
(2005) 02 CAL CK 0039
In the Calcutta High Court
Case No : C.O. 4314 (W) of 1991

Bibhuti Bhusan Dhara

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 4(1), 5
West Bengal Land Reforms Act, 1955 — Section 50, 51A

Citation : (2006) 2 ILR (Cal) 37

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Ranabijoy Bhattacharya, D. Betal and S. Sarkar, for the Appellant; R.P. Banerjee, for Respondent Nos. 8 and 9 and S.K. Dutta and Nilima Das for State, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates appearing for the parties.

2. In this writ application the writ Petitioner has prayed the following reliefs:

(a) Writ in the nature of Mandamus shall not be issued commanding the Respondents to restrain from giving any effect or further effect to the impugned memo No. 1258 dated 21.3.1991 and/or order issued by the District Magistrate, Howrah and the Collector, Howrah to do all acts for the purpose and also steps sought to have been taken by the authorities concerned in any form or manner whatsoever and/or to show cause as to why the said Memo and/or order which is Annexure "D" to this application and steps taken on the basis of the said Memo and/or order shall not be set aside and/or cancelled;

(b) To issue a writ in the nature of Certiorari asking the Respondents to show cause as to why the said memo order dated 21.3.1991 which is Annexure "D" to this application and also purported steps sought to have been taken as complained of, shall not be set aside and/or quashed;

(c) To issue any other appropriate writ or writs;

(d) To issue appropriate order directing the Respondents concerned to certify and bring before this Hon"ble Court all papers and records connected with the impugned Memo and/or order which is annexure "D" to his application in respect of the area measuring 18 decimals or land of the said plot No. 88 and/or all other papers connected therewith within such time as may be passed;

(e) To issue appropriate order or direction restraining the Respondents, their agents and officers, subordinates and all other working under them from giving any further effect to the impugned notice which is annexure "D" to this application and also steps taken in connection with the said Memo and/or order and all orders made and/or steps taken in pursuance thereof in any form or manner whatsoever;

(f) An ad interim order of injunction in terms of Clause (e) above;

(g) To pass such further order or orders as to this Hon"ble Court might seem fit and proper.

3. The impugned order being Annexure "D" of the writ application is a notice of requisition under Sub-section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 hereinafter referred to for brevity as West Bengal Act II of 1948 whereby and whereunder for construction of Administrative Building of Bagnan II Development Block, the land of the writ petitioner was under requisition notice issued by the competent authority. This writ application was affirmed on 1st April, 1991. During pendency of the writ application by publication of a notice u/s 4 Sub-Section 1(a) of the said Act in the Calcutta Gazette, extra ordinary dated Friday 24th October, 1993, the concerned land of the Petitioner within R.S. Plot No. 88 Mouza Gunanandapur, J. L. No. 80, p. S. Bagnan, Dist. Howrah, was acquired. Petitioner filed a Supplementary Affidavit subsequent to filing of the writ application, contending, inter alia, that in he concerned plot he got the ownership of 0.6 decimal areas out of total 18 decimal areas and constructed a temple of Radha Gobinda Jew.

4. This writ application was moved in the year 1991 before Tarun Chatterjee, J. (as His Lordship then was) ex parte and no interim order was passed at that stage. Subsequently, by the order dated 7th December, 1995 Altamas Kabir, J. at present the Hon"ble The Acting Chief Justice, only directed maintenance of status quo in respect of the temple in question/Though the acquisition of the concerned land covered under the requisition notice was completed on 24th October, 1993 by issuing a public notice but no challenge has been made in this writ application by amendment of writ application.

5. This writ application has been opposed by the State Respondents by filing their Affidavit-in-Opposition and on contending, inter alia, that the Petitioner was duly served with the notice of the requisition and following the rules, acquisition proceeding was completed. It has been further contended that land was recorded

as "Sali" i.e. agricultural land in the record of rights and there was no application made praying conversion of the use of land for non-agricultural purpose to construct the temple and since at the time of taking possession of the land in terms of the requisition notice, there was no existence of temple as alleged save and except temporary structure, Petitioner is not entitled to get any relief.

6. In course of hearing, learned Advocate for the Petitioner has urged the following points:

(a) That since the temple of Radha Gobinda Jew is existing, no requisition and/or acquisition proceeding could be initiated and/or finalized following (he said West Bengal Act-II of 1948 in view of statutory embargo.

(b) That no notices were served to the other coowners, Respondent No. 8 and 9, hence, notice of requisition was bad in law irrespective of the fact that the Respondent No. 8 and 9 are the sons of the writ Petitioner who also purchased lands measuring 6 decimal each of the said plot having total area of 0.18 decimal.

(c) Since the purpose of requisition and acquisition thereof, was to construct an Administrative Building of Block Development Office, the same is not covered by the purpose as enumerated in the statute itself.

(d) That since the need was of permanent and perennial for construction of Administrative Building, the requisition notice was bad following the West Bengal Act II of 1948 in terms of the judgment passed in the case H.D. Vora v. State of Maharashtra (1)

7. The submission of the learned Advocate for the Petitioner has been countered by the State Respondents, contending, inter alia, to this effect:

(a) That in the record of rights, the land was recorded as "Sali" i.e. agricultural land and use of such land never was changed from agricultural purpose to non-agricultural purpose by proper application under the West Bengal Land Reforms Act, 1955. Under the law accordingly, there could not be any existence of any temple of permanent nature. Furthermore, at the time of requisition when the possession was delivered, there was no such structure as claimed in writ petition.

(b) Notice were served to the recorded owners as well as to the writ Petitioner. Proforma Respondent No. 8 and 9 never mutated their names in the record of rights. The notices were duly served to the Petitioner, who was occupying the land and no objection was filed by Respondent No. 8 and 9 despite public notice.

(c) Under West Bengal Act II of 1948 there is no embargo that if need is permanent and perennial, no requisition and acquisition proceeding could be initiated and thereby property could not be acquired for public purpose. Following the statutory provision, the acquisition of land was completed. Construction of Administrative Building as per the sketch plan started in order areas adjoining to the land of the Petitioner leaving aside land of the Petitioner due to the pendency of the matter in the Writ Court where "status quo order" was passed so far as the

temple area in question as alleged.

8. On hearing the respective parties at good length, the points emerge before this Court for decisions are to this effect:

(a) Whether the notices were duly served in terms of Section 3 of the said Act.

(b) Whether there is a public purpose to construct the Administrative Building of Block Development Office in terms of the statute and State Government had the power to follow the West Bengal Act II of 1948 to acquire the land in question.

9. It appears from the respective affidavits that other owners having the land in the adjoining plot have already accepted the compensation money except the writ Petitioner, the Respondent No. 8 and 9 of this writ application.

10. So far as the service of the notice u/s 3 of the said Act, it appears from statute that to the owner and the occupier of the concerned land, notice of requisition to be served. It is an admitted fact in the writ application that the requisition notice was duly served to the writ Petitioner, the occupier of the land, as well as to the recorded owner from whom the Petitioner and Respondent No. 8 and 9 purchased land. It is also an admitted fact that after purchase of the land, writ Petitioner applied for mutation of his name in terms of Section 50 of the Land Reforms Act read with Section 51A. of the said Act, but mutation order was not passed before the requisition notice was issued. Learned Advocate for the Petitioner, however has urged that once the property was purchased before requisition, the Collector should have consulted the registry Office and should have made an enquiry about the sale to identify the owner. Such submission is rejected summarily in view of the settled law to this effect as passed in the case West Bengal Housing Board Vs. Brijendra Prasad Gupta and others, and State of West Bengal and others Vs. Samarendra Nath Paul and others, wherein the Apex Court held that under the West Bengal Act II of 1948 only the recorded owner is entitled to get the notice including the occupier of the land, it has been further held that the Collector need not to make any roving enquiry to ascertain the ownership of the land. Record of rights is the document, which to be followed by the Collector while issuing the requisition notice. Having regards to such settled law, the point as taken to nullify the requisition process on ground that no notice was served to the Respondent No. 8 and 9 who became the owners of the land due to purchase from the previous owner, is not accepted as in the record of rights, the names of previous owner was already existing who was duly served with the notice of requisition. Furthermore, from the writ application it is an admitted fact that the Petitioner was duly served being an occupier of the concerned land. The Respondent No. 8 and 9 who are sons of present Petitioner are not at all the writ Petitioners herein. They have not raised any grievance to the authorities in response to public notice and prayed any relief being added as a party writ Petitioner in this proceeding also. Having regard to such state of affairs, this Court answer the point against the writ Petitioner by holding that notices of requisitions were duly served following the statutory provision as laid

down in West Bengal Act-II of 1948.

11. The Petitioner has further urged relying the judgment of this Court passed in the case *Indian Metals and Ferro Alloys Ltd. and Another Vs. State of West Bengal and Others*, that in the pre requisition stage, the Petitioner had the right of hearing. This point is not at all *res integra* in view of the judgment holding, *inter alia*, that there was no scope of pre-decisional hearing in the statute and the constitutional validity of the statute was duly upheld by the Apex court in the case AIR 1971 963 (SC)

12. So far as the public purpose as raised for construction of the Administrative Building, on a bare reading of the statute it appears that u/s 3 where the conditions as stipulated thereto for requisition of the property it is provided that for "maintaining supplies and services essential to the life of the community... or for the creation of better living conditions in rural or urban areas Government is duly empowered to make necessary requisition". The construction of Administrative Building of Block Development Office is for public purpose, as by such construction the people will get the benefit of proper service from the State and it is within the domain of essential service to the society in terms of the statute. The relevant provision of the statute reads thus:

3. Power of requisition: (1) if the State Government is of the opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community (or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas) or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other areas excluded by the State Government by a notification in this behalf, by the construction or re-construction of dwelling places in such areas (or for purposes connected therewith or incidental thereto), the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning:

Provided that no land used for purpose of religious worship or used by an educational or charitable institutions shall be requisitioned under this section.

13. In the instant case, the requisition notice as served clearly indicated that for construction of Administrative Building of Block Development Office, the property was needed by the Government. The function of Block Development Office is to implement different Government Schemes and Projects through Panchayat for better living conditions in rural areas. Hence, the Block Office has to implement different Government Schemes and Project for betterment of the living conditions of the citizen of the rural belt. Unless there is an Administrative Building, the Block Development Officer cannot function. In that view the construction of an Administrative Building of the Block Development Office and for that purpose the requisition of land cannot be said as having no element of public purpose. The

construction of an Administrative Building is a purpose allied to creation of better living conditions. This point is not at all *res integra* in view of the judgment of this Court passed in the case *Subrata Mukherjee Vs. State of West Bengal and Others*, wherein an identical question cropped up about construction of a Police Station Building by making necessary requisition of the premises and the Court answered against the writ Petitioner by holding that the requisition could not be questioned as illegal.

14. Hence, the point as raised that construction of Administrative Building is not coming under the purview of the conditions as stipulated in the statute,, as urged by the learned Advocate of the Petitioner, has no legal basis. Hence, that contention stand rejected.

15. So far as the another point as urged whether for perennial and permanent need, the provisions of the law down in Section 3 of Act-II of 1948 could be resorted to, learned Advocate for the Petitioner has relied upon strongly the case *H. D. Vora(Supra)* to substantiate his argument that the State Government had no power to proceed with the said Act-II of 1948 in lieu of following the procedures of Land Acquisition Act, 1948 being Act-I of 1948, a Central Act. On a bare reading of the case *H. D. Vora(Supra)* it appears that in that case requisition was continuing for more than 30 years without acquiring the property and on that context, the Apex Court held otherwise, but subsequently this view of the Apex Court was explained in the case *Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others*, a judgment of three Judges Bench, by holding, *inter alia*, that Government can make requisition of the property and can acquire it also without following the Land Acquisition Act, 1948 but following the special statute applicable to the State. In that case for long 25 years, the property was under requisition and accordingly the Court directed immediate acquisition of the property and payments of compensation money. In the instant case, it appears that the requisition notice was served on 21st March, 1991 and property was acquired by Gazette Notification on 24th October, 1993. Hence, only for a little period of time, namely for two years and six months, the property of the Petitioner was under requisition and subsequently it was duly acquired by issuing proper Gazette Notification in terms of Section 5 of the West Bengal Act II of 1948. The other owners and/ or occupiers of lands under the said Mouza whose lands were under requisition, have already received their compensation except the writ Petitioner and private Respondents. In this view, it is not a fit case for applicability of the ratio of the case *H.O. Vora (1)*. Hence, the contention of the Petitioner fails.

16. So far as the statutory embargo to make requisition of religious places and educational institutions in terms of the statute as urged by the Petitioner, it appears from the records that the land was recorded as "Sali" land when the requisition notice was served and it was never converted to non-agricultural land for any construction, far to say, temple as allegedly constructed. Furthermore, from the delivery of possession receipt, it appears that at the time of taking

possession of the land there was no such temple existing. Having regard to that state of affairs, since in the record of rights, the land was recorded as "Sali" and there was no scope to construct any temple without converting the land to a non agricultural land, this Court is of the view that Petitioner is not legally entitled to get any benefit by referring the said statutory embargo as in the record of rights the particular plot No. 88 and/or any portion wherein the Petitioner has claimed ownership was not at all recorded as non agricultural land, but on the other hand in the record of rights same was recorded as "Sali" land namely agricultural land, where under the law no construction could be made without converting its character to non agricultural land.

17. Furthermore, the notice of a acquisition is not under challenge in the writ application by making necessary amendment. From the affidavit of State Respondents it appears that already the construction work has started in terms of the sanctioned plan and it was not completed due to Courts order of status quo as passed earlier.

18. Considering all these aspects and having regard to the need of the locality to have Administrative Building of Block Development Office through which different beneficial schemes could be implemented by the office, this Court feels that there was a public need and public purpose to acquire the land following the requisition proceeding first and thereafter acquisition proceeding in terms of West Bengal Act-II of 1948.

19. Hence, having regard to all those findings, this Court finally concludes that writ application has no merit. Accordingly writ application stand dismissed. All interim order as passed stand vacated. However, there will be no order of the cost of the proceeding.

20. Let urgent xerox certified copy of this order, if applied for, be given to the learned Advocates for the parties expeditiously.