

(1999) 03 CAL CK 0013
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 3302 (W) of 1999

Kanhaiyalal Saraf

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3(1), 3(2), 51A

West Bengal Land (Requisition and Acquisition) Rules, 1948 — Rule 3

Citation : (1999) 2 CALLT 291 : 2 CWN 378

Hon'ble Judges : Bijitendra Mohan Mitra, J

Bench : Single Bench

Advocate : Mr. Debasish Kund and Dipak De, for the Appellant; Mr. Durgadas Roy and Mrs. Dipti Bhattacharya, Mr. Indrajit Singh and Mr. Prasenjit Basu, for the Respondent

Judgement

B.M. Mitra, J.—The instant writ petition is taken up for disposal at the motion stage without user of any affidavit since in view of emphatic assertion made by Mr. Sen appearing on behalf of the respondent No. 6 the matter does not brook for any delay. Accordingly, some written instructions were put forward before this court and the learned advocate appearing on behalf of the State has also put forward his written instructions. In view of non-user of any affidavit, there has been no occasion for traversing the material allegations contained in the instant petition and, as such any of the allegations contained therein will not be treated as to have been admitted. The entire matter is being insisted upon for being heard at the stage of "Listed Motion" since extension of interim order has been opposed by the contesting respondents. This court has become a party to pass initial interim orders and it will refer to the reasons which have prompted this court at the material point of time to pass such interim orders. However, in view of exhaustive hearing given to the Parties at the risk of dislocating whole day's work, this court proposes to dispose of the writ petition at the motion stage.

2. In the instant petition, there has been, inter alia, a substantial challenge

thrown with regard to two notices being annexure "D" and "E" appended thereto from a perusal whereof it appears that those have been passed under the provisions of section 3(1) coupled with section 4(1) (a) of the West Bengal Land (Requisition and Acquisition) Act, 1948. It appears from the tenor of submissions of Mr. Kundu, learned Advocate appearing on behalf of the petitioner, that he wants to challenge the impugned notices on two fold grounds, namely, on the basis of the allegation of alleged non-service of notice on the petitioner and also on the ground that there is no public purpose involved in the initiation of the said proceedings pursuant to the notices as impugned. It has been submitted by Mr. Kundu that the question of public purpose should be taken up first as, according to him, if he succeeds on the said point, then the question of non-service of notice can be relegated to the background and it may pale into the comparative insignificance.

3. Be that as it may, this court proposes to consider the basic limbs of the foundation of submissions of Mr. Kundu on the two fold grounds as aforesaid and it tends to proceed on the basis first about the scrutiny of whatsoever importance may be attached to the same about the alleged non-service of notice.

4. Mr. Roy, learned Advocate appearing on behalf of the State, has handed over a written instruction signed by the L. A. Collector, 24-Parganas (North) at Barasat from which it appears that as per L.R. Records the names of two persons appear on the plots in question, namely, one Sri Amarendra Laskar and another Blshu Laskar and the name of the petitioner is neither recorded nor did his name appear at the time of and schedule verification. This court while taking that instruction into consideration has perused the averments contained in the writ petition and it appears that in paragraphs 2 and 3 reference was made about the deeds of conveyance which were stated to have been duly registered dated 10th June, 1966 by land in question which were stated to have been purchased by the petitioner and as a follow up measure the said petitioners have applied for mutation of the name in respect of the said land and they were paying rent regularly. This court has the occasion to peruse the documents annexed to the writ petition, namely, the Record of Rights, from which it appears that such recording tallies with the letter of instruction put forward on behalf of the State respondents. Of course, a lone reference may be made to one of the annexures appended to the writ petition, namely, tax receipt, from which the petitioner's name appears. This court instead of going into the vortex of controversy relating to factual matrix of the dimension of the entire range of scrutiny can refer to the case of Panchu Molla v. State of West Bengal, reported in 80 (2) CLJ 1 where it has been held by this High Court that when the State has mutated the name of the petitioner as tenant and has accepted the rent from the petitioner in the said capacity, the State Government cannot treat the said land as vested and by the subsequent Act the State Government recognised the tenancy right of the petitioner. The said judgment, as aforesaid, does not hold good any longer in view of the decisions reported in the case of Sm. Sawarni v. Sm. Inder Kaur & Ors., reported in 1998 (6) SCC 223 where it has been held that mutation of the

property in a revenue record does not create or extinguish title nor has it any presumptive value or title. It only enables the person to make possible mutation by way of his remedy to pay the land revenue in question.

5. In the background of the aforesaid decision, a reference can be made to the provisions of section 3(2) of the West Bengal Land Requisition Act No. II of 1948 where it has been provided that an order under sub-section (1) shall be served in a prescribed manner on the owner of the land where the order relates to the land in occupation to an occupier in paying the owner of the land also on such occupier. A further reference can be made to Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules, 1948 where several modes have been prescribed in terms of which it has been further provided that an order under sub-section (2) of section 3 shall be served on the owner of the land and where the order relates to the land in occupation of an occupier not being the owner of the land also on such occupier. The land in question as per the case made out by the petitioner is a vacant land and there has been no categorical averment in the writ petition that they are occupying the said land and retaining the physical possession of the same either by themselves or by their authorised agents in their behalf. If on a vacant land no occupier is found, then in terms of the mode, prescribed under sub-rule (d) of Rule 3 as aforesaid, it can be attempted to be served by fixing a copy thereof in a conspicuous part of the land to which the order relates and also in some conspicuous place of the office of the Controller. It is only possible for the State Machinery to keep track of owners by following the record of rights in respect of vacant land as otherwise it will not be merely an uphill task but also an impossibility to trace out as to who becomes the absolute owner pursuant to sale transactions particularly when they were entered into long time back and no effective step was taken to alert the authorities to make them familiar as to who is the owner of the land. The land as mentioned in the writ petition is a part of the entire chunk of land on which construction is going to be made in respect of a housing complex known as "Anupama" wherein the land of the petitioner is situate. The same is being carried on for a considerable period of time and the petitioner should have been given to know of the impending move of the authorities to extend their frontiers either of possession or encroachment of land and they should have been vigilant to take appropriate steps at an earlier point of time. This court after going through the legal aspect of the matter does not feel that the petitioner is an occupier of the open land being in actual physical possession thereof but if he is an owner there is no overt act of assertion of his ownership and ownership of the petitioner has been lying at a dormant stage. Therefore, this court can take into account a decision of the case of State of West Bengal and others Vs. Samarendra Nath Paul and others, and a reference may be made to paragraph 8 of the same where in the concluding portion thereof it has been opined that the Division Bench could not say that admittedly no notice was affixed in some conspicuous place in the office of the Collector, A further reference can be made to the case of West Bengal Housing Board Vs. Brijendra Prasad Gupta and others, where the apex court

holds that section 50 of the West Bengal Land Reforms Act provides for maintenance of records of rights by the prescribed authority by incorporating therein the changes on account of mutation of names as a result of transfer by inheritance or partition, etc. Under sub-section (a) of section 51A, other entry in the record of rights shall be presumed to be correct unless it is proved that the entry in the record of rights is incorrect otherwise there is every presumption about the correctness of record of rights. The observation made by the Division Bench of the High Court is that the Collector should have been aware of the tenancy of the mutation procedures but the same may not be accepted by the Collector that it is no part of the duty of the said authority of the Government to make a roving enquiry to determine the ownership of persons. Therefore, the requirements of law are made when notices are served upon the recorded owners as per record of rights. Here, in the backdrop of the analysis of the legal questions, this court also is not in a position to arrive at any conclusion that no notice was fixed either in a conspicuous place in the open land or in the office of the Collector. Therefore, this court does not intend to deal further with this point and it feels that no premium can be given in aid of academics of question of alleged non-service of notice when the cloud to a considerable extent has been removed from the same.

6. It is worthwhile to mention and repeat once again that tills court has been consciously made a party to pass a clear order at different stages that attention of this court was drawn by Mr. Kundu from the relevant annexures annexed to the writ petition, namely, from brochure circulated among the public by or on behalf of the respondent No. 6. Mr. Kundu has drawn attention of this court from the said brochure that "Anupama" bids to provide residential accommodation to individuals belonging to higher income group, non-resident Indians and institutions both in private and public sectors. Even a reference was made by the learned Advocate for the petitioner about the insertion contained in annexure "G" in the brochure that more than 40 per cent has been kept for the affluent section of the society. The user of expression "affluent" is in the grammatical sense and the esoteric of such expression has overtaken the court by an element of surprise and particularly when it appears to the court prima facie at the material point of time, reservation is made for higher income group (nonresident Indians) and large institutions. They are not definitely wedded to the weaker section of the community. As such, this court is made to ponder and prima facie at the time of grant of interim order at the initial stages it has felt that the same tends to militate against public purpose. However, at this juncture, this court is required to peruse the impugned notices where it appears that an opinion has been expressed in annexure "D" for construction of housing complex and in annexure "B" also a reference was made for such purpose. The term "public purpose" appears to have been mentioned in the West Bengal Land (Acquisition and Requisition) Act, 1948 and in terms of section 4(1) (a) it makes a reference about public purpose. Section 3(1) of the said Act tries to project the total dimension of public purpose and Mr. Sen, the learned Advocate on behalf of the

respondent No. 6, has pointed out that here public purpose will be required to be construed in the portion where within the dimension it is comprehended to create better living conditions in rural or urban areas and also for construction or reconstruction of dwelling place. According to Mr. Sen, better living condition in urban areas includes better residential accommodation for the people living in urban areas.

7. Mr. Kundu, while dilating on it, has referred to the decision in the case of *Munshi Singh and Others Vs. Union of India (UOI)*, and he has laid special stress in paragraph 6 as it has been mentioned therein that public purpose, as stated in sub-section (1) of section 4, has to be particularised because unless that is done, various matters, which are mentioned in sub-section (2), cannot be carried out. Therefore, specific details are required to be given in the notice itself. The same cannot be rigidly followed in terms of the decision in the case of *State of West Bengal and others Vs. Samarendra Nath Paul and others*, . It appears that with regard to the said project known as "Anupama" a case was made out and a reference may be made to paragraph 9 thereof where it has been observed that order u/s 3(1) of the Act has spelt out in details the purpose for which the land is sought to be requisitioned. In the case reported in *West Bengal Housing Board Vs. Brijendra Prasad Gupta and others*, the question of public purpose has been debated. Before this court makes a reference from the said decision, it is necessary to make an observation that in a metropolitan city like Calcutta it is ravaged by the problem of acute scarcity of accommodation and there is a genuine need where a person can rest in a peaceful situation. Every person is desirous of carving out his accommodation commensurate with capability to find out a suitable place so that it can cater to his needs in a reasonable manner. Today in the domain of political ideology, the concept of equality is also undergoing a radical change and it is felt by the protagonist of egalitarian society that inequality in abundance is preferable to that of equality in gutters. Even those who think of a socialistic pattern of society including those who have adopted a fabian form of socialism are making themselves amenable to qualitative dimension equality. Therefore, all segments of society are required to be accommodated. In a society, it may be conceived of as a platform marked by the splendor of diversity among different levels of persons in attaining economic achievements. The apex court in the case of *West Bengal Housing Board Vs. Brijendra Prasad Gupta and others*, has held that the Directors of the Housing Board and the Joint Venture Company would see that no runaway profit is earned as sale price of higher income group house is guided by the market forces but there is no exploitation. Other segments of the society need protection from exploitation. It is neither possible nor desirable to lay down any principle as to how this is to be done in a particular case. Therefore, from the observation made in the said Judgment, even discerning of well being of consideration of interest of higher income group cannot be allowed to be sacrificed at the altar of social reconstruction because they have also a right to be protected against exploitation and they can live in dignity in a society commensurate with their

capability. The court must shake off the myth that public purposes are served only at a stage or by the Housing Board or by the Joint Venture Company when the same does not earn any profit. Profit earning must be there otherwise the weaker sections of the community cannot be fitted in within the society. Therefore, in order to protect the weaker section, price discrimination should be followed so that some profits can be earned which can make it possible to the coordinators to co-ordinate where people of different establishments of different groups can live together. It appears that in the aforesaid case the question that has cropped about public purpose is answered in the affirmative but Mr. Kundu has strongly Joined issue though according to him the facts are distinguishable in nature. This court does not know as to what are the exact limits of differentiation between the classification sought to made between higher income group, middle income group and lower income group. The discretion must rest with the authority and the touch-stone of the same has to be tested on the anvil of reasonableness". Here, it appears that it is an amalgam of different financial standings and, therefore, it is a question of bid at the instance of the Housing Board to assimilate different groups of financial strength in a composite place. However, in order to usher an era of egalitarian society, the State must promote in terms of the directive principles of the State policy and it must give a preference to the claim of the economically weaker section of the community. This court feels that in view of amalgam of different compositions of financial strata being attributed to different types of people and for their being accommodated in one place, it emerges as the policy of the State as the court cannot dictate the policy of the State and it cannot determine the policy. Therefore this court feels that at the Journey of progress the society has come at a stage where fixed notion cannot be given as the Supreme Court has rightly observed that there cannot be any hard and fast rule and it has to be visualised in the perspective of the totality of the case.

8. From the resume of the order of requisition of land u/s 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 appended to the writ petition, vide annexure "D", it appears that the said order has been issued with a prefix of making a mention of the opinion for construction of the Housing Complex. The same is reflected in the next annexure being annexure "E" appended to the writ petition. It also appears that they find it reflected in the publication of the Calcutta Gazette (Extra-Ordinary) issued on February 25, 1997 reflecting the aforesaid purpose. The Supreme Court in the case of West Bengal Housing Board Vs. Brijendra Prasad Gupta and others, in paragraph 18 thereof has opined that it is difficult to accept the submission of the writ petitioners that the purpose for which the requisition has been made was not a public purpose within the meaning of the Act. Even a mention may be made about a reference made in paragraph 32 of the said judgment where the apex court has observed that the Housing Board acts as a regulatory body and the State Government oversees the Housing Board and has also imposed certain terms and conditions. This appears to be a crucial guideline as over and above the construction being

undertaken in a joint venture project, the same is regulated by the Housing Board and the State Government oversees the Housing Board and it retains its control to impose certain terms and conditions. Mr. Kundu, learned Advocate for the petitioner, while assailing the aspect of public purpose, has drawn repeated attentions of this court from the brochure annexed to the writ petition, vide annexure "G" and he has drawn attention to the fact that the brochure itself proposes to provide for residential accommodation to individuals belonging to higher income group (non-resident Indians) and for large institutions both private and public sectors. Mr. Kundu has also drawn attention about emphasis being laid on reservation for more than 40 per cent for the affluent section of the society and, according to him, the brochure being in the form of amplification of the purpose spelt out either in the order or in the Gazette does not lend any credence to public purpose and, on the contrary, it tends to eat into the very vitals of the foundation of the fibres of public purpose. This court has taken note of the said submission of Mr. Kundu quite seriously but from the perusal of the order passed u/s 3(1) of the connected Act and also from the Gazette Notification though it does not appear, but according to him, the amplification as reflected in the brochure should be taken as a rider which will illustrate the range of gamut of public purpose and, according to him, the same can be dubbed as a public purpose. On that score alone, Mr. Kumar has pressed that the present case is distinguishable from the facts of the judgment of the apex court. To repel the submission of Mr. Kundu, Mr. Sen, the learned Advocate appearing on behalf of the respondent No. 6 has drawn attention of the court from the said judgment where the apex court has made calculation of the figures from which it appears that L1G and MIG dwelling units constitute 73 per cent of the total units that are proposed to be constructed and HIG only constitutes 27 per cent of the total project. According to Mr. Sen. here the allocation of flats to different income groups stands in the vicinity of the ratio of allocation which are almost analogous to that of the rations followed in the apex court and, according to him, the said ratio has come down because of the intention of the Housing Board as a regulatory body and because the State Government oversees the Housing Project. According to Mr. Sen, this is the resultant effect of the overall superintendence of the Housing Project by the State Government. According to him. the sum-total which has been carved out ultimately is to be taken into account and that should be gauged in the perspective of the concept of public purpose. The re fore, according to Mr. Sen. the objects which were expressed in the brochure do not find parity and promise has been narrowed down by performance because of the regulatory body and other bearing credence of the stated apparatus. According to him, the picture of reality should not be lost sight of and that appears to be co-extensive of that of the concept of public purpose. Therefore, according to Mr. Sen, the cited decision of the apex court gives a complete answer to the controversy sought to be placed on the facet of public purpose and the same should not be allowed to be reopened by way of academic exercise on the touch-stone of esoterics. This court after taking into account the overall scenario of the reality and particularly in the wake of the decision of the

apex court feels that in the light of the view point expressed by the apex court it becomes difficult for this court to hold that it is opposed to public policy.

9. Mr. Kundu, learned Advocate for the petitioner, has referred to the case of *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, where it has been laid down by the apex court that any providing for acquisition of property must be for a public purpose. Whether the law of acquisition is for public purpose or not is a Justiciable issue but the decision in that regard is not to be given by any detailed investigation or on facts. The intention of the legislature has to be gathered mainly from the statements and objects of Karnataka Contract Carriage Acquisition Act and its preamble. This case refers to the situation of taking over of public transport by the State and, in the wake of nationalisation by the State Transport, the question cropped up as to whether it would enure for the benefit of public purpose. Here, the facts of the instant case are not related to public carriages but to construction of housing complexes to accommodate different sections of the population living in a metropolitan city. Therefore, the parameters of public purpose guiding governance of stage carriage cannot be similar to that of construction of housing complex. There, the apex court has the occasion to interpret the preamble, reasons and the objects of the connected Act. Here, in the instant case, the question has arisen by way of seeking an inference to be drawn from the initial brochure circulated to the prospective allottees in the "Anupam Apartment" and that may not be the reasonable basis for assessing the purpose because the said purpose is rightly to be modulated and shaped under the guidance of the regulatory body and overall superintendence of the State. The entire upshot of the same is to be looked into in the perspective of the purpose as mentioned in the impugned notice. As such, the instant case to a considerable extent fits in with the case the mention of which has been made in details in the case reported in *West Bengal Housing Board Vs. Brijendra Prasad Gupta and others*, which has been referred to on numerous occasions and has been discussed in details. As such, this court does not feel inspired to derive any inference from the decision as mentioned above which may fit in with the facts and circumstances of the present case. Mr. Kundu has also referred to the case of *Howrah Mill Ltd. v. State of West Bengal & Ors.* reported in 98 (1) CLJ 455 in order to illustrate that the powers as circumscribed under the statute have to be exercised within the limits for the purpose for which the same was made. There is no dispute with regard to the said proposition. Here, the controversy which has been attempted to be raised is as to whether it is circumscribed within the brochure circulated on behalf of "Anupama" and not with regard to the statute. Therefore, that case is also distinguishable on that score. Accordingly, this court after taking note of the respective submissions of the parties including the stand taken by the State feels that there is no scope for interference in the instant writ petition for the reasons as indicated hereinbefore. Accordingly, the writ petition stands dismissed on contest.

Xerox certified copy, if applied for, be issued at an early date.

10. Petition dismissed