
(2021) 08 CAL CK 0037
In the Calcutta High Court
Case No : Writ Petition No. 11085 Of 2020

Hooghly Parks And Resorts Llp	Vs	APPELLANT
State Of West Bengal & Ors		RESPONDENT

Date of Decision : 09-08-2021

Acts Referred:

Disaster Management Act, 2005 — Section 34, 65, 66, 66(1)

Citation : (2021) 08 CAL CK 0037

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Saptangsu Basu, Ayan Banerjee, Mrinalini Majumdar, Susovan Sengupta, Subir Pal

Final Decision : Disposed Of

Judgement

Debangsu Basak, J

1. Petitioner is aggrieved by a decision dated November 10, 2020 passed by the Additional District Magistrate (Development), Hooghly dated

November 10, 2020.

2. Learned senior advocate appearing for the petitioner submits that, the petitioner obtained lease of an immovable property from the State

Government by virtue of a Deed of Lease dated July 1, 2017. He draws the attention of the Court to the various clauses of the Lease Deed. He

submits that, the petitioner is obliged to perform certain responsibilities in terms of the Lease Deed. Performance of such responsibilities involves

money. The petitioner, therefore, expended huge sum of money in order to perform such obligations. The premises was requisitioned by the State

Government by a writing dated April 29, 2021 purporting to invoke Section 34 of the Disaster Management Act, 2005 (Act of 2005). He draws the

attention of the Court to the provisions of Section 34 of the Act of 2005. He submits that, Section 34 does not empower the authorities to requisition

the immovable property. According to him, Section 65 empowers the authorities to do so. Thereafter, he draws the attention of the Court to the

provisions of Section 66 of the Act of 2005. He submits that, once an immovable property is requisitioned under Section 65 of the Act of 2005, the

authorities are required to pay compensation in respect of such requisition under Section 66 of the Act of 2005. There must be an award under Section

66 for the petitioner to invoke the first proviso of Section 66 in the event, the petitioner is aggrieved by the award of compensation of the authorities.

He draws the attention of the Court to the writing dated November 10, 2020 by which, the Additional District Magistrate (Development), Hooghly

purported to hold that the petitioner will be entitled to rent remission for the period of requisition. He submits that such a writing cannot be construed to

be an award within the meaning of Section 66 of the Act of 2005 for the first proviso therein to be invoked by the petitioner. He seeks appropriate

relief with regard thereto.

3. State is represented. Learned Advocate for the State submits that the petitioner gave up his statutory right under Section 66 in writing.

4. The petitioner and the State Government entered into a lease in respect of an immovable property on July 1, 2017. There are reciprocal obligations

to be performed by the parties in terms of the Lease Deed entered into between the petitioner and the State Government. There are covenants in the

Lease Deed which requires performance of certain obligations by the petitioner which entail expenditure of money.

5. The immovable property in respect of which the lease is subsisting was requisitioned by the State Authorities on April 29, 2020. In the letter of

requisition dated April 29, 2020, the State Authorities quoted Section 34 of the Act of 2005 as the empowering section to requisition such immovable

property. Wrong recording of a Section of a statute will not vitiate the action provided the power to requisition is otherwise available. The Act of 2005,

as rightly pointed out by the learned Senior advocate for the petitioner, empowers the Central and the State Authorities to requisition an immovable

property under Section 65 of the Act of 2005. The relevant provision of Section 65 of the Act of 2005 is as follows:

65. Power of requisition of resources, provisions, vehicles, etc. for rescue operations, etc.

(1) If it appears to the National Executive Committee, State Executive Committee or District Authority or any officer as may be authorised by it in this behalf that—

(a) any resources with any authority or person are needed for the purpose of prompt response;

(b) any premises are needed or likely to be needed for the purpose of rescue operations; or

(c) any vehicle is needed or is likely to be needed for the purposes of transport of resources from disaster affected areas or transport of resources to

the affected area or transport in connection with rescue, rehabilitation or reconstruction,

Such authority may, by order in writing, requisition such resources or premises or such vehicle, as the case may be, and may make such further orders

as may appear to it to be necessary or expedient in connection with the requisitioning.

6. Section 66 provides the modality of payment of compensation. Section 66 of the Act of 2005 are as follows:

66. Payment of compensation.

(1) Whenever any Committee, Authority or officer, referred to in sub-section (1) of section 65, in pursuance of that section requisitions any premises,

there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following,

namely:—

(i) the rent payable in respect of the premises, or if no rent is so payable, the rent payable for similar premises in the locality;

(ii) if as consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable

expenses (if any) incidental to such change:

PROVIDED that where any person interested being aggrieved by the amount of compensation so determined makes an application within the thirty

days to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to

be paid shall be such as the arbitrator appointed in this behalf by the Central

Government or the State Government, as the case may be, may determine:

PROVIDED FURTHER that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the Central Government or the State Government, as the case may be, to an arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation: In this sub-section, the expression "person interested" means the person who was in actual possession of the premises requisitioned under section 65 immediately before the requisition, or where no person was in such actual possession, the owner of such premises.

(2) Whenever any Committee, Authority or officer, referred to in sub-section (1) of section 65 in pursuance of that section requisitions any vehicle, there shall be paid to the owner thereof compensation the amount of which shall be determined by the Central Government or the State Government, as the case may be, on the basis of the fares or rates prevailing in the locality for the hire of such vehicle:

PROVIDED that where the owner of such vehicle being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government or the State Government, as the case may be, for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government or the State Government, as the case may be, may determine:

PROVIDED FURTHER that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined under this sub-section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the Central Government or the State Government, as the case may be, in this behalf may decide.

7. The immovable property in respect of which the petitioner enjoys the lease

was requisitioned for the period from April 30, 2020 to July 31, 2020.

The petitioner claims compensation in respect of such requisition. Such demand of compensation was considered and the decision thereon was

communicated to the petitioner by the letter dated November 10, 2020. By the impugned decision, Additional District Magistrate (Development),

Hooghly informed the petitioner that the petitioner is entitled to rent remission in respect of such property only. The authority did not consider the other

amount that the petitioner expended during the requisition period. The petitioner is aggrieved by such decision.

8. The petitioner raises an issue that the impugned decision dated November 10, 2020 does not fall within the four corners of Section 66(1) of the Act

of 2005 so as to trigger the first proviso of such section.

9. With the deepest of respect, I am unable to accept such contentions of the petitioner. Section 66(1) requires the authority requisitioning the property

to pay compensation to the persons interested. It lays down the modality of calculation of the compensation payable. The first proviso of Section 66(1)

of the Act of 2005 stipulates that, in the event, a person interested in the compensation is aggrieved by the amount of compensation determined under

Section 66(1) can make an application within thirty days to the State Government, for referring the matter to an Arbitrator.

10. As noted above, the issue is whether the impugned decision dated November 10, 2020 of the Additional District Magistrate (Development),

Hooghly can be construed to be an order under Section 66(1) of the Act of 2005 for the first proviso therein to trigger. The petitioner applied for

compensation. The petitioner is a person interested in the payment of compensation for the requisition. The Requisitioning Authority considered such

request for compensation and passed an order on November 10, 2020. The first part of Section 66(1) of the Act of 2005 mandates the Requisitioning

Authority to pay compensation to the persons interested in the compensation. The manner for calculating the compensation payable is also provided.

In the facts of the present case, the decision to pay compensation was communicated to the petitioner. The letter dated November 10, 2020 comes

within the parameters of Section 66(1) of the Act of 2005. It allows a sum of Rs. 1,65,000/- to be deducted from the rent payable by the petitioner to

the State under the Lease Deed. It is a decision to pay compensation to the

petitioner who is a person interested to receive compensation and therefore comes within the purview of Section 66(1) of the Act of 2005. In the event, the petitioner is aggrieved by such decision, it would be for the petitioner to avail of the procedure prescribed thereafter under Section 66(1) of the Act of 2005, that is to say that, the petitioner is required to apply to State Government within thirty days from the date of the order of compensation for referring the matter to the Arbitrator. The petitioner did not do so.

11. The impugned order is not vitiated due to lack of jurisdiction or is unreasoned or passed in breach of principles of natural justice. Challenge to the impugned order despite existence of statutory alternative remedy therefore cannot be sustained. The petitioner did not specify the date of receipt of the impugned order in the writ petition. However, by an electronic mail dated December 14, 2020 the petitioner asked the State Authorities to release the Bills for payment of rent so that the petitioner can commence making payment. This mail can be construed to mean that the petitioner accepted the quantum of compensation specified in the impugned order dated November 10, 2020. There is nothing on record to substantiate that the petitioner disputed the quantum of compensation contemporaneously or asked for arbitration within 30 days from the date of receipt of the impugned order dated November 10, 2020.

12. The Act of 2005 provides a mechanism to decide upon the quantum of compensation payable as also an elaborate mechanism for redressal of any grievance with regard thereto. The same can be held to be statutory alternative remedy available to a person interested in compensation. A Writ Court need not interfere with regard to quantum of compensation payable.

13. Moreover, there are disputed questions of fact involved in the calculation of the quantum of compensation payable. Such disputed questions of fact are best left to be decided by the authority prescribed under the Act of 2005.

14. In such circumstances, I find no merit in the present writ petition.

15. WPA No. 11085 of 2020 is disposed of without any order as to costs.

16. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.