

(2000) 06 CAL CK 0046
In the Calcutta High Court
Case No : Writ Petition No. 467 of 1998

Samarendra Nath Paul and Others

APPELLANT

Vs

West Bengal Housing Board

RESPONDENT

Date of Decision : 14-06-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 11(1), 11A, 16, 4, 9
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 11, 3, 3(1), 4, 4(1)

Citation : 105 CWN 862

Hon'ble Judges : Prabir Kumar Samanta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Samanta, J.—The intricate questions involved in this writ petition are whether an acquisition made under sub-section (1a) of Section 4 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the Act II of 1948) stood lapsed after a period of one year from the date of commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996 (hereinafter referred to as the Amendment Act of 1996) and whether the notice issued by the State/respondents under sub-section (3B) of Section 9 of the Land Acquisition (West Bengal Amendment) Act of 1997 for giving effect to such an acquisition was valid in law. The relevant facts giving rise to the problem in this case may be shortly stated as under:

A total land measuring more or less 34 cottahs (.57 decimals) comprised in two plots being plot Nos. 1787 and 1788 under Mouza Monoharpur were belonging to the writ petitioners.

2. The Collector of Hooghly issued notice and/or an order for requisition of the above lands u/s 3(1) of Act II of 1948 on May, 1984. According to State/respondents the possession of the disputed lands were taken over by the Collector on the said date. The writ petitioners filed a writ petition challenging

the said notice and/or the order dated 9th May, 1984 made u/s 3(1) of the Act II of 1948 on the ground of non-service of notice as well as on the ground of absence of public purpose within the meaning of Section 3 of Act II of 1948. The said writ petition was ultimately dismissed on contest by a judgement and order dated 13th July, 1988 passed by the learned single Judge. The writ petitioners preferred an appeal being F.M.A. No. 861 of 1989 before the Division Bench of this court. In the said appeal the writ petitioners moved a stay application on the allegation that the respondent/West Bengal Housing Board had started making some construction on the disputed lands. The said stay application was disposed of by an order dated 28th June, 1991 with the observation that the construction work as started in the plots in question such as digging of earth and measurement thereto may be effected but in no case construction work above plinth level shall be made without obtaining further orders from this court. It may be stated that in view of dismissal of the writ petition challenging the order and/or notice or requisition u/s 3(1) of Act II of 1948 and the aforesaid order of stay by the Division Bench on the application for stay filed by the writ petitioners in the said appeal, it cannot be said that the State authorities were precluded from making an order for acquisition in exercise of power under sub-section (1a) of Section 4 of the Act II of 1948 of the suit lands so requisitioned. In fact, the Deputy Secretary of the Government of West Bengal issued a notice dated 6th July, 1991 for acquisition of the disputed lands in exercise of power under sub-section (1a) of Section 4 of Act II of 1948 during the pendency of the above appeal in this court. In these state of affairs the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 came into force with effect from 1st April, 1994. By virtue of such amendment the life of the Act II of 1948 was extended until the 31st day of March, 1997 and Section 3 of the said Amendment Act, 1994 provided as under:

Section 3. Section 3 of the principal Act (hereinafter referred to as the said section) shall be omitted with effect from the 1st day of April, 1994: Provided that such omission shall not-

- (a) affect the previous operation of the said section so omitted or anything duly done or suffered thereunder, or
- (b) affect any right, privilege, obligation or liberty acquired, accrued or incurred under the said section so omitted, or
- (c) affect any inquiry, investigation, legal proceeding or remedy, in respect of any such right, privilege, obligation or liability as aforesaid, and any such inquiry, investigation, legal proceeding or remedy may be instituted, continued or enforced as if the said section had not been so omitted:

Provided further that any reference to the said section in any other provisions of the principal Act shall be construed as a reference to the said section as if the said section had not been so omitted.

3. Thus in view of Section 3 of the said Amendment Act of 1994 the requisition

already made u/s 3 of the Act II of 1948 would continue as if the said section had not been omitted and legal consequences would accordingly follow but the said Act II of 1948 as a whole would be spent in force after 31st March, 1997. Thereafter the West Bengal Land (Requisition and Acquisition), (Amendment) Act of 1996 was published in Calcutta Gazette on 8th October, 1996. The sub-section (2) of Section 1 of the said Amendment Act of 1996 provided that it shall be deemed to have come into force on the 1st day of April, 1994 and by virtue of Section 3 of the said Amendment Act of 1996 a new section 7A was added after section 7 of the principal Act of II of 1948 which read as under:

Section 7A. 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, 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.

4. It is not in dispute that in respect of the aforesaid acquisition made on 6th July, 1991 u/s 4(1a) of the Act II of 1948 of the disputed lands, which was made more than two years before the commencement of said Amendment Act of 1994, no award was declared within the prescribed time as provided u/s 7A of Act II of 1948. In these state of affairs the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1977 came into force on the 1st day of April, 1997. Sections 3 and 4 of the Land Acquisition Amendment Act, 1997 provided as under: Section 3. In section 9 of the principal Act after sub-section (3) the following subsections shall be inserted.

3(A) 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) (Amendment) Act, 1948 (hereinafter referred to in this section as the said Act) as re-enacted by the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1977, and in every such case, the provisions of sub-section (1) of Sections 4, 5, 5A, 6, 7 and 8 of the said 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 determination 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 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 subsection (1a) of section 4 of the said Act and in every such case, the provisions of sections 4, 5, 5A, 6, 7, 8 and 16 of this Act shall be deemed to have been complied with : Provided that the date of publication of notice under subsection (1a) of Section 4 of the said Act shall be the date of reference for the purpose of determining the value of the land under this Act : Provided further that in every such case, the Collector shall make an award u/s 4 of the said Act shall be the date of reference for the purpose of determining the value of the 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." Section 4. In section 11A of the principal Act, after the proviso, the following proviso shall be added, "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.

5. In the meantime, the appeal filed by the writ petitioners against the order of dismissal of their writ petition challenging the order of requisition made u/s 3(1) of the Act II of 1948 was allowed by a judgment dated 3rd July, 1996 by the Division Bench of this court and the State/respondents were directed to restore back possession of the suit lands to the writ petitioners. The State of West Bengal preferred an appeal being SLP No. 207 of 1997 before the Supreme Court against the aforesaid judgement of the Division Bench of this court. The Supreme Court by its judgment dated 9th July, 1997 set aside the judgment of the Division Bench of this court and restored the order of the learned single Judge upholding the order of requisition made of the disputed lands u/s 3(1) of Act II of 1948.

6. In these facts and circumstances and after the aforesaid judgment dated 9th July, 1997 of the Supreme Court the petitioner moved this instant writ petition for setting aside and/or quashing both the orders of requisition dated 9th May, 1984 u/s 3(1) and the notification dated 6th July, 1991 for acquisition of the disputed lands issued under sub-section (1a) of section 4 of the Act II of 1948 on the grounds that in view of proviso to section 7A as incorporated in the Act II of 1948 by Amendment Act of 1996, the notification for acquisition of the disputed lands stood lapsed upon expiry of one year from 1st April, 1994 as no award was declared within the said period for the acquisition so made even though the operation of the notification for acquisition of the disputed lands was not stayed

during the relevant period.

7. However, during the pendency of the present writ petition in this court the respondents authorities issued notice to the petitioners under sub-section (3B) of section 9 of the Land Acquisition Amendment Act, 1997 on 20th January, 1999 and ultimately pursuant to the aforesaid notice, the Collector of Hooghly passed an award u/s 11(1) of the Land Acquisition Act, 1894 on 20th June, 1999 which facts were also brought on record by way of supplementary affidavit by the writ petitioners.

8. Thus, in view of notices issued under sub-section (3B) of Section 9 of the Land Acquisition Amendment Act, 1997 by the respondents/ authorities, it is evident that the respondent authorities proceeded on the basis that the notification issued under sub-section (1a) of section 4 of Act II of 1948 for acquisition of the disputed lands was valid and operative in law. The questions therefore, fell for consideration as to whether the same subsisted as a valid notice of acquisition on the date of issue of notice u/s 9(3B) of Land Acquisition Amendment Act, 1997 in view of section 7A of the Act II of 1948 as incorporated by Amendment Act of 1996. If no. what would be the effect of a notice issued under sub-section (3B) of section 9 of Land Acquisition Amendment Act, 1997 in respect of an acquisition which stood lapsed by operation of law.

9. Before I proceed further it is recorded that the notice of acquisition issued under sub-section (1a) of section 4 of the Act II of 1948 has no independent existence under the Act II of 1948 inasmuch as such acquisition is permissible only upon requisition of the properties made u/s 3 of the Act. The aforesaid notice being particularly under sub-section (3B) of section 9 of the Land Acquisition Amendment Act, 1997 it cannot be said that the respondents authorities proceeded on the basis that even if the acquisition of the disputed lands under sub-section (1a) of section 4 of Act II of 1948 stood lapsed by operation of law then again the order of requisition made of the same u/s 3(1) of the Act II of 1948 stood revived and the State authorities were competent enough to complete the proceeding for acquisition of the disputed lands in exercise of the power under the provisions of the Land Acquisition Amendment Act, 1997. This position is further established by the fact that the State/ authorities did not purport to take any action by invoking the provisions of sub-section (3A) of section 9 of the Land Acquisition Amendment Act, 1997.

10. In the ordinary course, in view of proviso to section 7A as per Amendment Act of 1996, the notification dated 6.7.91 for acquisition of the lands in question being more than two years old on the commencement of Amendment Act of 1994 would lapse if no award was passed within a period of one year from the date of commencement of that Amendment Act of 1994. In other words the same would lapse on or after 1.4.95. Thus the Land Acquisition Amendment Act, 1997 created a legal fiction for completion of the acquisition of the lands under the principal Land Acquisition Act, 1894 by issuing notice under sub-section (3B) of section 9 of the West Bengal Land Acquisition Act of 1997 and thereby

dispensing with the provisions of sections 4,5,5A, 6,7, 8 and 16 of the said principal Act, 1894 even in respect of notification for acquisition which stood lapsed by operation of law. It is therefore necessary to be seen how far that was permissible in law. Of all those sections as mentioned in sub-section (3B) of section 9 of the West Bengal Land Acquisition Amendment Act of 1997 section 16 of the West Bengal Land Acquisition Act, 1894 is important. Section 16 of the said Act provided that when the Collector has made an award u/s 11 he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Therefore, the land acquired under the Act of 1894 would vest to the State Government after an award u/s 11 is passed and possession is taken thereof. But under Act II of 1948 upon publication of a notification under sub-section (1a) of section 4 of Act II of 1948 the land would vest to the State Government where such land was requisitioned in exercise of power u/s 3(1) of Act II of 1948. Such vesting of the land in the State absolutely and free from encumbrances was, because of the provisions of law, and was not dependant upon taking over possession of the land or making of an award for such acquisition of the land. Sub-section (3B) of section 9 of the West Bengal Land Acquisition Amendment Act, 1997 sought to create a legal fiction as if the award had been passed and the possession of the lands in question was taken over under the principal Act of 1894 where such notice has been issued. This necessarily implies that an acquisition of a land has been completed under the provisions of the Land Acquisition Act, 1894 in compliance with the relevant provisions thereof including the passing of an award for such acquisition, though in fact such acquisition, has not been made in any particular case in compliance with the relevant provisions of law. Thus, in all possible conclusion the purport of the West Bengal Land Acquisition Amendment Act, 1997 was to give effect to the acquisition of a land made in exercise of the powers under Act II of 1948 even though by operation of Amendment Acts of 1994 and 1996 the same might have stood lapsed because of not making an award within the time stipulated therein. This would further be evident from section 4 of the West Bengal Land Acquisition Amendment Act of 1997 by which a further proviso was added to section 11A of the Land Acquisition Act, 1894. The said proviso which was incorporated by such amendment further made a provision for making awards in respect of the acquisition made of the lands in exercise of powers under sub-sections (3A) and (3B) of section 9 within a period of 2 years from the date of issue of the public notice.

11. On the face of the Amendment Acts of 1994 & 1996 the notice under sub-section (1a) of Section 4 of the Act II of 1948 stood lapsed on the date on which the notice under sub-section (3B) of section 9 was issued. Though the question was posed as to whether such a notice under sub-section (3B) of section 9 can be issued where there was no operative notice under sub-section (1a) of Section 4 of Act II of 1948 but the real question is what is the effect of the legal fiction created by sub-section (3B) of Section 9 of the Land Acquisition Act of 1894. To appreciate the legal fiction of purported acquisition of lands by issuing notice

under subsection (3B) of Section 9 in respect of acquisition made under sub-section (1a) of Section 4, where such acquisition stood lapsed, it is necessary to refer to the several decisions Of the Supreme Court in this regard. The Supreme Court in the case reported in Smt. Parayankandiyal Eravath Kanapravan Kalliani Amma and others Vs. K. Devi and others, , at paragraph 78, held as under : "When an Act of Parliament or a State Legislature provides that something shall be deemed to exist or some status shall be deemed to have been acquired, which would not have been so acquired or in existence but for the enactment, the court is bound to ascertain the purpose for which the fiction was created, and the parties between whom the fiction was to operate, so that full effect may be given to the intention of the legislature and the purpose may be carried to its logical conclusion."

12. Again Lord Asquith in the well known case of East Dwelling Co. Ltd. vs. Finsury Borough Council, (1951)2 AER 587, observed that "if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from or accompanied it... The statute says that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of the state of affairs." The statement of law as made by Lord Asquith as above was consistently followed by the Supreme Court. Reference may be made to the decision of the Supreme Court reported in AIR 1979 SC 1815, State of Tamil Nadu vs. M/s. Arooram Sugars Ltd.

13. The sheet anchor of the petitioners' case is that the notice of acquisition under sub-section (1a) of section 4 of Act II of 1948 stood lapsed, as no award was declared for such acquisition within the period of one year from the date of commencement of the Amendment Act of 1994 i.e. from 1.4.94 and therefore, the application of the provisions of sub-section (3B) of section 9 of the Land Acquisition Amendment Act, 1997 was not permissible as such application could only be in relation to an operative acquisition u/s 4(1a) of Act II of 1948. In order to understand the scope of the plea as above it is also necessary to consider whether by virtue of operation of new section 7A of Act II of 1948 the acquisition of the land in question made under sub section (1a) of section 4 had in fact really lapsed. It will be useful in this connection to refer to the decision of the Supreme Court reported in Nripati Ghoshal, First Land Acquisition Collector and others, etc. Vs. Pramavati Kapur (Dead) by LRs. and others, . In paragraph 5 of the said report it was held as under : "It is seen that the acquisition proceedings under the Act were initiated no doubt after the first writ petition was filed challenging the requisition under the West Bengal Act. But the notification u/s 4(1) and the declaration published u/s 6 of the Act became final before the learned single Judge had passed the order on April 8, 1983. Thereby the public purpose namely defence purposes, got crystalised before the judgment was rendered by the learned single Judge. The learned single Judge accepting the legal position, quite rightly, had given time to complete the award enquiry and to pass the award.

Unfortunately, due to lethargy on the part of the authorities to have the funds made available, award could not be made for non-depositing of the amount. The question, therefore, emerges, whether the acquisition is mala fide? So long as the public purpose, subserves, the finding that the acquisition is mala fide is ex facie unsustainable. No doubt there are laches on the part of the authorities but so long as the acquisition proceedings were legal and the defence personnel remain in possession of the premises for the defence purpose, the acquisition is for public purpose. Therefore, it can not be characterised to be mala fide. It is seen that by the time the second writ petition which is the subject matter ultimately in this appeal, came to be filed the acquisition had become final, the award had become final and the compensation was tendered. Under those circumstances, the High Court, without going into the validity in that behalf, was not right in setting aside the acquisition on the specious finding that it is mala fide. Therefore, the High Court has not properly considered that aspect in the correct perspective in deciding the matter.

14. The purport of the said decision in substance is that so long the public purpose sub-serves the acquisition, is sustainable even if the award for some reason or other has not been declared for such acquisition within the prescribed time. In this particular case the requisition of the disputed lands for a public purpose was upheld by the Supreme Court as would be evident from the decision reported in *State of West Bengal and others Vs. Samarendra Nath Paul and others*, , *State of West Bengal & Ors. vs. Samarendra Nath Paul & Ors.* Undisputedly possession of the disputed lands was taken over upon such requisition u/s 3(1) of Act, II of 1948. In view of the provisions of sub-section (1a) of section 4 of Act II of 1948, the disputed lands vested to the State Government, absolutely free from all encumbrances upon publication of the notification u/s 4(1a) of Act II of 1948. Therefore, there was no dispute whatsoever as to the acquisition of the properties for a public purpose and the vesting of the same absolutely with the State Government. If the public purpose for acquisition of the disputed lands and the vesting of the same absolutely in the State Government cannot be questioned, then in view of section 9 as amended by West Bengal Land Acquisition Amendment Act, 1997 the operation of new section 7A has been obliterated. Firstly because the purative state of affairs of acquisition of the disputed lands for public purposes had in fact been in existence. Secondly by incorporating sub-section (3B) to. section 9 of the principal Land Acquisition Act, 1894 it has been sought to achieve the purpose of giving effect to the acquisition made thereof even where the provision of new section 7A was not fully complied with. This could be the only logical conclusion. Otherwise where new section 7A was not fully complied with. This could be the only logical conclusion. Otherwise where new section 7A has been complied with upon acquisition made under subsection (1a) of section 4 of Act II of 1948 then there would be no occasion at all to apply the amended provisions of sub-section (3B) of section 9 of the West Bengal Land Acquisition Amendment Act 1997. This logical conclusion also gets support from section 4 of the West Bengal Land

Acquisition Amendment Act, 1997 as quoted hereinbefore. Said Section 4 incorporated a proviso to section 11A of the principal Land Acquisition Act, 1894 which provided a further time of two years for making an award in respect of the acquisition made of the land referred to in sub-section (3A) and sub-section (3B) of section 9 from the date of issue of public notice u/s 9. All these provisions put together clearly indicate that by West Bengal Land Acquisition Amendment Act, 1997, the legislature intended to validate and/or to keep alive the acquisition of the land that might have lapsed and such was the intention of the legislature to achieve the purpose of completing an acquisition by declaring an award in respect of the land which was acquired for a public purpose and therefore to achieve the purpose of utilising the same for public good and for the interest of public. Again if the principle of Lord Asquith as above is to be followed then also the Court is bidden in view of West Bengal Land Acquisition Amendment Act, 1997 to treat the imaginary state of affairs of the valid acquisition of the disputed lands under the law as real unless it is clearly prohibited from so doing. The requisition of the disputed properties for public purpose and the vesting of the disputed properties absolutely in the State Government upon notification under sub-section (1a) of section 4 of the Act II of 1948 were not in dispute. Section 7A merely provided that in the event of not making an award within the time prescribed therein the notice issued u/s 4(1a) of Act II of 1948 would lapse. Therefore, on the principles laid down in the case of Nripati Ghosal (supra) it cannot be said that non-making of the award within the time prescribed under new section 7A as per the Amendment Act of 1997 would put the entire process of acquisition under Act II of 1948 in reverse gear and all further subsequent actions for keeping alive the process or the proceeding would be absolutely barred in law. Therefore, to give a logical end to the purpose sought to be achieved by the West Bengal Land Acquisition Amendment Act, 1997 the court is not forbidden from treating an imaginary state of affairs of valid acquisition of the disputed lands as real and to proceed on the basis of the provisions of sub-section (3B) of section 9 of the West Bengal Land Acquisition Amendment Act, 1997. The constitutionality of the West Bengal Land Acquisition Amendment Act, 1997 and the provisions made therein were not raised before me. In view of the findings as above, the applicability of the provisions of sub-section (3B) of Section 9 of the West Bengal Land Acquisition Amendment Act, 1997 in the facts and circumstances of this case cannot therefore be challenged as it purported to subserve the public purpose by keeping alive the acquisition made under sub-section (1a) of Section 4 of the Act II of 1948 even after the said Act was effaced from the statute book. I, accordingly, do not find any merit whatsoever in the contentions put forward on behalf of the writ petitioners in support of this writ petition. This writ petition must therefore fail. Hence, the same is dismissed. However, there will be no order as to costs. All interim orders shall stand vacated.

Prayer for stay of operation of this judgment and order is refused.

All parties to act on a xerox signed copy of this judgment and order on the usual undertaking.