
(2015) 08 CAL CK 0063
In the Calcutta High Court
Case No : WP No. 756 of 2013

Shyamal Sircar and Others APPELLANT
Vs
The State of West Bengal and Others RESPONDENT

Date of Decision : 31-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 300A
Land Acquisition Act, 1894 — Section 17(4), 4, 6
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 3(1)(o)

Citation : (2015) 4 CALLT 401

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Debayan Bera and S.P. Chakrabarti, for the Appellant; Sadhan Ray Chowdhury, Paritosh Sinha and Sucharita Ray, Advocates for the Respondent

Judgement

Sanjib Banerjee, J—The petitioners complain of being cheated by the State in their land being confiscated for a pittance only to be ultimately made over to realtors for a high end residential complex being developed without the land being used for any public purpose.

2. The subject-matter of the present petition is about of an acre of land in once down-market Tangra that is now increasingly reaching to the sky. The predecessors-in-interest of the petitioners had leased out such land along with a larger chunk for a company to set up its factory thereat. The original lease was executed and possession was made over by the predecessors-in-interest of the petitioners to the relevant company in or about 1955. The original lessee faced financial problems and such company was nationalised in or about 1984. The nationalised company, Tyre Corporation of India Limited (TCIL), was controlled by the Central government, but due to its net-worth being eroded, a reference was made in respect of TCIL in 1992 to the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the of Sick Industrial Companies (Special Provisions) Act, 1985. TCIL was declared sick on or about December 18, 1992.

3. TCIL had two principal units: at Tangra and at Kankinara, North 24- Parganas. The Tangra manufacturing facility of TCIL was on a land measuring in excess of 16 acre of which a three-acre portion was owned by the family of Sircars which had been leased out in 1955 as noticed above. There were apparently four branches of the Sircar family.

4. The Sircars obtained an eviction decree against TCIL in respect of their land in or about 1987. The decree was upheld in appeal in 1989. Prior to the appellate order affirming the decree, the State, at the behest of the Central government which ran TCIL, caused a notification under Section 4 of the Land Acquisition Act, 1894 to be issued in the year 1988 for acquiring the Sircar's three-acre land that had originally been let out to the predecessors-in-interest of TCIL and in respect whereof the eviction decree had been passed. The declaration under Section 6 of the Act of 1894 was published on or about May 22, 1989. The award in respect of two acre out of the three-acre plot that was the subject-matter of the acquisition proceedings was passed on or about June 30, 1992 and the notional possession of such two acre out of the three-acre plot was taken over by TCIL in August, 1992, though such land was always under the possession of TCIL and continued to be in the possession of its predecessors-in-interest and TCIL since or about 1955. The acquisition in respect of the balance one acre out of the three-acre plot acquired by the State on behalf of TCIL was the subject-matter of a writ petition at the behest of the present petitioners or some of their predecessors-in-interest. Such previous petitioners questioned the propriety of acquiring the property, particularly, since an eviction decree had been passed in respect thereof and there was no overwhelming public purpose which required Section 17(4) of the Act of 1894 to be invoked in connection with such acquisition. The previous petitioners enjoyed an interim order which lasted till the dismissal of the previous writ petition by an order of October 29, 2003. An award was passed in respect of the petitioners' one-acre plot on December 1, 2004. There is no dispute that the persons entitled to receive the compensation in respect of the one-acre plot have since received the same and the acquisition of the entirety of the three-acre plot, including the one-acre plot which is the subject-matter of the present petition, was completed and all of such land stood vested in the State and was notionally passed on to the requiring body, TCIL, though TCIL or its predecessors-in-interest enjoyed possession of such land from or about 1955.

5. In the reference pertaining to TCIL before the BIFR, there was a proposal for the Tangra unit of TCIL to be closed down so that the substantial creditors of the company could be paid off and the company could come out of the purview of the Act of 1985 and continue its business with its Kankinara manufacturing facility. At the suggestion of the operating agency appointed by the BIFR in course of the reference under the Act of 1985, an assets sale committee (ASC) was set up by the BIFR for the purpose of selling off the Tangra unit of TCIL. Such ASC met on February 27, 2004 and the discussion at the meeting reveals the steps taken for disposing of the land at the Tangra unit of TCIL of about

16.73 acres. The minutes of the meeting disclose that advertisements were caused to be published in the Calcutta editions of "The Telegraph" and "The Economic Times" newspapers and in all editions of the "Financial Express" on or about January 19, 2004.

6. The copy minutes of such meeting of the ASC, which have been appended to the fourth respondent's supplementary affidavit affirmed on July 1, 2015, record that eligibility criteria were set down for the bidders. The bidders were required to be "highly reputable property developer company/firms" with experience. They were required to have a minimum net-worth of Rs. 25 crore with an annual turnover of at least Rs. 40 crore in the previous three financial years. It appears that four bids were received, two of them from well-known real estate concerns in the city.

7. The minutes of the relevant meeting of the ASC reveal that all four bids were in excess of Rs. 23 crore, but only two of the bids were higher than the reserve price of Rs. 24.30 crore indicated by the BIFR on the basis of the valuation of the land at Rs. 27 crore. Only one bid was in excess of the amount at which the Tangra land was valued - from the respondent No. 4 herein at Rs. 27.81 crore. TCIL forwarded the recommendation of the ASC of February 27, 2004 for the acceptance of the fourth respondent's bid to the BIFR by a letter of March 4, 2004. By a letter of April 5, 2004, the BIFR informed TCIL that it approved the recommendation of the ASC for effecting the sale of the Tangra unit of the company. There does not appear to be any dispute that the fourth respondent has paid the entire consideration of Rs. 27.81 crore for acquiring all the land of TCIL at its Tangra unit, including the three acre of what was originally the Sircars' land and the one acre entitlement of the present petitioners therein. The conveyance in respect of the entirety of the land was executed on December 31, 2004 and a copy of the deed of conveyance has been appended to the petition. The fourth respondent says that it obtained sanction of its plan for constructing several buildings by or about March, 2008 upon it agreeing to surrender, or actually surrendering, a sizable portion of the land to the Kolkata Municipal Corporation for the widening or construction of a road. It is also not in dispute that several of the proposed towers have come up on what was once the Tangra unit of TCIL. The final tower has yet to be constructed or is in the process of being constructed.

8. The petitioners contend that when land is acquired by the State for a public purpose, the land must be used for such purpose and for no other. The ancillary argument on behalf of the petitioners is that since the compensation that a land-loser was entitled to under the Act of 1894 could never add up to the actual loss suffered by the land-loser, the manner in which an acquired land is put to use must be strictly monitored and the Court will step in upon the land-loser complaining of the land being put to some other use, particularly, if any part thereof is sold to a private individual or concern for the commercial exploitation thereof. In such vein, the petitioners have relied on two recent judgments of the

Supreme Court in support of their contention that when the land is used otherwise than for the public purpose for which it was acquired, the land-losers have a right to reclaim the land.

9. The first of the judgments cited is reported at *Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others*, (2011) 4 RCR(Civil) 613 : (2011) 11 SCALE 239 : (2011) 10 SCC 608 : (2011) 11 SCR 701 where the Court held that the power of eminent domain enjoyed by the State to compulsorily acquire land of private persons cannot be overstretched to legitimise a patently illegal and fraudulent exercise undertaken for depriving the land-owners of their constitutional right to property with a view to favour private persons. The facts in that case need to be noticed in some detail to discern the ratio decidendi and its applicability in the present set of facts.

10. In that case, large chunks of land were acquired by the State government at the instance of the Karnataka State Tourism Development Corporation for the avowed purpose of setting up a golf-cum-hotel resort near the Bangalore airport. Paragraph 3 of the report reveals that a private real estate developer entered into agreements with several land-owners for purchase of their land in the area with the aim of setting up a group housing scheme with the approval of the Bangalore Development Authority. The Court noticed that it was such private realtor who was "the person behind the move made by the Corporation for the acquisition of land for execution of tourism-related projects including golf-cum-hotel resort." The Court noticed that such aspiring real estate baron parleyed with senior officers of the Bangalore Development Authority and the tourism development corporation to discuss the steps for securing possession of the acquired land and agreed to provide funds to the corporation for such purpose "subject to the furnishing of bank guarantee by the Deputy Commissioner on behalf of the Corporation and release of 12 acres 34 guntas in his favour for the purpose of implementing the group housing scheme." It was against the backdrop of such facts that the Supreme Court found that there was fraud at the inception of the process and the entire exercise was designed by some officials of the tourism development corporation in connivance with the private realtor to acquire land for a public purpose only to transfer a sizable part thereof to the private realtor. Paragraph 38 of the report, in its initial part, sums up the legal position:

"38. The courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be overstretched to legitimise a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to comply with the mandate of the provisions contained in Part VII of the Act. Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass

the provisions of Part VII..."

11. The other decision cited on behalf of the petitioners is reported at Greater Noida Indusl. Devt. Auth. Vs. Devendra Kumar and Others, (2011) 7 SCALE 439 : (2011) 12 SCC 375 : (2011) 4 UJ 2384 . In that case, the government of Uttar Pradesh acquired about 157 ha land in district Goutam Buddh Nagar "in the name of planned industrial development" and subsequently allotted a major portion of the acquired land measuring over 90 ha to several builders. The Supreme Court referred to the doctrine of public trust being applicable to matters involving the acquisition of land, particularly, if the acquisition was meant to advance any private interest, and found that the power of eminent domain had been abused in that case. Paragraphs 39 and 40 of the report indicate the facts that weighed with the Court in setting aside the acquisition and imposing punitive costs on the appellant authority:

"39. The above extracted pleadings show that while the State Government avoided giving any reply to the specific averments made by the writ petitioners on the issue of non-utilisation of the acquired land for achieving the public purpose specified in the notifications issued under Section 4, the Authority gave evasive reply and did not indicate as to how much land has been used for achieving the purpose of acquisition. It is, thus, clear that many hundred hectares of acquired land has not been used for planned industrial development.

"40. In this scenario, it is not possible to understand as to why the State Government and the Authority resorted to further acquisition of land for the same purpose and that too by invoking the urgency provision and then allot more than 90 ha of the acquired land to the builders so as to enable them to earn huge profits by constructing multi-storeyed complexes."

12. Though the petition is for the annulment of the acquisition of petitioners' land, a lesser prayer has been made by the petitioners at the hearing, without prejudice to their claim for return of the land. They suggest that, at the very least, the quantum of compensation paid to them should be enhanced.

13. The petition is resisted primarily by the fourth respondent purchaser of the Tangra land on the ground that it was a bona fide purchaser of the land for value in a transparent process overseen by an empowered body and the sale was approved by a statutory authority having due jurisdiction in such regard under the said Act of 1985. The fourth respondent claims that almost the entirety of the land has been constructed upon, with the exception of one tower and it is too late in the day for the fourth respondent to be asked to disgorge the land even if the petitioners are found to be justified in their complaint.

14. However, the principal thrust of the fourth respondent's submission is that the petitioners have made out no case for any interference; far less for an extraordinary order for undoing a transaction of the year 2004 which has been bona fide acted upon by the fourth respondent and third party rights created in respect of the land in question. The fourth respondent also suggests that this

petition of the year 2013 should not have been entertained in respect of a transaction of the year 2004, since the petitioners are deemed to have been aware of the sale of the Tangra land in favour of the fourth respondent as they have appended a copy of the relevant deed of conveyance to their petition.

15. The State records its presence by referring to a judgment reported at Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, AIR 2010 SC 2962 : (2011) 111 CLT 213 : (2010) 8 JT 298 : (2010) 7 SCALE 571 : (2010) 8 SCC 467 : (2010) 9 SCR 476 : (2010) 8 UJ 3854 : (2010) AIRSCW 4784 . The State asserts that it is the settled legal position that once land vests in the State free from all encumbrance, there cannot be any fetters on the power of the State to use or allocate the land.

16. The judgment cited by the State was in connection with land which had vested in the State under the Urban Land (Ceiling and Regulation) Act, 1976. It is elementary that vesting of land under the said Act of 1976 is upon land in excess of the entitlement under such Act being available to a person. The vesting is by operation of law and not pursuant to a conscious decision to acquire the land. Acquisition of land requires a public purpose. The considerations pertaining to vesting of land under the said Act of 1976 and the consequence of such vesting or the authority of the State to deal with the land vested under the said Act are completely different from any land vesting in the State upon the acquisition thereof for a declared purpose.

17. In a petition under Article 226 of the Constitution, it is for the Writ Court to assess whether a right of the kind asserted by the petitioner before it exists; and, if such right has been infringed. It is only thereupon, that the Court can proceed to discover ways of remedying the wrong and assuaging the suffering of the complainant before it.

18. The process by which land can be compulsorily acquired by the State, the purposes therefor and the quantum and manner of assessment of the compensation in such regard have been much debated upon in recent times and the matter is, at present, a contentious issue in the Parliament. The primary issue that arises herein does not require a detailed discussion beginning the First Amendment to the Constitution in 1951, the incorporation of Article 300A in Part XII of the Constitution and the right to property being banished from Part III of the Constitution. As much as it is imperative to recognise that the State in its eminent domain has to be left free to acquire private property for public purposes, it cannot also be lost sight of that land is, by its very nature, of limited supply and it is the scarcest of all commodities as the population in the country continues its exponential march.

19. In this case, the Sircars obtained a decree for the eviction of TCIL from a small part of the Tangra land of TCIL that had been leased out by the Sircars to the predecessor-in-interest of TCIL in 1955. There is no doubt that the acquisition proceedings were instituted in the wake of the eviction decree and to

ensure that TCIL, which had been taken over by the Central government pursuant to its nationalisation, could continue its manufacturing activities at the Tangra unit without the threat of losing any part of the land and, effectively, impairing the functioning of its factory. The acquisition was found to be justified and such aspect of the matter has been laid to rest with the order of this Court of October 29, 2003, the completion of the acquisition proceedings and the payment of the compensation to the Sircars. However, as the two Supreme Court judgments referred to by the petitioners instruct, merely because acquisition proceedings have been completed and the acquired land has vested in the State or has been transferred to the requiring body does not imply that how the land acquired is dealt with cannot be called into scrutiny.

20. What emerges from the discussions in *Royal Orchid Hotels Ltd. and Devendra Kumar* is that for an acquisition at the behest of the land-losers to be questioned after the completion of the acquisition, fraud at the stage of the initiation of the acquisition proceedings must be shown or the acquired land must be demonstrated to have been put to some other use than the public purpose for which it was acquired. It is necessary to restrict the right of a land-loser to reclaim his land so as not to eclipse the power of eminent domain that the State, by virtue of being the State, inherently enjoys. It is possible that land acquired for a particular purpose is ultimately found to be in excess of what was necessary for the public project. Ideally then, the State should devise an equitable scheme of offering the excess land back - not necessarily to the original owners whose land may accidentally not have been used for the project - but to all landlosers in the same acquisition proceedings, say, by a lottery or by devising some other rational scheme based on intelligible criteria. However, merely because a small part of the totality of the land acquired for a particular public project is not ultimately required for such project, that will not, by itself, render the entire acquisition or the acquisition of the excess land open to question. It is also possible that the excess land be put to use for any incidental public purpose. It is not possible to imagine what myriad situations may arise upon there being land in excess of what was necessary to be acquired for a particular public project or the many equitable solutions that can be found to deal with such excess land.

21. The present case is not one where there was fraud at the inception of the acquisition proceedings or that the land acquired has subsequently been wantonly distributed to private persons after its veritable confiscation from the petitioners. In the socialist philosophy that went into this country's administration at the time of the nationalisation of TCIL in the decade of the 1980s, the justification for a sick industrial undertaking being taken over by the Central government or a State government was primarily to protect the interests of the workmen and other employees of the concerned industrial undertaking. Such was also the avowed purpose of the said Act of 1985, which has ended up as the one legislation of socialist import that has been abused by the capitalist owners of industry to the utmost prejudice of those that the statute was designed to protect. At the time that the acquisition proceedings were instituted

in or about the year 1988, TCIL was a Central government undertaking and it was in its nascent stage of nationalisation. Since the justification for the acquisition is now a closed chapter, the limited extent to which the justification issue can be reopened is the manner of the end use of the acquired land. In Royal Orchid Hotels Ltd., the Court found that the acquisition was a part of a design to help a particular realtor. Such aspect is missing in this case. Indeed, it cannot be said that the acquisition in this case was flawed because of the end use of the acquired land since circumstances beyond control of the acquiring and requiring bodies overtook them and the acquisition.

22. There is no doubt that the Central government or requiring body TCIL made an investment in having the land acquired. It was necessary to obtain the land to ensure that the Tangra unit of TCIL continued to function. That, in turn, was necessary since the nationalisation of TCIL was to protect the interests of its workmen and employees. That a reference pertaining to the company was made to the BIFR in 1992 was a requirement of law in view of Section 15 read with Section 3(1)(o) of the said Act of 1985. It cannot be said that the Sircars' land was acquired by the State or the requiring body with prior knowledge that the company would be referred to BIFR wherein the Tangra unit would be required to be sold and the land would ultimately go to a real estate company for setting up a residential complex with profit motive. It cannot, equally, be reasonably said that such a situation could have been envisaged by the State or the requiring body at the institution of the acquisition proceedings. There is no doubt that the acquisition was for the purpose of the survival of the Tangra unit; that it turned out otherwise, cannot be ascribed to either the acquiring or the requiring body when viewed from their perspective at the time of the institution of the acquisition proceedings.

23. It is unfortunate that despite the Tangra unit of TCIL being sold to ensure the sustenance of the Kankinara unit, TCIL was wound up by this Court on a creditor's petition. However, TCIL had come out of the purview of the BIFR upon its net-worth becoming positive after the sale of the Tangra unit. The scheme of the Act of 1985 is to ensure that ameliorative, remedial and other measures are taken by a body of experts to turn a sick industrial company around and attempt to make its net-worth positive. Theoretically, the reference pertaining to TCIL made in the year 1992 yielded an agreeable result in the net-worth of the company turning positive upon its

Tangra unit being sold off. Such sale was within the authority of the BIFR and it was on the recommendation of the secured creditors of TCIL and the ASC constituted by the BIFR for such purpose. The sale of the Tangra land, including the petitioners' one-acre plot therein, was neither by the acquiring body nor by the requiring body; it was approved and allowed by another statutory body having no connection with either the acquiring or the requiring body and which was not influenced by either.

24. In a sense, the petitioners are the victims of the circumstances; but in the

state of facts, it cannot be said that the petitioners are entitled to reclaim their land acquired by the State for TCIL merely because it was ultimately sold to a private party and not used for any public purpose.

25. The alternative prayer of the petitioners for enhanced compensation has to be rejected out of hand. There is no charter to pay additional compensation to persons who have lost their land in acquisition proceedings for the land being ultimately used for a purpose other than what it had been acquired for. In any event, even if by some quirk of judicial imagination such a relief could be devised in a similar set of facts, it would be a futile attempt in the present case. Compensation for acquisition of land comes from the requiring body. That body in this case was TCIL, which is today in liquidation; with the official liquidator not having adequate funds to pay off even the secured creditors of the company in liquidation. Further, since neither the acquiring nor the requiring body has been found to have committed any wrong, it would defy reason to saddle either of them with damages.

26. Since a reference as to the quantum of the compensation awarded is pending, the observations here will not prejudice any of the parties to the reference. However, in view of this order, no enhancement of the compensation may be sought in the reference on the ground of the land being ultimately sold or used for a purpose other than the public purpose for which it was acquired.

27. WP No. 756 of 2013 fails. There will be no order as to costs.

28. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.