(2018) 04 CAL CK 0002

In the Calcutta High Court

Case No : APO 59 of 2016, GA 3704 of 2015, WP 756 of 2013

SHYAMAL SIRCAR & ORS. APPELLANT

Vs

STATE OF WEST BENGAL & ORS. RESPONDENT

Date of Decision : 26-04-2018

Acts Referred:
Land Acquisition Act, 1894 — Section 4, 4(1), 6, 17(4)

Citation : (2018) 04 CAL CK 0002

Hon'ble Judges : MUMTAZ KHAN, I.P.MUKERJI, J

Bench : Division Bench

Advocate : Debayan Bera, Sakti Prasad Chakraborti, Chama Mookherjee, Sucharita Roy, Smita Das Dey, Anuj Singh, Ajay Gaggar, S. Sarawagi

Final Decision : Disposed Off

Judgement

I.P. MUKERJI, J.

The National Rubber Manufacturer Limited, now known as Tyre Corporation of India Limited (TCIL), was at one point of time up to the early

eighties a lessee of the subject land under the Sircars. Their lease expired. The Sircars initiated civil proceedings for their eviction. During the

pendency of the proceedings, in February, 1984 National Rubber was converted into a government company, TCIL. Since, the above proceedings for

eviction of TCIL were decreed upto the first appeal level and second appeals were pending, they proposed to the Central Government to acquire the

land in question, through the State Government.

The property in question compromises of premises Nos.12, 13, 14 and 15 Chingrighata Lane, Kolkata â?" 700015. The Industries department of the

Government of West Bengal, on 17th September, 1988 initiated steps for acquisition of this property, measuring 3.1896 acres. The notification under

Section 4 read with Section 17(4) of the Land Acquisition Act, 1894 was published in the Official gazette on 12th October, 1988. The Section 6

declaration was published on 22nd May, 1989.

The notification making a declaration of acquisition was challenged by Bimal Kumar Sarkar in a writ application before this Honâ??ble Court (C.O.

No.1751 (W) of 1990). The acquisition process was challenged mainly on the ground that it was undertaken to defeat the decree of a Civil Court to

evict TCIL from the premises and hence was an abuse of the process of law. Moreover, the acquisition served no public purpose. Rejecting all the

contentions of the writ petitioner, this Court dismissed the writ application on 29th October, 2003. A partial award was passed on 30th June, 1990.

After dismissal of the above writ application on 29th October, 2003, on 1st December, 2004 the balance award was made. The persons entitled to

receive compensation received it. The entire three acres of land stood vested in the state. The requiring body was TCIL which continued to possess

the land.

Now TCILâ??s manufacturing facility at Tangra was in excess of 16 acres which included this three acreâ??s plot. The affairs of the Tangra unit

of TCIL (they had another unit in Kakdeep in North 24 Paraganas) were considered by the BIFR under the SICA Act, 1985. The Board set up an

asset sale Committee for the purpose of selling the Tangra unit of TCIL to pay off its creditors. On 5th April, 2004, the Board informed TCIL, that it

approved, the recommendation of this committee for sale of the Tangra unit. The entire 16 acres of land were valued at Rs.27 crores and sold for

Rs.27.81 crores to the respondent

No.4. Only this respondent had made an offer in excess of the valuation. On 31st December, 2004, the entire land belonging to the Tangra unit of

TCIL was conveyed to respondent No.4. According to the statement of the respondent No.4 recorded before the trial court it obtained sanction of its

plan for constructing several buildings by or about March, 2008. The learned Judge recorded in the impugned judgment and order that several towers

has been raised although the final tower had not come up. The principal ground if not the only ground on which the appellant/petitioner has challenged

the acquisition proceedings is this. It is argued on behalf of the appellant/ petitioner, that the acquired land was not used for public purpose by the requiring authority although it was acquired for this purpose.

Secondly, the private respondent to whom the land was transferred was doing pure and simple commercial activities from the premises. Thirdly, the

respondents had practised fraud on their power to acquire land and had abused this power. There is some authority for the view that if the erstwhile

owner of the land discovers after the acquisition of his land by the State that it is not being used for public purposes, then he has the right to first cause

its inspection to be made and thereafter take appropriate steps in the matter.

In Royal Orchid Hotels Limited & Anr. Vs. G. Jayarama Reddy & Ors. reported in (2011) 10 SCC 608 a notification was issued on 29th December,

1981 by the Karnataka Government under Section 4(1) of the Land Acquisition Act, 1894 for the purpose of acquisition of land in Bangalore South

Taluk. The purpose for which the land was acquired was for the setting up of a Golf cum hotel resort near Bangalore Air Port by the Karnataka State

Tourism Development Corporation, ostensibly for public purpose. The Special Land Acquisition officer passed an award on 7th April, 1986. It appears

from the narration of facts by the Supreme Court that the said Corporation did not have the necessary fund to finance the acquisition. One Dayananda

Pai who was interested in a part of the land actively participated in and aided the acquisition process leading to an agreement dated 8th May, 1987 by

which the Corporation conveyed to him 12 acres 34 guntas of the acquired land. Mr. Justice Sanjib Banerjee at the trial court stage very rightly

observed that when the acquisition process was tainted with fraud, from the beginning, the Court should set aside the acquisition. For example if there

is a fraudulent misrepresentation that the land is being acquired for public purposes and ostensibly it is shown to the public at large that it is being

acquired for this purpose, but the real purpose from the very start is to transfer it to a private entrepreneur, then there is fraud in the acquisition of the

land. This acquisition can be set aside, even after the transfer of the property to this entrepreneur, whatever may be the point of time of transfer. The

facts in Greater Noida Industrial Development Authority Vs. Devendra Kumar & Ors. reported in (2011) 12SCC 375 were also similar. Here the

main intention for acquisition of land in question was to provide it to the builders who could profitably develop it.

Similar was the nature of the acquisition in Radhy Shyam (Dead) Through Lrs. &

Ors. Vs. State of Uttar Pradesh & Ors. reported in (2011) 5SCC

553. In our case the State government was not primarily responsible for the sale of the land. The affairs of TCIL were referred to the BIFR. The

BIFR directed sale of the Tangra unit of the company so as to make the net worth of the company positive. The learned trial judge had noted that

indeed the net worth of the company had become positive after the acquisition.

In this case we cannot hold that the initial intention in acquiring the appellantâ??s land was tainted by fraud or with the motive of transferring the land

to a third party to be used for private purpose. The acquisition was for the betterment of TCIL but this company could not operate in a viable manner.

It started running into losses. Its affairs were referred to the BIFR. It appointed an operating agency which recommended the sale of the Tangra unit.

The Board accepted the recommendation. The respondent No.4 was the buyer.

There are other reasons why this appeal should be dismissed. In 1990 a member of the Sircar family challenged by way of a writ application (C.O

No.1751(W) of 1990) the acquisition on the ground of that it was made to defeat the decree of a Civil Court for eviction of TCIL from the premises

and handing over vacant possession by them to the Sircar family. That writ was dismissed. Some 23 years after dismissal of that writ the instant writ

has been preferred by some other members of the Sircar family challenging the acquisition on the ground that much subsequent to the acquisition, the

land has been transferred to a private party for private commercial activities. There has been change in its purpose. The transfer in favour of the

respondent No.4 was approved by the BIFR in 2004. Hence, it was further to a regular legal process. The Sircar family has received full

compensation in terms of the awards in respect of this acquisition under the Land Acquisition Act, 1894.

This gross delay in filing the writ has been sought to be explained in paragraphs 45 to 49 of the writ application in the following manner. â??45. In the

month of February, 2011, the petitioners found that building are being constructed on the acquired lands originally belonging to the petitioners and/or

predecessors in interests. The petitioners thought that such constructions are being made by Tyre Corporation of India Ltd. (In Liquidation).

Moreover, the petitioners could not ascertain the actual state of affairs and in fact, the petitioners could not anticipate even that constructions are not being made by Tyre Corporation of India Ltd., the respondent No.3.

46. Immediately thereafter the petitioners found one site office ofrespondent No.4 and the petitioners came to know that such constructions on the

acquired lands are actually not being made by Tyre Corporation of India Ltd. (In Liquidation) and, on the contrary, actual constructions are being

made by M/s Mahakosh Property Developers, the respondent No.4 herein. Having come to know of that, the petitioners made a frantic effort to

collect actual information behind such constructions.

47. Thereafter the petitioners ascertained that the property, which wasacquired for the alleged public purpose, i.e. for industrial development for and

on behalf of the respondent No.3 has actually been transferred by Tyre Corporation of India Ltd., (In Liquidation) the respondent No.3 to M/s.

Mahakosh Property Developers, the respondent No.4 herein. 48. On or about 7th March, 2011 the petitioners were actually able to collect a certified

copy of the sale deed executed by the Tyre Corporation of India Ltd, (In Liquidation) in favour of M/s. Mahakosh Property Developers. From the

certified copy of the said sale deed, it appears that the Deed of Sale was actually executed on 31st December, 2004 and by the said deed of sale, Tyre

Corporation of India Ltd. (In Liquidation) sold out various properties to M/s. Mahakosh Property Developers, which included the acquired property

also. A copy of the Sale Deed dated 31st December, 2004 is annexed hereto and marked as Annexure â??P-10â??.

49. Prior to 7th March, 2011, the petitioners have no knowledge that the property, which was actually acquired for alleged public purpose, has been

transferred to M/s. Mahakosh Property Developers, the respondent No.4 and the said M/s. Mahakosh Property Developers is making construction on

the said land for private gain.â??

This explanation is far from acceptable. Now, to ask for reversal of this transfer after so many years and for the Court to allow this prayer would be

plainly inequitable. There has been a long delay. Diverse third party interests have long been created. In no circumstances will the Court try to reverse

the acquisition at this point of time. In those circumstances, all the contentions on behalf of the appellant fail. The impugned judgment and order of the

trial court dated 31st August, 2014 is affirmed. The appeal (APO 59 of 2016) is hereby dismissed. The application GA No.3704 of 2015 is disposed of accordingly. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I Agree.

(Md. MUMTAZ KHAN, J.)Â Â (I.P. MUKERJI, J.)

LATER:

Judgment in the above appeal was made ready a little before the recent cease work called by the lawyers of this Court. It was not placed for

judgment because of the cease work. The lawyer aggrieved by the judgment might not have been able to be present to ask for stay of operation

thereof. The application for a certified copy of the order may not have been submitted in time.

However, as the cease work continued without any prospect of the Court resuming its normal functions in the foreseeable future, on and from 5th

April, 2018 these matters were placed in the list â??For Judgmentâ?. Nevertheless, judgment was not delivered, hoping that the cease work would

end. This Court is of the opinion that it is high time to deliver the judgment in the interest of the parties and in the interest of justice. A judgment in the

above appeal has been delivered today (26.04.2018). Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with

all requisite formalities.

