
(2001) 12 CAL CK 0041

In the Calcutta High Court

Case No : C.R. No's. 16338-16341 (W) of 1981

Lila Deb Chowdhury and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition (West Bengal Amendment) Act, 1997 — Section 11A, 23, 54A, 9

Land Acquisition Act, 1894 — Section 9(3B)

West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996 — Section 7A

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 4, 7

Citation : (2002) 1 CALLT 278

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : A.K. Chatterjee and K.N. Chakraborty, Saktinath Mukherjee, L.K. Gupta, S.L. Bidasana and S. Ghosh, for the Appellant; S.C. Ukil and C. Roy, for the Respondent

Judgement

B. Ghosh, J.—These writ petitions were affirmed on 7th April. 1981 and were filed simultaneously therewith challenging the vires of Act II of 1948 as re-enacted by the West Bengal (Requisition and Acquisition) Re-enacting Act, 1977 as well as requisition orders dated 24th April, 1978 issued in relation to the lands belonging to the petitioners. Inasmuch as the Supreme Court has already declared that Act 2 of 1948 is intra vires, no argument was advanced that the said Act or the re-enacting Act is ultra vires. Although many a grounds had been taken to challenge the aforementioned requisition orders but only two grounds, namely, at the instance of Calcutta Metropolitan Development Authority (in short, CMDA) no land could be requisitioned and that since possession of lesser area of the land, than notified, was taken the same would show that the land was not required were urged at the hearing in relation to the case as had been made out in the original writ petition.

2. These writ petitions were considered by this Court on 16th April. 1981, when

this Court issued rules and passed interim orders restraining the respondents, their servants and agents from proceeding any further on the basis of the said requisition orders as well as from interfering in any manner with the possession of the petitioners in respect of the lands in question for two weeks with liberty to pray for extension upon notice to the respondents. That interim order expired after expiry of two weeks from 16th April, 1981. During the subsistence of the said interim order or after expiry thereof, the same was not extended. In that view of the matter, acquisition notices under the said Act were issued concerning the lands, which were requisitioned. Thereafter on 17th February, 1986 an order was passed, whereby and whereunder this Court directed all the parties to maintain status quo as on 17th February, 1986 as regards construction and possession of the subject lands of the petitioners. Subsequent thereto this Court permitted the petitioners to bring on record subsequent events and also permitted the petitioners to challenge the acquisition notices issued under the said Act pertaining to the lands in question. In terms thereof the writ petitions have been amended. In the amended writ petitions very many grounds have been taken challenging the acquisition notices. At the hearing, however, the only submission was that the acquisition notices have lapsed by operation of law.

I shall deal with these contentions separately.

3. In support of the first contention it was urged that the Act by which CMDA was originally constituted and also the Act by which CMDA was later on re-constituted do not permit CMDA to requisition any land for the appropriate Sections provide that acquisition of land by CMDA would be deemed to be for public purpose. In contrast, my attention was drawn to certain Acts, by which some other authorities had been constituted, which, *infer alia*, provide that both requisition and acquisition at the instance of such authorities would be deemed to be for public purpose. It was also added that the functions of CMDA are such that if any land is required by CMDA, the same must be for a permanent requirement entitling CMDA to after the land as it desires and therefore, at its instance no requisition can be had inasmuch as requisition cannot be for perpetuity, nor the same permits the requisitioner to change the nature and character of the land requisitioned.

4. The statute by which CMDA was originally constituted as also the statute by which CMDA was later on re-constituted contains a legislative declaration to the effect that acquisition at the instance of CMDA shall be deemed to be for public purpose. The applicable provisions of law only declare that, but do not ordain that CMDA can only acquire lands. The said statutes also do not expressly debar CMDA from requisitioning land. When there is no prohibition in the statute preventing CMDA from requisitioning lands, merely because there is a legislative declaration that acquisition of land by CMDA shall be deemed to be for public purpose, it would not be safe to hold that CMDA was not entitled to requisition the lands in question or that at its instance lands in question could not be requisitioned.

5. One of the functions of CMDA is to develop habitable townships. In order to do so no doubt it is necessary to acquire lands for the purpose of converting them into townships, but to effectively make a township if lands are first requisitioned and then a part of such land or the land in its entirety is acquired, such requisition cannot be called in question. In the instant case the entire land belonging to the petitioners, except lands beneath the structures constructed on the lands of the petitioners, were requisitioned, the acquisition notice intended acquisition of all those lands in entirety, which were requisitioned.

6. To my mind either the requisition is bad or the same is good. If the requisition is bad, then everything in pursuance therewith is bad. It is not the contention that the requisitions are bad. The contention is that the requisitions became bad as possession of lesser land, than requisitioned, was taken. Undisputed facts disclose that the lands were first requisitioned for the purpose of ascertaining whether the same are required for the proposed township. According to CMDA it was given possession of the lands, which had been requisitioned. According to the petitioners' possession of lesser land was taken by CMDA I need not go into such controversy at all for a misdirected action or an erroneous action on the part of an officer in pursuing the requisitions: the requisitions would not become bad. It was urged that laws permitting requisition, which entail dispossession of the owner, should be construed strictly. It is true that such laws must be construed strictly, but then that would not permit reading of words in the statute, which are not there in the statute, entailing a decision of the validity of the requisition on the basis of subsequent conduct of a servant of an organization, at whose instance the requisition had been made, while pursuing such requisition.

7. For the reasons aforesaid I refuse to Interfere with the requisition orders.

8. In order to understand the contentions of the petitioners in relation to the subject acquisition one has to look at the applicable laws since the facts are undisputable and they are that the requisition orders were issued on 28th April, 1978, in pursuance therewith the lands in question were taken possession of on 9th January, 1979, acquisition notice was published on 8th December 1983 and the award was made on 23rd December, 1999.

9. Section 4(1a) and (2) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (Act 2 of 1948) is as follows:

"4. Acquisition of land.

(1a) The State Government may acquire any land requisitioned u/s 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in Sub-section (1) of Section 3.

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end."

10. By reason of the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, the West Bengal Land (Requisition and Acquisition) Act, 1948 remained valid till 31st March, 1994. Again by reason of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the West Bengal Land (Requisition and Acquisition) Act 1948 remained valid until 31st March 1997. The operation of the West Bengal Land (Requisition and Acquisition) Act, 1948 has not been extended thereafter. In that view of the matter, West Bengal Land (Requisition and Acquisition) Act, 1948 expired on and from 1st April, 1997.

11. On 8th October, 1996 the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996 came into effect, whereby Section 7A was inserted in the West Bengal (Requisition and Acquisition) Act, 1948. The inserted Section 7A is as follows:

"7A. Award by Collector.--The Collector shall make an award under Subsection (2) of Section 7 within a period of three years from the date of publication of the notice in the Official Gazette under Sub-section (1a) of Section 4 (hereinafter referred to as the said notice), and if such award is not made within the period as aforesaid, the said notice shall lapse:

Provided that in a case where the said notice has been published more than two years before the commencement of the West Bengal Land Requisition and Acquisition (Amendment) Act, 1994, (West Bengal Act 14 of 1994), the award shall be made within a period of one year from the date of commencement of that Act.

Explanation.--In computing the period of three years or one year as the case may be, under this section, the period during which any action or proceeding to be taken in pursuance of the said notice is stayed by an order of a Court having jurisdiction, shall be excluded."

12. On 2nd May, 1997 by the Land Acquisition (West Bengal Amendment) Act, 1997 Sub-section (3A) and (3B) were inserted in Section 9, a proviso was inserted in Section 11A, a proviso was added to Sub-section 11A) of Section 23 and a new section Section 54A were inserted in the Land Acquisition Act, 1894. The provisions of Section 9, 11A, Sub-section (1A) of Section 23 and Section 54A of the Land Acquisition Act 1894 incorporating the amendments effected by the Land Acquisition (West Bengal Amendment) Act, 1997 are as follows:

"9.(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of

their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made u/s 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (If any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(3A) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition u/s 3 of the West Bengal Land (Requisition and Acquisition) Act. 1948 (West Bengal Act 2 of 1948) (hereinafter referred to in this section as the said Act), as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977 (West Bengal Act 15 of 1977), and, in every such case, the provisions of Subsection (1) of Section 4, Section 5, Section 5A, Section 6, Section 7 Section 8 of this Act shall be deemed to have been complied with:

Provided that the date of notice under this sub-section shall be the date of reference for the purpose of determining the value of such land under this Act.

Provided further that when the Collector has made an award u/s 11 in respect of any such land, such land shall, upon such award, vest absolutely in the Government, free from all encumbrances.

(3B) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition u/s 3 of the said Act, and notice for acquisition of such land has also been published under Sub-section (1a) of Section 4 of the said Act, and. In every such case, the provisions of Section 4, Section 5. Section 5A, Section 6, Section 7, Section 8 and Section 16 of this Act shall be deemed to have been complied with:

Provided that the date of publication of notice under Sub-section (1a) of Section 4 of the said Act shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that in every such case, the Collector shall make an award u/s 11 in respect of such land only for the purpose of payment of due compensation to the persons interested in such land where such land has upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances.

(4) in case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at this last

known residence, address or place of business and registered under Sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898).

11A. Period within which an award shall be made.--The Collector shall make an award u/s 11 within a period of two years from the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Provided further that in respect of the acquisition of the land referred to in Sub-section (3A) and Sub-section (3B) of Section 9, the award shall be made within a period of two years from the date of the issue of the public notice u/s 9.

Explanation--In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

23.(1A) in addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of publication of the notification u/s 4, Sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, which ever is earlier.

Provided that in respect of the acquisition of the land referred to in Subsection (3A) and Sub-section (3B), of Section 9, in addition to the market value of the land, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of taking possession of the land to the date of the award of the Collector.

Explanation.--In computing the period referred to in this Sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of the Court shall be excluded.

54A. Act to apply to acquisition of land referred to in Sub-section (3A) and 3(B) of Section 9.--Save as otherwise provided in Sub-section (3B) of Section 9, the second proviso to Section 11A, and the proviso to Subsection (1A) of Section 23, the provisions of this Act shall apply to the acquisition of the land referred to in Sub-section (3A), and Sub-section (3B) of Section 9 mutatis mutandis."

13. It is claimed and contended by the respondents that on 1st April, 1998 notices were issued u/s 9(3A) of the Land Acquisition Act, 1894 and it was insinuated that such notices covered the lands in question. I was, however, not favoured with a copy thereof.

14. In terms of the provisions contained in Sub-section (2) of Section 4 of the West Bengal Land (Requisition and Acquisition) Act, 1948, the moment notice of acquisition is issued under Sub-section (1a) of Section 4 of the, said Act, the period of requisition of land comes to an end and the requisitioned land vests absolutely in the State Government free from all encumbrances. This vesting is not free of cost. Section 7 of the said Act, which has not been set out above, provides for payment of compensation upon an award to that effect being made. Section 7 of the Act, however, does not stipulate when such award shall be made and what would be the consequence if the award is not made at all. Section 7A was thus added to the said Act by the West Bengal Land Requisition and Acquisition (Amendment) Act. 1996. By inserting the said section the legislature ordained that the award in respect of the acquired land should be made within a period of 3 years from the date of publication of the notice acquiring the requisitioned land and if such award is not made within the said period, the said notice shall lapse. What would happen to those acquisition notices, which were issued long time back, yet no award has been made in relation to the lands covered by such notices? This was taken care of by inserting the proviso to Section 7A of the Act. The proviso to Section 7A of the said Act, as inserted by the 1996 Amending Act, ordains that in case notice of acquisition under Sub-section (1a) of Section 4 of the act has been published more than two years before the commencement of the Amending Act, 1994, the award shall be made within a period of one year from the date of commencement of the 1994 Amending Act. In other words the proviso fixed the date of all acquisition notices issued prior to two years from the date of coming into force of the 1994 Amending Act as that of the date immediately prior to two years of the date of coming into force of the 1994 Amending Act, The Amending Act, 1994 came into effect on 31st March, 1994 although the Amending Act, 1996 by which Section 7A was inserted, came into force on 8th October, 1996, but still then the legislative mandate was to reckon the date of all acquisition notices issued prior to 31st March, 1992 as 31st March, 1992 enblock. The reasonable construction of the inserted Section 7A, therefore, would be that in case a notice of acquisition has been published more than two years before 31st March, 1994, the award shall be made within a period of one year from 31st March, 1994 and in any other case within a period of 3 years from the date of publication of the acquisition notice under Sub-section (1a) of Section 4 of the Act. If such award is not made, the acquisition notice shall lapse. By reason thereof the following consequences have arisen:

(a) The acquisition notice issued prior to 31st March, 1992, the award must be made by 31st March, 1995, in default the notice of acquisition shall lapse;

(b) The acquisition notice issued on or subsequent to 31st March, 1994, the award must be made within three years therefrom. In default the notice of acquisition shall lapse. Since the Act remained valid only upto 31st March, 1997, despite having time to make and publish award, if the notice of acquisition had been issued one day before 31st March, 1997, the notice of acquisition shall

lapse since the Act stood lapsed with effect from 31st March, 1997;

(c) The Act remained valid upto 31st March, 1997 and accordingly on any day prior to 31st March, 1997 any land could be requisitioned and any such land in relation thereto if an acquisition notice had been issued one by before 31st March, 1977. i.e., when the Act lapsed, despite having three years time to publish the award, the acquisition cannot be completed; and

(d) it may be possible that a land has been requisitioned on any day during the validity of the Act, i.e., within 31st March, 1997 and it is decided to acquire the said land subsequent to 31st March, 1997 but since the Act lapsed on 31st March, 1997, no such step can be taken to acquire the land under the Lapsed Act.

15. The legislature being aware of the above consequences amended the Land Acquisition Act, 1894. It, however, does not appear that the first consequence, as mentioned above, has at all been interfered with by amending the Land Acquisition Act, 1894, i.e., in respect of the requisitioned land for which an acquisition notice had been issued prior to 31st March, 1992 but no award in relation thereto has been made and published on or before 31st March, 1995 and in consequence thereof the acquisition notice has lapsed by reason of the legislative mandate contained in Section 7A of the Act. However, if a land has been requisitioned any day prior to 31st march, 1997 by serving a notice under Sub-section (3A) of Section 9 of the Land Acquisition Act, 1894, such land can be acquired and if such a notice is issued, the award in respect of the land acquired is required to be made within two years from the date of the notice and in default the entire proceeding for acquisition of land shall lapse. It goes without saying that after the said Act came to an end on the expiry of 31st March, 1997 upon the lapse of the entire proceeding for acquisition of land for not making the award within a period of two years from the date of publication of the notice, there cannot be any claim on the basis of the requisition and accordingly neither the requisitioning authority, nor the acquiring authority can hold on to the land. Similarly when a land has been requisitioned and in relation thereto an acquisition notice has been issued but the award could not be made within three years from the date of such acquisition notice in accordance with the mandate contained in Section 7A of the Act, but the acquisition notice has not lapsed, by serving a notice u/s 9(3B) of the Land Acquisition Act, 1894 such land too can be acquired provided within a period of two years from the date of such notice the award is made and published and in default the acquisition proceeding shall lapse, whereafter, for the similar reasons, neither the requisitioning authority, nor the acquiring authority shall be entitled to remain in the land. The amendment effected to the Land Acquisition Act, 1894 do not, however, revive and acquisition notice which has lapsed by reason of Section 7A of the Act. Although Sub-section (3B) of Section 9 of the Land Acquisition Act, 1894 uses the words "in every such case" before the words "notice for acquisition of such land has also been published under Sub-section (1a) of Section 4 of the said Act" but the said words "in every such case" should be construed to mean in every

such case where the notice for acquisition is alive and has not lapsed by reason of the mandate contained in Section 7A of the Act. There is no express legislative intent in the amendment effected to the Land Acquisition Act, 1894 to revive an acquisition notice which stood lapsed by reason of the mandate contained in Section 7A of the Act. As aforesaid, the Act came to an end on 31st March, 1997. No step under the said Act could be taken subsequent to 31st March, 1997. No requisition order could be issued after 31st March, 1997. The land, which has been requisitioned on or before 31st March, 1997 could be acquired by issuing an acquisition notice and then by making an award and for that Sub-section (3A) was inserted in Section 9 of the Land Acquisition Act, 1894. A land which has been requisitioned and in respect thereof a notice of acquisition has also been issued but the acquisition proceeding could not be completed prior to 31st March, 1997 by making and publishing an award within a period of three years from the date of such notice, as no step could be taken under the Act to complete the acquisition under the Act after 31st March, 1997, to safeguard the situation Sub-section (3B) of Section 9 of the Land Acquisition Act, 1894 was inserted. The logical conclusion would be that land requisitioned. In respect whereof acquisition notice has been issued prior to 31st March, 1992, the acquisition proceeding must be completed either within 3 years from the date of the acquisition notice or within 31st March 1995 whichever is later, in default the acquisition proceeding would stand lapsed; land requisitioned but no notice of acquisition had been issued till the subsistence of the Act, such land may be acquired by taking recourse to sub-section (3A) of Section 9 of the Land Acquisition Act, 1894 and such acquisition may be completed by making the award within 2 years from the date of notice under Sub-section (3A) of Section 9 of the Land Acquisition Act, 1894; and lastly land requisitioned, in respect whereof an acquisition notice has been issued on any day after 31st March, 1994, but the acquisition could not be completed by making and publishing the award within the time mentioned in the said Act, can be acquired by taking steps under Sub-section (3B) of Section 9 of the Land Acquisition Act, 1894 provided within 2 years from the date of notice under Sub-section (3A) of Section 9 of the Land Acquisition Act, 1894 the award has been made. This appears to be the legislative mandate.

16. It has been correctly submitted by the learned counsel for the writ petitioners that where special provisions have been made by the legislature, as have been made in the said Act and in the Land Acquisition Act, 1894, for compulsory acquisition of property belonging to a person, the provisions of such law must be strictly construed and they should not be construed in a manner to extend their ambit beyond the words actually used by the legislature and while effecting acquisition under such a law, the provisions of the law must be strictly complied with. The right to property is a recognized Constitutional right. Such right can be interfered with the authority of law. Faced with this difficulty, the learned counsel for the respondents, submitted that after the acquisition lapsed by reason of the mandate contained in Section 7A of the Act, the requisition

revived and accordingly in relation to such requisition steps can be had under Subsection (3A) of Section 9 of the Land Acquisition Act, 1894. As aforesaid, by reason of Sub-section (2) of Section 4 of the Act the moment acquisition notice is issued under Sub-section (1a) of Section 4 of the Act, the requisition of such land comes to an end. No provision contained in the said Act provides that if the acquisition cannot be had, the requisition will revive. Section 7A of the Act though says that on the contingency mentioned therein, the notice under Sub-section (1a) of Section 4 of the Act shall lapse, but then the expression "lapse", as used, does not mean that the notice is effaced or wiped out. The expression "lapse" in the circumstances means coming to an end or elapsing or becoming void. The conclusion, therefore, would be upon issuance of a notice under Sub-section (1a) of Section 4 of the Act the requisition comes to an end and thereafter either the property can be acquired by taking steps under the Act by making and publishing the award within the time fixed by the Act or that acquisition proceeding will come to an end if such award is not made within the time and the acquisition notice will become void then. By reason of the acquisition notice becoming then void, in the absence of an appropriate mandate of the legislature, the requisition, which has come to an end by reason of the selfsame notice, will not revive. It is to be kept in mind that the Land Acquisition Act, 1894 does not authorise requisition, it, by reason of the amendment, only authorise acquisition of land which has already been requisitioned in accordance with the authority of Law.

17. In that view of the matter, since the acquisition notice in the instant cases has been issued, the requisition of the lands came to an end simultaneously with issuance of such acquisition notice and since the acquisition notice was issued much prior to 31st March, 1997 but in relation thereto the award was made only on 23rd December, 1999, all steps taken to have the lands acquired have become void and accordingly a declaration to that effect is given.

18. However, having regard to the fact that the lands in question are situate within a township, which is being developed by CMDA, I direct the petitioners not to change the nature and character of the land in question in any manner whatsoever within a period of six months from today with liberty to the respondents to acquire the said lands in accordance with the authority of Law.

This disposes of the writ petitions. There shall be no order as to costs.

Let certified xerox copy of this judgment, if applied for, be supplied to the parties concerned as early as possible.