

(1999) 12 CAL CK 0049
In the Calcutta High Court
Case No : Writ Petition No. 19158 (W) of 1998

Gopeswar Prasad Agarwal	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 14-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 4, 5

Citation : AIR 2000 Cal 159 : 104 CWN 506

Hon'ble Judges : K.J. Sengupta, J

Bench : Single Bench

Advocate : P.K. Roy and Asoke Banerjee, for the Appellant; Indrajit Sen and P. Basu and A.N. Banerjee, for the Respondent

Judgement

K.J. Sengupta, J.—The writ petitioner herein claiming one of the co-owners of a plot of land bearing R. S. Dag No. 462 under Khatian No. 226, Mouza Mondalghanti, P. S. Rajarhat, District-24 Parganas (North) has challenged the requisition and subsequent acquisition of the aforesaid plot of land. The petitioner has acquired this land along with other co-owners by and under a registered Deed of Conveyance.

2. It is the case of the petitioner that the State respondent has illegally and wrongfully and without serving any notice or giving any hearing to the petitioner has requisitioned and later on acquired the aforesaid plot of land. In a partition suit joint Receivers being the respondent Nos. 4 and 5 herein. have been appointed by this Hon'ble Court in its ordinary original Civil Jurisdiction. In the aforesaid partition suit the said joint Receivers by an order dated 27th March, 1991 have taken possession along with other suit properties of the said plot of land. The joint Receivers were appointed and they took possession of the property in question before this impugned order of requisition was passed followed by acquisition. There was no public purpose for requisition and acquisition of the aforesaid plot of land. The possession taken by the State

Government as well as the private respondent, viz., the added respondent is wholly illegal and tantamounts to interference with possession of the Court through the joint Receivers. In substance this requisition and acquisition are deliberate act of contempt.

3. Bengal Peerless Housing Development Company Limited (hereinafter referred to as the said Company) was not a party to this writ petition. Subsequently it was added as party respondent by an order of this Court. The aforesaid company being affected by interim order staying operation of acquisition order has made an application for vacating interim order. I, however, did not vacate the interim order instead decided to hear the writ petition out finally. Affidavits have been made complete.

4. Mr. P. K. Roy, learned senior Counsel, in support of the writ petition, submits that there was no facts and circumstances and/ or situation which warranted for applying 1948 Act (since repealed). The aforesaid Act was brought about to meet temporary purposes but in this case the object is for permanent and perennial purposes. So, the acquisition proceedings under the aforesaid Act is wholly mala fide and in fact this exercise is fraud upon the statute. The State respondent deliberately did not resort to 1894 Act in order to deprive the petitioner of giving reasonable opportunity of being heard and also from paying legitimate compensation before possession is taken. Moreover, there is no element of public purpose for acquiring the aforesaid plot of land. In any event assuming this requisition followed by acquisition under the 1948 Act is valid but the procedure thereof has not been followed in terms of the provision of the 1948 Act. No notice was given to the petitioner who is admittedly co-owner. The name of the petitioner has been mutated in the records of rights. It appears purported notice u/s 3 of 1948 Act was attempted to be served upon the erstwhile recorded owner. It was so done deliberately to keep away the petitioner and other co-owners with full knowledge of their right as owners in the land. Their knowledge about petitioner's ownership would appear from the fact that notice for receiving compensation has been given to one of such co-owners. So, admittedly no notice was served upon any of the recorded owners. Thus the entire requisition proceedings as well as the acquisition proceedings stand vitiated. Moreover, this property along with other properties were and still are under possession and custody of the joint Receivers appointed by this Hon'ble Court. No leave was obtained from the Court for initiating proceedings aiming at to dispossess the joint receivers. In fact pursuant to this impugned requisition and acquisition proceedings the joint Receivers were physically dispossessed and this Court was pleased to direct restoration of possession of the joint Receivers who are still in possession. This venture on part of the State Government along with the aforesaid "Company" is illegal, wrongful and further contumacious act and action. For this, Mr. Roy argues, his client reserves right to take action in accordance with law.

5. Mr. Indrajit Sen, learned senior Counsel, appearing on behalf of the Bengal

Peerless Housing Development Company Limited, submits that in exercise of power u/s 3 of the 1948 Act, the State Government had requisitioned initially this plot of land, thereafter u/s 4 of the aforesaid Act the land was subsequently acquired. It is submitted by Mr. Sen that Statute empowers Government to requisition even if it is permanent in nature and the State Government without resorting to the provisions of Act I of 1894 can acquire the land under 1948 Act. In this connection he relies on a decision reported in West Bengal Housing Board Vs. Brijendra Prasad Gupta and others, This plot of land was sought to be requisitioned and acquired for immediate and emergent need of the acute housing accommodation problem faced by middle income and lower income group of people and this necessity has been felt bitterly and in extremity by the State Government and as such in order to complete expeditiously housing project the aforesaid Act, 1948 has been made applicable. He also argues that it is no longer res integra that the said Act is constitutionally valid. It is submitted that so long public purpose exists, acquisition cannot be termed to be being mala fide and the acquisition is sustainable. In this connection he relies on a decision reported in Nripati Ghoshal, First Land Acquisition Collector and others, etc. Vs. Pramavati Kapur (Dead) by LRs. and others,

6. On the question of service of notice. Mr. Sen argues that u/s 3 (2) of the said Act notice of requisition is to be served upon the owner or occupier of the land under requisition in the prescribed manner, i.e., as prescribed under Rule 3. The word "or" employed in the said Rule is disjunctive and any one of the methods as prescribed can be resorted to for service of such notice either upon the owner or occupier. When the notice u/s 3(1) was served upon the owner or the occupier of the land, viz., the Receiver by affixation on the conspicuous part of the land and at the Collector's office in terms of Rule 3(d), service of notice is complete, in this connection he relies on a Supreme Court decision reported in State of West Bengal and others Vs. Samarendra Nath Paul and others, .

7. The notification u/s 4 regarding acquisition was published in the official gazette on 25th September, 1996. This publication tantamounts to notice being served upon all concerned.

8. The possession, of the joint. Receivers was not within the knowledge of his client as there was no visual indication either by boundary wall or by any structure wherefrom possession of the joint Receivers could be discerned. Since the joint Receiver was not in physical possession of any portion of the land requisition followed by acquisition is not at all invalid under the law. Admittedly the joint Receivers raised boundary wall much later, in 1999 pursuant to the Court's order. Furthermore, notice of acquisition was published and gazetted on 25th September, 1996. In spite of such notice the joint Receivers did not come forward to raise any objection and/or to intimate the State Government, as such no leave of the Court was necessary. In this connection he relies on a decision reported in Anthony C. Leo Vs. Nandlal Bal Krishnan and others, .

9. The writ petition is also not maintainable, he argues, as the requisition

followed by acquisition proceeding of the land was started in the year 1991 and completed in the year 1997 when the award for compensation had been published on 10th March, 1997. On 9th October, 1998 the petitioner has come forward to challenge the validity of requisition and acquisition.

10. Mr. Banerjee, learned Counsel, appearing for the State, submits that the notice was served upon the recorded owners ascertained from records that were made available from the Land Reforms department. He also argues that joint Receivers were not in physical possession. Therefore, question of service of notice upon them does not arise. The recorded owner refused to accept the notice, it was affixed at a conspicuous part of the land in question and also at the office of Collector as per law. So far the notice given to one of the co-owners of the land in question for receiving compensation is concerned it was issued because subsequently one of the co-owners approached the Land Acquisition Collector and demanded compensation money as he had interest in the land. Those apart as a whole he adopts the argument of Mr. Indrajit Sen.

11. After submissions, made by the learned lawyers, they filed written notes of argument. It appears from the written notes of argument filed by the petitioner this requisition followed by acquisition have been challenged on the question of non-service of notice and the possession of the property being taken without leave of the Court, as it was custodia legis.

12. As the question of maintainability has been taken by the contesting respondents it has to be decided first before any other point is embarked upon for decision. It is contended that since in the year 1991 the impugned requisition and acquisition proceeding was commenced and it was complete In the year 1997 by publication of award. The writ petition being moved on 9th October, 1998 cannot be maintained as it was a belated action. It is an admitted position that this acquisition proceeding is a follow up action of the requisition of the land. In the writ petition question of non-service of notice of requisition has been alleged. Upon plain reading of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 it appears to me that service of order upon owner and in case of the land being in occupation of third party upon the occupant, is mandatory. Unless the aforesaid mandatory requirement is fulfilled possession of the land being taken, is an illegal and unauthorised act. Section 4 of the aforesaid Act provides for acquisition of the land since being requisition. So, lawful and valid requisition of land is a sine qua non of valid acquisition of the land under the aforesaid Act. As the root of acquisition is being challenged on the ground of non-compliance of the mandatory requirement of the law it cannot be said that the writ petition is not maintainable or it is a belated action. Moreover, the property is a custodia legis admittedly now the recorded owner has come forward to challenge the same so ordinarily the writ petitioner could not come: I am of the view when any question of non-compliance of mandatory provision of the law is raised in a writ petition question of delay in this case does not arise. As such the writ petition is perfectly maintainable.

13. Next question is to be examined as to whether the requisition followed by acquisition is done in accordance with law or not.

14. In order to find out answer to the aforesaid question two substantial questions need to be examined. One whether the property in question is custodia legis in legal sense or not; another if not then notice of requisition and acquisition were served or not.

15. To find out first question, I am to examine whether the joint Receivers had taken possession of the said land in question or not. If so, whether any requisition followed by acquisition is valid, of a particular portion of the land being held by the joint Receivers. I accept the submission of Mr. Sen that no leave of the Court is necessary for taking possession of the property provided physical possession whereof has not been taken by the Receiver.

16. This submission is made on the strength of the aforesaid Supreme Court decision reported in Anthony C. Leo Vs. Nandlal Bal Krishnan and others, . Nobody is disputing the aforesaid proposition but question is whether the aforesaid decision is applicable on the facts and circumstances of this case or not.

17. I directed the Joint Receivers to file affidavit. From the affidavit it appears to me that joint Receivers took possession of the said land in question on or about 29th March, 1991. Factum of taking such possession has been recorded in their service of contemporaneous letters of complaint to the S. P. concerned and Officer-in-Charge of the local police station. The said letters are annexed to their affidavit. Nobody has challenged the aforesaid documents being manufactured or forged. The joint Receivers have also recorded the factum of possession in subsequent correspondence and communication. It appears in terms of the order passed by Justice Sen (as his Lordships then was) that the joint Receivers indeed took possession of the said land. In fact an order of Inspector General of Police (Head-quarters) has been annexed whereby police picket was provided to protect possession of the joint Receivers. Significantly it is alleged a notice addressing to joint Receivers was affixed at the Collector's office. The aforesaid act and action of joint Receivers are nothing short of actual physical possession. The possession of the joint Receivers was subsequently disturbed and interfered with by Mr. Sen's client with aid and assistance of the State respondent and that is why an ad interim order was passed by this Court restoring possession of the joint Receivers and directing them to raise boundary wall and/or fencing to consolidate such possession. It is, however, contended by Mr. Sen passing of the said order suggest that the joint Receivers were not in possession. This contention hardly needs serious consideration as the joint Receivers by an affidavit supported by contemporaneous documents stated that possession of land in question was taken by them long before this requisition and acquisition proceeding. Rather aforesaid interim order restoring possession unmistakably substantiate the factum of prior possession of the joint Receivers. Mr. Roy is perfectly right in saying that possession of the Court cannot be disturbed by any person without permission of the Court. I am of the view, and come to the findings that joint

Receivers were in possession before the order of requisition was passed followed by acquisition. Subsequent activity of taking physical possession of the land tantamounts to wrongful, illegal, contumacious dispossession of the joint Receivers. It is needless to mention admittedly no leave was obtained from the Court to disturb the possession of the Receivers. Such fact is not disputed by any of the respondents including the applicant for vacating interim order. Their plea is that they did not have any knowledge about the possession of the joint Receivers. Such a plea is wholly incorrect as it appears from written notes of argument of added respondent at page 3 notice u/s 3 was served upon Receiver by affixation. In any event plea of ignorance may be a good defence in contempt proceedings but it is settled law any act or action by any person taken without leave of the Court tending to dispossess the Receiver and interfere with the court's possession is a nullity. I find support of this view from the decisions cited by Mr. Roy reported in *Kanhaiyalal Vs. D.R. Banaji and Others*, and *Anthony C. Leo Vs. Nandlal Bal Krishnan and others*, .

18. So, I hold that possession of the said property taken by the State respondents together with the aforesaid applicant added respondent from the Receivers is illegal, if not contumacious act as it tantamounts to interference with the Court's possession, as such the same is invalid.

19. Next question remains as to service of notice under Sections 3 and 5 of the said Act. Admittedly the notices were addressed to the erstwhile recorded owner, Abu Bakkar Mondal and no attempt was made to serve any notice to any of the present co-owners. Curiously the notice for receiving compensation was addressed to one of the co-owners not to the erstwhile recorded owners. In the affidavit-in-reply a certified copy of the up to date records of right is annexed and it appears therefrom that long before initiation of the requisition followed by acquisition proceedings the petitioner's and other co-owner's names were mutated and/or recorded in the records of rights. Therefore, the plea taken by the State respondent about the service of notice upon the erstwhile recorded owner is wholly untrue and unbelievable and this nothing but a careless act and further aiming at to hide the notice from the true and lawful owners and/or occupiers. No notice was shown to me addressing the writ petitioner and/or the recorded subsequent owners. Therefore, any affixation of notice as alleged by the respondent is wholly untrue. I hold that no notice was attempted to be issued before requisition and acquisition in favour of the petitioner who is a recorded owner. The story of affixation on the conspicuous part of the property as contended by the State respondents is unacceptable and unbelievable inasmuch as in the affidavit-in-opposition by the joint Receivers it has been alleged that land in question is completely barren and vacant and there was no structure.

20. Therefore, I hold that without serving any notice of order of requisition under the law possession was taken and the acquisition followed. Therefore, the entire proceedings of requisition and acquisition are thus illegal on that account too and

the same is set aside.

21. The respondents, however, would be at liberty to proceed afresh in accordance with law.

22. There will be no order as to costs.

23. The operation of the judgment and order as already passed shall remain stayed for a period of three weeks after the Christmas vacation.

24. Let xerox certified of the Judgment and order be made available to the learned lawyers for the parties, if applied for.