and made available on 25th September, 1996. Mr. Basu submitted that in keeping with the provisions of Section 4, on or from such date, the right, title and interest in the disputed land stood vested to the State Government.

12. Mr. Basu submitted that the project which was named "Anupama Housing Complex" entails the construction of about 1200 flats for people of different income groups and for connected facilities. According to Mr. Basu, already the major portion of the project had been completed and about 900 flats already been made over to the allottees.

13. Mr. Basu submitted that the writ petition was misconceived since notice of the order of requisition u/s 3(1) of Act II of 1948, had been duly served on the owners/occupiers by one of the four modes of service prescribed under Rule 3 of the 1948 Rules and, in fact, such service had been held to be good service by the Hon'ble Supreme Court in *State of West Bengal v. S.N. Paul* (supra). Mr. Basu pointed out that such service had been duly proved from the report of the process server who had effected such service and the same must, therefore, be taken to be service on all the interested parties. Apart from the above, notice was also sought to be served by affixation in the Collector's office.

14. On the question of disturbance of the Receivers' possession, Mr. Basu submitted that since notice had been served by affixation on a conspicuous portion of the plot in question, it was for the learned Receiver to raise objection to the requisition and the intended acquisition, but since no such objection had been taken despite the fact that the Receivers claim to have taken possession of the plot, the objection now being sought to be taken on behalf of the writ petitioner was not tenable and the learned single Judge erred in accepting the same. Mr. Basu submitted that a somewhat similar situation had arisen in *Kanhaiyalal Vs. D.R. Banaji and Others*, where the validity of a sale of a property in the custody of a Receiver, without the leave of the Court, was under consideration. In the said case, such sale without notice to the Receiver and without leave of the Court was held to be voidable and could be declared illegal in a proper proceeding or by suit, but not void ab initio. Mr. Basu submitted that the Hon'ble Supreme Court also observed that in spite of notice, the Receiver had allowed the auction sale to be held for non-payment of Government dues, the sale would have been valid.

15. Mr. Basu urged that in spite of being in possession of the plot in question and in spite of affixation of the order u/s 3(1) of Act II of 1948 on a conspicuous portion thereof, the Receivers had not raised any objection to the requisition and subsequent acquisition of the said plot, the same must be held to be valid in view of the law as declared in *Kanhaiyalal's* case (supra).

16. In the alternative it was submitted that if it is presumed that the learned Joint Receivers had no knowledge of the requisition and acquisition proceedings, it otherwise proved that they were not in possession of the plot on which notice of the order u/s 3(1) of Act II of 1948 had been affixed, and the general principle that the Receivers' possession is not to be disturbed without the leave of the Court would have no application as was held by the Hon'ble Supreme Court in *Anthony C. Leo Vs. Nandlal Bal Krishnan and others*, .

17. Mr. Basu lastly urged that the writ petition was not maintainable at the instance of the writ petitioner whose claim to ownership of the land in question was yet to be determined in the suit, being Suit No. 190 of 1991, pending in this Court. Mr. Basu submitted that notice of Requisition was served on the owners and occupiers of the land on 16th November, 1991 and on 9th October, 1998, after about seven years when the project was almost on the verge of completion, the writ petitioner chose to move the writ petition. Mr. Basu submitted that the learned single Judge had erred in interfering with the requisition and acquisition proceedings at such belated stage and the judgment and order passed on the writ application of Shri Gopeswar Agarwal was liable to be set aside.

18. Learned counsel appearing for the State and the State representative supported the stand taken on behalf of the appellant company and submitted that the appellant company had been formed as a joint sector company to construct dwelling units in collaboration with the State and the said object had been upheld by the Hon'ble Supreme Court as having an element of public interest. It was urged that the learned single Judge had erred in holding that notice of the order of requisition u/s 3(1) of Act II of 1948 had not been served, since such service had been duly effected on the owners/occupiers of the land in the manner contemplated under Rule 3(d) of the 1948 Rules. It was submitted that the same yardstick applied as far as the Joint Receivers were concerned also and since they had remained silent in the matter, the order of requisition and subsequent acquisition ought not to have been held to be illegal or void.

19. Appearing for the writ petitioner/respondent No. 1, Mr. P.K. Roy, learned senior counsel, repeated the submissions which had been made before the learned single Judge.

20. Mr. Roy submitted that while notice of the order of requisition was attempted to be served on the erstwhile recorded owner no attempt was made to serve the writ petitioner whose name had been mutated in the Record-of-Rights as a co-owner. Mr. Roy submitted that it would be obvious that the State and its concerned authorities were aware of the rights of the writ petitioner and other co-owners in the plot in question since notice for receiving compensation had been given to one of the co-owners.

21. Mr. Roy laid stress on the fact that the plot in question was in custodia legis from about 29th March, 1991, while the order of requisition u/s 3(1) of Act II of 1948 was issued long thereafter on 15th November, 1991. Mr. Roy urged that no attempt was made by the concerned authorities to serve the learned Joint Receivers or to obtain the leave of the Court before seeking to interfere with the possession the Court. Mr. Roy submitted that the learned single Judge had quite appropriately observed that possession taken by the State authorities and the appellant herein from the Receivers was illegal, and if it was not a contumacious act, it tantamounted to interference with the Court's possession and was, therefore, invalid. Mr. Roy urged that the decision of the Hon'ble Supreme Court in *Kanhaiyalal's case* (supra) was rendered in a totally different context and on a

completely different set of facts, where an auction sale for non-payment of government dues without leave of the Court was held not to be void but voidable since inspite of having notice the Receiver did not pay off the said dues. Mr. Roy submitted that even in the said case, the action of the State authorities was held to be contumacious and, therefore, invalid.

22. Mr. Roy also urged that in the absence of notice addressed to the writ petitioner or the other co-owners, the claim of service by affixation on a conspicuous portion of the plot was wholly unsubstantiated and had been rightly rejected by the learned single Judge.

23. Mr. Roy submitted that since the Court's possession in the plot in question had been interfered with by the State and its authorities and the appellant company without the leave of the Court, the judgment and order of the learned single Judge did not merit any interference and the appeal was liable to be dismissed with costs.

24. From the materials on record and the submission made on behalf of the respective parties, two main questions emerge for consideration in this appeal. The first question is whether the finding of the learned single Judge regarding non-service of the order u/s 3(1) of Act II of 1948 on the owners of the plot and the learned Joint Receivers, can be sustained. The second question, which flows from the first, is whether in the absence of leave of the Court, the order of requisition and the notice of acquisition are rendered illegal and void.

25. Sub-section (1) of Section 3 of the above Act empowers the State Government to requisition lands for the purposes of mentioned therein. Sub-section (2) of Section 3 which is relevant for our purpose reads as follows :

"(2) An order under Sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation of an occupier, not being the owner of the land, also on such occupier."

26. The manner in which such service is to be effected is indicated in Rule 3 of the 1948 Rules and provides as follows :

"3. Manner of Service of Orders -- An order under Sub-section (1) of Section 3 shall be served on the owner of land and where the order relates to land in occupation of an occupier not being the owner of the land, also on such occupier.

(a) by delivering or tendering a copy thereof, endorsed whether by the person authorised by the Act to make the order or by the Collector, to the person or whom the order is to be served or his agent, or

(b) by fixing a copy thereof on the outer door of some conspicuous part of the house in which the person on whom the order is to be served originally resides or carries on business or personally works for gain, or

(c) by sending the same to the person on whom the order is to be served by registered post with acknowledgment due, or

(d) by fixing a copy thereof in some conspicuous part of the land to which the order relates and also in some conspicuous place of the office of the Collector."

27. The aforesaid provisions indicate that an order under Sub-section (1) of Section 3 is required to be served in the prescribed manner on the owner and the occupier, if any, of the land. Rule 3 of the 1948 Rules provides for four different methods of service, each independent of the other. In other words, the four methods prescribed are disjunctive and any of the four methods of service can be resorted to for the purposes of Sub-section (1) of Section 3 of Act II of 1948.

28. In the instant case, although, a specific case has been made out on behalf of the writ petitioner that the order under Sub-section (1) of Section 3 had not been served on him or on the Joint Receivers, the records indicate that such service had been effected by affixing a copy thereof in a conspicuous portion of the land in question and also in the office of the Collector, which is one of the four methods of service prescribed in Rule 3.

29. The learned single Judge had come to a conclusion that service had not been effected on the writ petitioner or on the learned Joint Receivers and that in the absence of such service the order of requisition and the subsequent notice of acquisition stood vitiated.

30. In the face of service effected in the manner prescribed under Rule 3(d) of the aforesaid Rules, we are unable to accept the findings of the learned single Judge on this point. Of course, it is a different matter as to whether the leave of the Court was required to be taken prior to the passing of the order u/s 3(1) of Act II of 1948 since the property was in custodia legis and we shall advert to the said question later. But as far as the service of the order is concerned, since the Receivers are said to have taken possession of the land on or about 29th March, 1991, and the order u/s 3(1) was passed thereafter on 15th November, 1991, we are inclined to hold that the requirement relating to service of the order issued u/s 3(1) had been properly fulfilled also as far as the learned Joint Receivers were concerned.

31. This brings us to the next questions as to whether the leave of the Court was required to be taken by the State Government and its authorities before proceeding u/s 3(1) and Section 4 of Act II of 1948. The learned single Judge has held that the proceedings taken for requisition and acquisition of the land without obtaining leave of the Court was contemptuous, and, accordingly, quashed the same. In arriving at the aforesaid conclusion the learned single Judge relied on the two decisions of the Hon"ble Supreme Court in *Kanhaiyalal's* case (*supra*) and in that case of *Anthony C. Leo* (*supra*) referred to on behalf of the writ petitioner. In the first of the two cases a sale of a property in possession of the Receiver was under consideration and it was held that although such a course of action was illegal, in the absence of notice to the learned Receiver the sale would only be voidable and not void ab initio. In the second case the

Hon"ble Supreme Court was called upon to decide the question as to whether a Receiver appointed by Court can interfere with the rights of a third party. While considering the above question, the Hon"ble Supreme Court went on to observe that where a Receiver appointed by the Court is in actual physical possession of the property, his possession cannot be disturbed without the leave of the Court. But it was also observed that the said Rule would not be applicable if the Receiver was not holding physical possession of the property.

32. In Kanhaiyalal's case the Hon"ble Supreme Court was of the view that since the Receiver did not take any steps inspite of having notice of the outstanding government dues and allowed the auction sale to be held for non-payment of such dues, the auction sale could not be said to be invalid.

33. In our view, the same principle would also apply in the instant case since the learned Joint Receivers claim to have taken possession of the property in question prior to the issuance and service of the order u/s 3(1) of Act II of 1948. Having regard to the provisions of Rule 3(d) of 1948 Rules, it must be deemed that the Receivers had notice of the said order and did not raise any objection to the intended Requisition and Acquisition inspite of having notice of the same.

34. Applying the principles of Kanhaiyalal's case, we are inclined to hold that in the absence of any objection from the side of the Joint Receivers, the requisition and subsequent acquisition, without the prior leave of the Court, was not invalid. If, on the other hand, the learned Joint Receivers were not in actual physical possession of the land, the principles explained by the Hon"ble Supreme Court in Anthony C. Leo's case become applicable.

35. We are, therefore, unable to agree with the learned single Judge on this count also and we are of the view that the proceedings taken under Sections 3(1) and 4 of Act II of 1948 were not vitiated in absence of prior leave of the Court for commencing such proceedings.

36. The other point raised on behalf of the writ petitioner/respondent regarding the validity of the order of Requisition for a purpose which was permanent in nature, was not seriously pressed on behalf of the writ petitioner/respondent having been set at rest by the Hon"ble Supreme Court in the case of West Bengal Housing Board v. Brijendra Prasad Gupta and Ors. (supra) relied upon by Mr. Basu.

Having regard to the above, we are unable to uphold the order of the learned single Judge and we accordingly set aside the same. Consequently, the writ petition stands dismissed.

There will, however, be no order as to costs.

If an urgent xerox certified copy of this judgment is applied for, the same is to be supplied expeditiously, subject to compliance with all the required formalities.

Stay as prayed for is considered and rejected.

M. K. Basu, J.

I agree.