

(1997) 02 CAL CK 0030
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction C.O. No. 20307 (W) of 1996

Jaykrishna Basu and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-02-1997

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12
Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 3, 4
Land Acquisition Act, 1984 — Section 2

Citation : AIR 1997 Cal 253 : (1998) 1 CALLT 50

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : Mr. D.P. Adhikari, Mr. A.B. Raut and Mr. Ambar Nath Banerjee, for the Appellant; Dr. Tapas Banerjee, Mr. N.K. Mehta and Mr. P.K. Bhowmik, Mr Bhabesh Chandra Biswas and Ms. Nilima Das, for the Respondent

Judgement

S.B. Sinha, J.—The petitioners who are admittedly owners of Plot No. 41/572 (earlier L.R. Plot No.572) measuring an area of 4.47 acres comprised in R.S. Khatian No.217 J.L. No.102 of Mouza-Shibpur have filed this Writ application for issuance of a Writ of Mandamus directing the respondents to cancel the notification dated 18.10.96 Issued by the Deputy Secretary, State of West Bengal in terms of section 4 of the Land Acquisition Act, as contained in Annexure "F to the writ application, inter alia, on two grounds, namely, (1) that the direction in the said notification purported to be u/s 17(4) of the Land Acquisition Act is bad in law as there is no emergency, particularly in view of the fact that Indian Oil Corporation Limited had entered into negotiations with them for purchase of the said land and (11) there is no public purpose involved in the said acquisition.

Although no other point had been taken in the Writ petitioner, in the affidavit in reply filed by the petitioners to the affidavit in opposition, a new point has been taken that the purported proceeding under the said Act, is bad in law, in as much as, provision of Chapter VII of the said Act, had not been complied with prior to

the Issuance of the said notification.

2. Mr. Adhikari, learned counsel appearing on behalf of the petitioners in support of his aforementioned contentions has relied upon decisions in the case of Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, , Dora Phalauli Vs. State of Punjab and Others, and a Judgment of a learned single Judge of this court in Santosh Kumar Chakraborty & Ors. v. State of West Bengal & Ors., reported in 1996(1) CHN 83.

3. Dr. Tapas Banerjee appearing on behalf of the respondent No. 6 on the other hand has submitted that the lands are being acquired for a public purpose and in support of the aforementioned contention, my attention has been drawn to the statements made in paragraph 6 of the affidavit in opposition wherein, (interalia) alia. It has been stated that the Barauni Refinery of the respondent Corporation is not functioning to its rated capacity in view of the fact that the supply of crude oil is not adequate as it gets crude oil from Assam Oil Fields. It has been further stated that the availability of Assam crude oil to Barauni Refinery has been of the order of 2.2 MMTPA against the capacity of 3.3 MMTPA although the said Refinery can process 4.2 MMTPA, as a result whereof the present capacity of about 2 MMTPA remained un-utilised. It has been further pointed out that the crude availability to Barauni Refinery from Assam Oil Fields was likely to go down after completion of expansion projects of the existing refineries and commissioning of Numallgarh Refinery. With a view to meet the large deficit in the region, Government of India approved a project for laying down 500 Km. long crude oil pipeline from Haldia to Barauni and the land in question is required for the purpose of setting up of an intermediate pump station. It has further been pointed out that laying down of the pipelines between Haldia and Barauni was approved by the Government of India as a project of national importance. It has been submitted that the said project is a time bound project for which 42 months time had been granted, but in view of the urgency, time schedule has been reduced to 30 months. According to Dr. Banerjee, therefore Installation of an Intermediate pump station being very important, there cannot be any doubt whatsoever that the possession of the land in question was required to be taken over on emergency basis, failing which, national exchequer will incur a colossal loss. Learned counsel pointed out that a declaration u/s 6 of the Land Acquisition Act as well as an order u/s 7 had been Issued, and thus, this writ application is not maintainable, in as much as, the petitioners have filed the application suppressing the aforementioned fact.

4. As regards the question of public purpose, learned counsel pointed out that in view of the fact that the respondent No.6 is a corporation within the meaning of section 3(cc) of the Act, it is not necessary to comply with the provision of Chapter VII of the Land Acquisition Act. Learned counsel in support of his aforementioned contentions has relied upon Union of India & Ors. v. Praveen Gupta & Ors., reported in Judgment Today 1996(6) SC 624, Md. Alt & Ors. v. State of U.P. & Ors. reported in Judgment Today 1996 (9) SC 435, Ramntrlal N.

Bhutia & Anr. v. State of Maharashtra & Ors., reported in (1997) SCC 134, Sterling Computers Ltd. v. M/S.M.N. Publications Ltd., reported in 1993(1) SCC 44 and Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, .

5. Learned counsel appearing on behalf of the State has very fairly produced records of the case, from a perusal whereof it appears that apart from the fact stated in the respective affidavits in opposition filed on behalf of respondent No.3 as also Indian Oil Corporation, the aforementioned venture in question was treated as a Joint venture and the acquisition in question has been made by the State in view of the request made by the Central Government. It further appears from the records that all other requirements for Initiating a proceeding u/s 4 had been completed and a declaration u/s 6 had also been Issued. Although the impugned notification as contained in annexure "F to the Writ application does not state existence of any emergency, from the note sheet it appears that all the concerned authorities had in unequivocal terms stated that keeping in view the fact that the programme in question is a time bound programme and installation of an intermediate pump station is required for the purpose of transportation of crude oil from Haldia to Barauni in the State of Bihar, which, as noticed hereinbefore, has been declared to be a project of national importance, there had been an urgency in the matter. All the concerned authorities, Including the Minister concerned had agreed with the said proposal, whereafter only the impugned notification has been issued. It is not in dispute that Indian Oil Corporation is a State within the meaning of Article 12 of the Constitution of India, and is a corporation within the meaning of section 3(cc) of the said Act, which expression includes any body corporate established by or under a Central, Provincial or State Act, and Includes a Government company as defined in section 617 of the Companies Act. On the other hand, the word "company" has been defined in section 2(e) to mean, a company defined in section 3 of the Companies Act, other than a Government company referred it in clause [cc]. In the year 1984, the Land Acquisition Act was amended by Act 68 of 1984, in terms, whereof, friter alfa, the words "Public purpose" has been defined. Clause (iv) of section 2(0) of the Act includes within the aforementioned expression, the provision of land for a corporation owned or controlled by the State. Section 4 authorised the State to issue a notification under the said provision if the land in any locality is needed or likely to be needed for any public purpose or for a company. From what has been seen hereinbefore, it is thus clear that a distinction exists between acquisition for a company and an acquisition for public purpose. Whereas, for the purpose of acquisition on behalf of a company, requirements of Chapter VII of the Act are required to be complied with, no such requirement is to be complied with if the acquisition is made for a public purpose, in the facts and circumstances of this case, there cannot be any doubt whatsoever that the purpose for which the acquisition is being made, is a public purpose. The question which arises for consideration now is whether in view of the fact that as no urgency has been stated in the notification so as to enable the

State to Invoke its power u/s 17(4) of the Act, this impugned notification is valid in law or not. In Narayan Govinda's case (supra), the apex court was dealing with a matter prior to the Amendment Act 1984. In view of the law as it then stood. It held that the burden of proof that a matter is an urgent one and thus requires invocation of section 17, is on the State. In Dora Phalault's case (supra), a Division Bench of the Supreme Court no doubt struck down a notification as the same did not contain any statement that in the opinion of the Government there was any urgency to take recourse to the provision of section 17 of the Act, but it appears that both the aforementioned decisions have been distinguished by the Supreme Court of India in Union of India & Ors. v. Praveen Gupta & Ors., reported in JT 1996(9) SC 642, in the following terms :

"Shri Sanghi, learned Senior Counsel has pointed out that there is no real urgency in this matter and the respondents could have been given an opportunity to contend that land is not needed for any public purpose. In support there of. he placed strong reliance on the judgments in Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, : Dora Phalauli Vs. State of Punjab and Others, and State of Punjab and Another Vs. Gurdial Singh and Others, . The decision in Narayan Govind's case, has been distinguished by this court in several cases."

6. The apex court clearly held that each case has to be considered on its own facts. The apex court upon consideration of several decisions, held that a decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the materials available on records and, therefore, there was no need to pass any reasoned order to arrived a conclusion that there is urgency so as to dispense with the enquiry u/s 5A in exercise of powers u/s 17(4) of he Act The apex court further held: that the language of the notification is not conclusive but the court is required to consider the materials whether there existed any urgency for the purpose of exercising the power u/s 17(4) of the Act. While saying so, the Supreme Court followed its earlier decision in Jai Narain and Others Vs. Union of India and Others, . The decision of this court reported in 1996(1) CHN 83 appears to have been rendered in a different fact situation. In that case, the purpose of requisition was stated for the purpose of maintaining supplies and services essential to the life of the community and for Increasing employment opportunities along with other facilities for construction of a civic centre, in C1T Scheme No. VIII. In that case, neither any affidavit in opposition was filed nor the records had been produced. However, the learned Judge observed as follows :

"13. Keeping in view the aforesaid provisions of the said Act, it is clear that the acquisition has not been made in compliance with any of these provisions. The Impugned order in terms speaking of having been passed in exercise of powers u/ s 17(1) and section 17(4) of the said Act. No other section is referred to. Neither of these sections dispenses with the publication of the declaration u/s 6 of the said Act. It appears to be admitted from the affidavit in opposition that no such

declaration was made at all.

14. Furthermore, there is no case of urgency made out justifying the use of such emergent powers by the Authorities concerned. The precondition to the exercise of such power being absent, the order cannot be sustained."

7. The said decision is, therefore, not applicable to the fact of the present case. In the Instant case not only a notice u/s 6 has been Issued; in view of the statements made in the affidavit in opposition as also from the records I am satisfied that there exists an emergency. However, the opinion of the learned Judge to the effect that there cannot be any simultaneous notification Issued under sections 4 and 17(4), does not appear to be correct in view of the several Supreme Courts decisions where such notifications have been upheld Including the decisions referred to hereinbefore. In *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, , the apex court was dealing with identical situation where negotiation took place for purchase of land but till then it was held that keeping in view the fact that there existed an emergency, acquisition in terms of section 4 of the said Act cannot be said to be mala fide. The apex court clearly held that the courts have to weigh the public interest vis-a-vis the private while exercising the power under Article 226 of the Constitution of India. It further held: it may even be open to the High Court to direct in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons Interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing Interest. Beyond this, it is neither possible nor advisable to say. In *Md. Ali and Ors. v. State of U.P. & Ors.* reported in *Judgment Today* 1996(9) SC 435, it has been held that even prior to 1984 Amendment Act simultaneously publication of notification u/s 4(1) and declaration u/s 6 was valid in law. As regard the State's power to dispense with an enquiry u/s 17(4) the apex court observed :-

"It is also seen that in relation to the State of Uttar Pradesh, Land Acquisition (Amendment) Act 5 of 1991 has been brought into force w.e.f. February 17, 1991 and, therefore, in relation to the State of U.P. It is now settled law that when the State exercises the power of eminent domain and in exercise of the power u/s 17(4) dispensing with the enquiry u/s 5-A to acquire the land u/s 4(1) the State is entitled to have the notification u/s 4(1) and the declaration u/s 6 simultaneously published so as to take further steps as required u/s 9 of the Act I.e., Issuance of the notice and taking possession thereof u/s 17(2) of the Act. Thereafter the land stands vested in the State free from all encumbrances. In view of the urgency, the Government exercised power of eminent domain and dispensed with the enquiry u/s 5-A; we do not find any illegality in the action taken by the respondents in having the notification u/s 4(1) and the declaration

u/s 6 simultaneously published."

8. It is not disputed that a public purpose has been stated in the notification and such a public purpose is apparent from the records of the case. Once the State arrived at a satisfaction that there exists a public purpose for the purpose of acquisition of land the High Court in exercise of its power of Judicial review would not interfere therewith. In the case reported in *Bajirao T. Kote (Dead) by Lrs. and Another Vs. State of Maharashtra and Others*, , the apex court in paragraph 10 observed :-

"As mentioned earlier the State Government has exercised power u/s 4(1) for public purpose and the public purpose was mentioned therein exercise of the power cannot be Invalidated on account of mala fide so long as the public purpose is shown and land is needed or likely to be needed for the purpose of subsistence at the time of exercise of power. It is peremptorily for the State Government to decide whether there exists public purpose or not and it is not for this court or High Court to value evidence and come to its conclusion whether or not there is public purpose unless it comes to the conclusion that it is mala fide or colourable exercise of the power."

This aspect of the matter has also been recently considered in *Subhashgir Khushalgir Gosavi and others Vs. Special Land Acquisition Officer and others*, in the following terms :-

"But it is for the Government to take a decision and it is not for the court to decide as to which place is more convenient. Since the Government have taken a decision that acquiring the land for extension of the bus stand and bus depot is in the public interest, it cannot be said that the exercise of the power is arbitrary."

In *S.S. Darshan Vs. State of Karnataka and others*, , the Supreme Court was dealing with almost a similar situation where an Information technological park was to be set up. The acquisition was made by a company but it was held that the acquisition is for the public purpose of establishing of a technological park of national importance which is a Joint venture project involved three collaborators of Karnataka State. In the instant case from the records it appears that apart from the fact that the project in question has been considered as a joint venture of the Indian Oil Corporation as also the Central Government, the Indian Oil Corporation has been authorised to approach the State Government for acquiring of the land in question. In *Collector Ongole and Another Vs. Narra Venkateswarlu and Others*, the acquisition for providing houses to the weaker sections to the society was considered to be a public purpose. In *S.S. Darshan's* case (supra) the Supreme Court held "In the facts of that case upon taking into consideration the cumulative effect of all the documents that setting up of the technological park by the Government of Karnataka through the said Board and acquisition of this additional area became necessary on account of the Inadequacy of the land acquired earlier under the Karnataka Act of 1966 is in public interest. In that case the Supreme Court had held that even the action of taking recourse to the

provision of section 17 of the said Act could not have been assailed on the ground of mala fide. In Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, , the Supreme Court while considering question of promissory estoppel held that it is well settled legal position that the private Interest would always yield place to the public interest. As in the main writ application the petitioner had not taken any plea that the provisions of part VII of the Land Acquisition Act had not been complied with the said plea could not have been allowed to be taken in view of the decision of the Supreme Court of India in Paschdnbanga Prathamik Sikshak Stkshanprapts Bakar-o-Sikshak Samiti and others vs. President West Bengal Primary School Council and others reported in 1996(7) Sc 333. Even if such a plea is allowed to be raised, in my opinion, in view of the change in law by reason of Act No. 68 of 1984 the said plea has no force.

9. For the foregoing reasons, I am of the view that there is no merit in this application which must accordingly, be dismissed.

10. Before parting with this case, however, this court may take notice of the decision of the Supreme Court of India in Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, , which has been relied upon by Dr. Banerjee wherein the Supreme Court lamented non-disposal of a tender matter at an early date in the following terms :-

"Before we part with the Judgment we shall like to strike a note of caution. It is a matter of common experience that whenever applications relating to awarding of contracts are entertained for judicial review of the administrative action such applications remain pending for months and in some cases for years. Because of the Interim order passed in such application, the very execution of the contracts are kept in abeyance. The cost of different projects keep on escalating with passage of time apart from the fact (hat the completion of the project itself is deferred. This process not only affects the public exchequer but even the public in general who are deprived of availing the facilities under different projects. As such, it need not (sic) be Impressed that while exercising the power of Judicial review in connection with contractual obligations, courts should be conscious of the urgency of the disposal of such matters, otherwise the power which is to be exercises in the interest of public and for public good in some cases become counterproductive by causing Injury in general".

It is not appreciated as to why the aforementioned decision had been cited keeping in view the fact that the writ application was moved only on 3.2.97 and an undertaking was given on behalf of the Indian Oil Corporation not to take possession of the land in question for a week. The records had been produced only on 10.2.97 and at the request of the parties, the matter was fixed on 19.2.97 in order to enable the learned counsel for the petitioner to Inspect the records. The matter appeared in the list and was Heard on 19.2.97 and the judgment is being pronounced today.

11. In view of the fact that the decision as regards existence of emergency had to be arrived at on the perusal of the records the petitioner cannot be saddled with costs. The parties are, therefore, directed to pay and bear their own costs

12. Prayer for stay of operation of this order is considered and refused.

13. Application dismissed