

(2007) 04 CAL CK 0024
In the Calcutta High Court
Case No : F.M.A. No. 694 of 2000

Pallav Kumar Banerjee and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 27-04-2007

Acts Referred:

Constitution of India, 1950 — Article 300A
Defence of India Rules, 1939 — Rule 75A
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 3(1), 4, 4(1), 4(2)

Citation : (2007) 3 CHN 345 : 111 CWN 632

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Bidyut Kiran Banerjee, P.S. Basu and Fazlul Hague, Saktinath Mukherji, Pratap Chatterjee, Pradip Tarafdar, Z. Rahaman and Tapas Sil, for the Appellant;A.N. Banerjee and Swapan Kumar Pal, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred at the instance of the writ petitioners. The said writ petitioners moved the writ petition being W.P. No. 4361 (W) of 1997 challenging the notice issued u/s 5 of the West Bengal Land (Requisition and Acquisition) Act, 1948 as well as the notification published in the Calcutta Gazette on 14th October, 1996 under Sub-section (1a) of Section 4 of the said Act of 1948 for acquisition of Premises No. 11, Sarat Bose Road, Kolkata.

2. From the records it appears that another writ petition was moved earlier by the said writ petitioners challenging the notification issued u/s 3(1) of the said Act of 1948 which was numbered as C.R. No. 15177 (W) of 1979. The said writ petition was ultimately disposed of by the order dated 10th September, 1993 passed by the learned Single Judge of this Court in the following manner:

(1) Since the order of requisition has been continuing from the year 1979, the

concerned Land Acquisition Collector is directed to acquire the property in question, if the authority so desires, within six months from the date of communication of this order.

(2) If the concerned authority does not acquire the property in question within the time specified hereinabove, the Land Acquisition Collector is directed to release the property in question from requisition and restore possession of the same to the writ petitioner within six months thereafter.

3. In the subsequent writ petition wherefrom the present appeal arises, it has been alleged that notwithstanding the service of notice communicating the earlier order dated 10th September, 1993 passed in the earlier writ petition being C.R. No. 15177(W) of 1979, the concerned authority neither acquired the property in question within the time specified by the learned Single Judge in the said order dated September 10, 1993 nor the concerned authority released the said property. The writ petitioners, therefore, urged before this Court in the aforesaid writ petition that the aforesaid order dated 10th September, 1993 passed by the learned Single Judge in the earlier writ petition being not complied with, the concerned Land Acquisition Collector is estopped from proceeding any further with the acquisition of the property in question and the action taken in this regard by the said Land Acquisition Collector is wrongful and illegal since the prescribed time of acquisition mentioned in the earlier order of this Court dated 10th September, 1993 has admittedly been expired. The said writ petition ultimately came up for hearing before another learned Single Judge on 11th March, 1998 when the said learned Single Judge upon hearing the rival contentions of the respective parties dismissed the writ petition.

4. Instant appeal thereafter, has been preferred at the instance of the said writ petitioners challenging the said order of the learned Single Judge passed on 11th March, 1998.

5. Mr. Saktinath Mukherji, learned Senior Counsel of the appellants submits that West Bengal Land (Requisition and Acquisition) Act of 1948 was a temporary Act and after successive extensions, the Act was allowed to lapse in March, 1997. The Act was a special one for the requisition and speedy acquisition of land for certain purposes. One of the salient feature of the Act was the absence of any provision therein enabling the affected owner to object to the proposed requisition or acquisition. Under the said Act, the authority could requisition any land by simply issuing an order u/s 3(1) and then acquire the requisitioned land by publication of a notification u/s 4(la) of the said Act. Referring to Article 300A of the Constitution of India, Mr. Mukherji submits that an expropriating statute is required to be strictly construed. In other words, a deprivation can be brought about only in strict compliance with law. The learned Counsel of the appellants cited the following decisions in this regard:

(1) Tara Prasad Chaliha Vs. Secy. of State and Another,

(2) Palani Goundan Vs. Peria Goundan,

(3) S.R. Rajender and Others Vs. N.S. Govindier and Others,

6. In the case of Palani Goundan v. Peria Goundan reported in AIR 1941 Madras 158,. Patanjali Sastri, J. has observed:

...On the other hand, it stands to reason that the procedure provided in a statute for enforcement of the substantive rights conferred thereby should be construed as far as possible, so as to give effect to and not to nullify those rights. This is by no means in conflict with the principle we have often reiterated in connection with this Act, namely that its provisions being of an expropriatory character should be strictly construed and its scope ought not to be extended beyond what is clearly and expressly indicated by its terms....

7. Mr. Mukherji also referred to a recent decision of the Supreme Court in the case of State of Maharashtra and Another Vs. B.E. Billimoria and Others, , wherein the Hon"ble Supreme Court in paragraphs 22 and 23 observed as follows:

22. The said Act being an expropriatory legislation is required to be construed strictly. [See D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others,].

23. In Bhavnagar University v. Palitana Sugar Mill (P) Ltd., this Court held: (SCC pp. 121 & 125, paras 27 & 40)

27. An owner of a property, subject to reasonable restrictions which may be imposed by the legislature, is entitled to enjoy the property in any manner he likes. A right to use a property in a particular manner or in other words a restriction imposed on user thereof except in the mode and manner laid down under the statute would not presumed.

* * * * *

40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well-settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within four corners thereof.

8. Under the Constitutional Scheme of India an acquisition is required to be in strict compliance with the Law of Acquisition. In the instant case, the law of Acquisition was contained in Act II of 1948. Mr. Mukherji submits that under the provisions of Act II of 1948, only requisitioned land could be acquired and no acquisition of a land was permissible which was not requisitioned or even initially requisitioned, but subsequently ceased to be a requisitioned land.

9. It has been argued on behalf of the State-respondents and K.M.D.A. authorities that the order of requisition passed under Act II of 1948 in respect of any land would remain operative till the said land is acquired u/s 4 of the said Act II of 1948. Mr. Mukherji however, strongly disputed the aforesaid contentions

and submits that the aforesaid submissions of the respondent authorities cannot be accepted since the same runs counter to Section 6 of the said Act II of 1948 itself which contemplates release from requisition by the Government.

10. It has been argued on behalf of the appellants that in view of the specific order passed by Tarun Chatterjee, J. (as His Lordship then was) on 10th September, 1993 in C.R. No. 15177 (W) of 1979, order of requisition passed earlier in respect of the land in question could not remain operative at time when the respondent authorities allegedly took steps for acquiring the land in question u/s 4 of the said Act II of 1948. Mr. Mukherji submits that in absence of valid order of requisition, respondent authorities are not entitled to acquire the land in question under Act II of 1948. The decision of the Supreme Court in the case of Collector of Kamrup and Others Vs. Kamakhya Ram Barooah and Others, , has been referred to and relied upon by the learned Senior Counsel of the appellants in this regard. The relevant paragraphs from the aforesaid decision are set out hereunder:

5. It is true that at the date when the order of acquisition was passed u/s 4, the land was under requisition for use of the defence forces. That order of requisition was passed not u/s 3 of the Assam Act, but under Rule 75A of the Defence of India Rules, 1939. The previous requisition under the Defence of India Rules which was at the date of the order of acquisition outstanding could not confer any authority upon the Provincial Government of Assam to acquire the land belonging to the respondents u/s 4 of the Act.

6. It was urged that notwithstanding the illegality in the acquisition, the order of acquisition was saved by Section 11 of the Assam Act, which provides:

Save as otherwise expressly provided in this Act, no decision or order made in exercise of any powers conferred by or under this Act shall be called in question in any Court.

It cannot, however, be said that the order passed u/s 4 acquiring the land of the respondents was made in exercise of the powers conferred by or under the Act. The power which was exercisable u/s 4 being expressly a power to acquire land which is under requisition u/s 3 and there being no effective order of requisition under that Section 11 is no bar to the maintainability of the objection raised to the validity of the acquisition. The High Court was, therefore, in our judgment right in holding that the acquisition was illegal.

11. Mr. Mukherji also referred to another decision of the Supreme Court in the case of Jiواني Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, , wherein the provisions relating to requisition and acquisition have been discussed. The relevant paragraphs of the aforesaid decision are set out hereunder:

22. ...In other words, if there is power to acquire as also the power to requisition and the purpose is of permanent nature by having the property or a part thereof

for the Government then in such case to keep the property under requisition permanently might be an abuse of the power and a colourable exercise of the power not because the Government lacks the power of requisition but because the Government does not use the other power of acquisition which will protect the rights and interests of the parties better.

23. Where one is repository of two powers that is power of requisition as well as power of acquisition qua the same property and if the purpose can equally be served by one which causes lesser inconvenience and damage to the citizen concerned unless the repository of both the powers suffers from any insurmountable disability, user of one which disadvantageous to the citizen without exploring the use of the other would be bad not on the ground that the Government has no power but on the ground, that it will be a misuse of the power in law.

12. In the aforesaid case, the Hon"ble Supreme Court directed the Government to take steps to acquire the premises in question within a period of three years from the date and in default of compliance, liberty was given to the petitioner to apply for appropriate direction from Court. In the above case, reliance was placed upon an earlier judgment of the Hon"ble Supreme Court in H.D. Vora Vs. State of Maharashtra and Others, .

13. Relying on the aforesaid decision of the Supreme Court, Mr. Mukherji submits that Tarun Chatterjee, J. (as His Lordship then was) has precisely done the same thing by directing the respondent authorities to take steps for acquiring the land in question within the prescribed time limit by the order dated 10th September, 1993 passed in C.R. No. 15177 (W) of 1979. Mr. Mukherji specifically urged before this Court that the authorities having violated the specific order passed earlier by the learned Single Judge cannot subsequently request the Court to ignore such violation and uphold the very same offending Notification for acquisition.

14. The learned Senior Counsel of the appellants relying on the decision of the Supreme Court in the case of Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, submits that any step taken in violation of the Court's order is a nullity and all such steps are required to be set aside and restoration of status quo ante in a logical and legal necessity. The relevant paragraphs of the aforesaid decision cited by the learned Senior Counsel of the appellants are set out hereunder:

44. In Mulraj Vs. Murti Raghonathji Maharaj, , this Court has dealt with effect of a stay order passed by a Court and has laid down (at P. 1389 of AIR):

In effect therefore, a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. It is well-settled that in such a case the party must have knowledge of the injunction order before it could be penalised for disobeying it. Further, it is equally well-settled that in the injunction

order not being addressed to the Court, if the Court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the Court and prohibits it from proceeding further, as soon as the Court has knowledge of the order it is bound to obey it and if he does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That, in our opinion, is the only difference between an order of injunction to a party and an order of stay to a Court.

This would mean that the Speaker was bound by the stay order passed by the High Court on December 14, 1990 and any action taken by him in disregard of the said stay order was a nullity. In the instant case, the Speaker, in passing the order dated February 15, 1991 relating to disqualification, treated Bandekar and Chopdekar as disqualified members. This action of the Speaker was in disregard of the stay order dated December 14, 1990 passed by the Bombay High Court.

45. The High Court has upheld the order of the Speaker, even though he had disregarded the stay order passed by the High Court, on the basis that on the date on which the Speaker had made the impugned order. Paragraph 7 of the Tenth Schedule had not been held to be invalid by this Court and the invalidity came much later. The High Court has observed that on his interpretation of paragraphs 6 and 7 of the Tenth Schedule, the Speaker held that the stay order by the Division Bench was (not?) binding upon him and in such circumstances it could not be held that the action taken by the Speaker was perverse or mala fide. According to the High Court, the position would have been different if the Speaker was to make the order after the decision of the Court. We are unable to agree with this view of the High Court. The decision of this Court in *Kihota Holohan* case AIR 1992 SCW 3497 (supra) declares the law as it was on the date of the coming into force of the Constitution (Fifty-Second) Amendment Act, 1985. The action of the Speaker in ignoring the stay order passed by the High Court while passing the order dated February 15, 1991 cannot be condoned on the view that in the absence of the decision of this Court it was open for the Speaker to proceed on his own interpretation of paragraphs 6 and 7 of the Tenth Schedule and ignore the stay order passed by the High Court.

15. Mr. A.N. Banerjee, learned Counsel of the State-respondents while opposing the appellants submits that the steps taken regarding acquisition of the property in question cannot be said to be illegal under any circumstances as according to the learned Counsel of the State-respondents, learned Single Judge by his order dated 10th September, 1993 granted liberty to the authority concerned to acquire the property in question. According to the learned Counsel of the State-respondents, the property was acquired pursuant to the aforesaid direction of the learned Single Judge may be after the lapse of the prescribed period as mentioned in the aforesaid order. The learned Counsel of the State-respondents argued that the requisition order cannot be said to have lapsed under any circumstances and therefore, the order of acquisition in the instant case, cannot be declared illegal and/or void. Mr. Banerjee cited the following decision of the

Supreme Court in support of his arguments:

(1) The General Manager, Department of Telecommunications, Thiruvananthapuram Vs. Jacob Kalliath (Dead) by Lrs. and Others,

16. Mr. Bidyut Kiran Banerjee, learned Senior Counsel representing the respondent No. 3, however, submits that the learned Single Judge by the order dated 10th September, 1993 did not quash the notification issued u/s 3(1) of the said Act II of 1948 but only gave direction for acquisition so that the acquisition is not prolonged for an indefinite period. It was also submitted by Mr. Banerjee that once a property has been requisitioned by issuance of notification u/s 3(1) of the said Act II of 1948, requisition process continues till acquisition of the property in question u/s 4(1a) of the said Act II of 1948. It was argued on behalf of the respondent No. 3 that upon publication of notification u/s (1a) of Section 4 in the Official Gazette the requisitioned land from the said date of publication vest in the State and became property of the State Government and requisition of such property thereby came to an end upon fulfilment of formalities of acquisition. In view of the said provision, according to Mr, Banerjee, the requisition order cannot be said to have lapsed in the present case and as such the decision referred to and relied upon by the learned Senior Counsel of the appellants in the case of Collector of Kamrup and Others Vs. Kamakhya Ram Barooah and Others, , has no manner of application in the facts of the present case.

17. Mr. Banerjee also tried to distinguish the other decisions cited on behalf of the appellants on the ground that the aforesaid decisions cannot be made applicable in the facts and circumstances of the present case. Mr. Banerjee specifically submits that the order of requisition issued by the concerned authority under Act II of 1948 will remain operative till acquisition of the property in question u/s 4(1a) of the said Act notwithstanding the order passed by Tarun Chatterjee, J. (as His Lordship then was). Mr. Banerjee also submits that a combined reading of Sections 3 and 4 of the Act II of 1948 clearly indicates that no period is fixed under the statute within which the authority is required to complete the acquisition proceeding and, as such, the said power cannot be curtailed by an order of the Court fixing the period within which the said power must be exercised by the authority.

18. Mr. Banerjee further submits that in the instant case, acquisition has been made after the requisition under the provisions of Act II of 1948 and therefore, the ratio of the decision of the Hon'ble Supreme Court in the case of Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, , cannot have any manner of application in the facts of the present case. Mr. Banerjee cited the following decisions of the Supreme Court in support of his aforesaid arguments:

(1) AIR 1994 SC 2355, Mathura Prasad Sarjoo Jaiswal and Ors. v. Dossibai N.B. Jeejeebhoy (paragraph 10)

(2) The General Manager, Department of Telecommunications,

Thiruvananthapuram Vs. Jacob Kalliath (Dead) by Lrs. and Others, (paragraphs 5, 6, 7 and 8).

19. Considering the rival contentions of the respective parties and also considering the materials-on-record we find that in spite of the specific order passed by the learned Single Judge on 10th September, 1993 in C.R. No. 15177 (W) of 1979, concerned Land Acquisition Collector did not acquire the property in question within six months from the date of communication of the order and furthermore, the said Land Acquisition Collector did not release the property in question from requisition and restore possession of the same to the writ petitioners inspite of specific directions made in the said order. In view of the decision of the Hon''ble Supreme Court in the case of Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and Others, , the Court has power to regulate the acquisition proceedings by issuing appropriate direction to the concerned authority to complete the acquisition process in respect of a property within a specified time in order to avoid the delay and also to expedite acquisition. In our opinion, even under Act II of 1948, order of requisition cannot be continued for an indefinite/unhmted period in view of the principle decided by the Supreme Court in the case of Jiwani Kumar (supra).

20. We are unable to agree with the learned Counsel of the respondent No. 3 that the order of requisition issued u/s 3 of the Act II of 1948 will remain operative and valid till the property is acquired and a notice u/s 4(2) of the said Act II of 1948 is published in the Official Gazette. It is true that the period of requisition in respect of a land shall come to an end immediately after acquisition of the said property and publication of notice u/s 4(2) of the said Act since on and from the beginning of the day on which the notice is published, the property in question would vest in the State free from all encumbrances. However, it has not been provided under Act II of 1948 that the order of requisition shall continue till the land in question is acquired u/s 4(2) of the said Act. As a matter of fact, no such publication can be made under Act II of 1948 since the land requisitioned u/s 3 can be released from requisition u/s 6 of the said Act II of 1948 in the event, the same is not acquired.

21. For the aforementioned reasons we are unable to hold that under Act II of 1948 any order of requisition can be allowed to remain operative for an indefinite period and the Court will have no authority to issue any direction for expediting the steps for acquiring the property in question or to release the same in the event the same is not acquired within the specified time. In the case of H.D. Vora Vs. State of Maharashtra and Others, , Bhagwati, J. speaking for the Bench observed:

5. ...We do not think that the Government can under the guise of requisition continued for an indefinite period of time, in substance acquire the property, because that would be a fraud on the power conferred on the Government. If the Government wants to take over the property for an indefinite period of time, the Government must acquire the property but it cannot use the power of requisition

for achieving that object. The power of requisition is exercisable by the Government only for a public purpose which is of a transitory character. If the public purpose for which the premises are required is of a perennial or permanent character from the very inception, no order can be passed requisitioning the premises and in such a case the order of requisition, if passed would be a fraud upon the statute, for the Government would be requisitioning the premises when really speaking they want the premises for acquisition, the object of taking the premises being not transitory but permanent in character. Where the purpose of which the premises are required is of such a character that from the very inception it can never be served by requisitioning the premises but can be achieved only by acquiring the property which would be the case where the purpose is of a permanent character or likely to subsist for an indefinite period of time, the Government, may acquire the premises but it certainly cannot requisition the premises and continue the requisitioning indefinitely....

22. In the present case, the learned Single Judge by the order dated 10th September, 1993 did not permit the Government to enjoy the property for an indefinite period of time under order of requisition and passed specific direction to the concerned Land Acquisition Collector to acquire the property in question within the period of six months from the date of communication of the said order and it was also specifically mentioned in the said order that if the concerned authority does not acquire the property within the said specified time then the said property has to be released from requisition and possession is to be restored to the writ petitioners. In our opinion, the aforesaid order passed by the learned Single Judge was not only a valid and proper order but the same was binding upon the concerned parties including the respondents herein.

23. The respondent authorities particularly the concerned Land Acquisition Collector had no authority and/or jurisdiction to take steps for acquisition of the property in question after the prescribed period mentioned in the said order dated 10th September, 1993 passed by the learned Single Judge. Furthermore, in view of the specific direction passed by the learned Single Judge in the aforesaid order dated 10th September, 1993, the property in question stood released from requisition immediately after expiry of the period of six months from the date of communication of the said order to the concerned Land Acquisition Collector and therefore, no step could be taken for acquisition of the property in question u/s 4 of the Act II of 1948 as in terms of Section 4(1a) of Act II of 1948, State Government may acquire any land which is already under requisition in terms of Section 3 of the said Act.

24. In the instant case, the concerned Land Acquisition Collector sought to take steps for acquisition of the property in question when the same was not under requisition and therefore, such action of the concerned Land Acquisition Collector cannot be regarded as lawful and valid one.

25. The decisions cited by the learned Counsel of the State-respondents and also by Mr. Banerjee, learned Senior Counsel representing the respondent No. 3 are,

in our opinion, not at all applicable in the facts of the present case.

26. For the reasons mentioned hereinbefore, we are of the opinion that the learned Single Judge was not right in holding that even though the property in question was not restored in compliance with the earlier order of this Court dated 10th September, 1993 or that no acquisition proceeding was started within the specified period mentioned in the said order, the same does not disentitle the concerned authority to take steps under the law for acquisition of the property. In our view, the learned Single Judge failed to consider the most important factor that the property in question stood released from requisition since the concerned authority failed to acquire the property in question within the time specified in the said order.

27. In the aforesaid circumstances, it cannot be said that the concerned authority of the State Government took the subsequent steps for acquisition of the property in question in accordance with law. We, therefore, do not approve the decisions of the learned Single Judge as mentioned in the judgment and order under appeal.

28. Accordingly, the notice served upon the appellants/writ petitioners u/s 5(1) of the Act II of 1948 intimating the acquisition of the premises in question u/s 4 of the said Act and also publication of the notice u/s 4 of the said Act II of 1948 on October 14, 1996 in the Official Gazette cannot be sustained in the eye of law and the same are, therefore, quashed.

29. For the aforementioned reasons, the judgment and order under appeal passed by the learned Single Judge on 11th March, 1998 cannot be sustained and the same is also set aside.

30. The respondent authorities herein are directed to release the property in question and hand over possession of the same to the appellants within two weeks from the date of communication of this order positively.

31. The instant appeal thus stands allowed. There will, however, be no order as to costs.

32. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Later:

After pronouncement of the judgment, the learned Counsel of the respondent-K.M.D.A. prays for stay of the operation of the judgment and order. We find no reason to grant such stay. Accordingly, the prayer for stay is refused.

Arunabha Basu, J.

33. I agree.