
(2009) 08 CAL CK 0005

In the Calcutta High Court

Case No : A.P. O. No. 338 of 2001 and Matter No. 4644 of 1988

S.K. Containers (P) Ltd. and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Land Acquisition Act, 1894 — Section 11, 18, 4, 5(1), 6

Citation : (2009) 08 CAL CK 0005

Hon'ble Judges : Kalidas Mukherjee, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Santimay Panda and K.K. Pathak, for the Appellant; Samar Kumar Banerjee, Snehasish Bala for State, S.B. Bhunia and P.K. Pahari for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—Premises No. 1/1-A, 1/1-B and 1/1-C, Achariya Jagadish Chandra Bose Road, Calcutta, was owned by one Sailesh Kumar Bose and Satyesh Kumar Bose. It was under occupation of Hindi High School who was enjoying possession by virtue of a Dead of Lease for twenty one years commencing from January 1, 1959. The lease expired on December 31, 1980. On February 16, 1978 a notice of acquisition under the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894) was issued for acquiring the said premises for expansion of Vidyamandir Society which was inducted by Hindi High School without the knowledge and consent of the owners. However, Vidyamandir subsequently informed that they did not intend to acquire the said premises and as such the acquisition proceeding was abandoned. Subsequent thereto, a notice of requisition dated December 21, 1979 was issued under the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to as the said Act of 1948) inter alia requiring the said premises for housing Birla College of Science and Education which was subsequently renamed as Acharya Jagadish Chandra Bose College said to have been set up by Vidyamandir Society.

The State Legislature passed a bill in 1977 taking over management of Birla College of Science and Education which, however, did not get the presidential assent.

2. The order of requisition was challenged by the owners in Matter No. 418 of 1980. By judgment and order dated June 5, 1980 the learned single Judge allowed the writ petition and quashed the requisition proceeding. The owners issued a notice u/s 80 of the CPC for recovery of possession. At this juncture, the State issued a further notice of requisition under the said Act of 1948 dated August 26, 1991. The owners again challenged the second order of requisition dated August 26, 1991 by filing a writ petition being Matter No. 1760 of 1981. During the pendency of the said writ petition the State issued a notice u/s 4 of the said Act of 1894 dated June 24, 1988 intending to acquire the property in question for the benefit of the said college.

3. In this backdrop the appellants, above named, filed a writ petition being Matter No. 4644 of 1988 challenging the notice issued u/s 4 of the said Act of 1894 inter alia claiming that they had substantial interest in the property and as such they were competent to challenge this said notice.

4. Disclosing their interest the appellant contended in the writ petition that they entered into an agreement for sale with the owners of the premises in question. At the time of filing of the writ petition they could acquire 1/20th share in the property in question. The balance 19/20th share was, however, acquired by the appellants during the pendency of the instant appeal as we are told by Mr. Santimay Panda, learned senior counsel appearing in support of the appeal. The writ petition was initially moved before the learned single Judge on September 9, 1988 when interim order was passed by the learned single Judge staying the acquisition proceeding initially for three weeks. Matter appeared from time to time, however could not be taken up until November 14, 1988 when the learned single Judge directed the interim order, if any, to continue till the disposal of the writ petition. Hence, the State could not proceed any further in the matter in view of the pendency of the said writ proceedings. The matter came up for hearing before the learned single Judge on November 21, 2000 when His Lordship after hearing the matter dismissed the writ petition holding the same as meritless.

5. Pertinent to note, during the pendency of the said writ proceeding the appeal preferred against the order passed in Matter No. 1766 of 1981 came up for hearing before the Division Bench on April 24, 1993. The Division Bench observed that once the College was being taken over by the Government the public purpose was present. The Division Bench went to the extent by observing that even if the College was being run by a private body since it was imparting education, such activity was for public purpose. Hence, the challenge to the requisition proceeding on that score was without any basis. Since the requisition process had been followed up by acquisition proceeding by the Government and the acquisition proceeding was also under challenge, the Division Bench did not

express any opinion on the question of validity of the requisition. The Division Bench disposed of the writ petition challenging the order of requisition, holding the same as infructuous in view of the acquisition proceeding initiated by the State. The matter was, however, kept pending.

6. Before the learned single Judge, three points were argued on behalf of the appellant:-

i) Until the property in question is derequisitioned and the vacant possession thereof is handed over to the lawful owners, no proceeding to acquire the self-same property can be initiated.

ii) The object of acquisition is to help the respondent No. 4, a private body, to grab the said property. In other words there is no public purpose for acquisition of the said property and the acquisition proceedings pursuant to the impugned notice has been initiated to sub serve private interest; and

iii) In any event acquisition cannot be resorted to protect the wrongful possession of a person, who has no right to possess the property, i.e. a trespasser.

7. The learned single Judge discussed the history of setting up of the College and the subsequent events. The learned single Judge also relied upon the Division Bench observation referred to above and ultimately came to a finding that acquisition was for public purpose and as such could not be challenged on the ground that it was not for a public purpose. His Lordship also answered the third plea in the negative by holding that since the acquisition proceeding was lawful the possession could not be termed as wrongful.

8. On the first issue His Lordship held that the purpose of requisition and acquisition are different and distinct from each other. Those are guided by two different statutes. The relevant extract of His Lordship's observation on that score is quoted below:-

It is not a precondition to derequisition a requisitioned property and to hand over vacant possession thereof to the lawful owners to initiate an acquisition proceeding in respect the self-same property. There is no such bar at all. Conceptually also such a contention is not comprehensible. Requisition is made for the purpose of using the property so requisitioned upon payment of compensation, whereas acquisition is to acquire a property by paying compensation, although in both cases the volition of the owner is not necessary. In case of requisition compensation is paid for user, whereas in case of acquisition compensation is paid for acquiring. In case of the former the title remains with the owner. Only his right to use the property is taken away, whereas in the case of acquisition, the entire ownership right of the owner is acquired. There is, therefore, no sustainable challenge to the notice impugned in the writ petition.

9. Being aggrieved, the appellants filed the instant appeal which was heard by us

on the above mentioned dates.

10. Analysis of the Memorandum of the Appeal inter alia reveals that the principal contention of the appellants in the appeal was that the acquisition was being made on a total non application of the mind on the part of the State Officials without examining the question as to who would bear the expense of acquisition. The authority pre-judged the issue before arriving at a satisfaction u/s 6 and without appreciating that State was bearing a negligible portion of the expense. It was, however, contended in the Memorandum of Appeal that the acquisition was not for public purpose and was mala fide and not genuinely intended.

11. The writ petition was dismissed by the learned single Judge vide judgment and order dated November 21, 2000 whereas the appeal was filed on December 6, 2001. In between on July 2, 2001 the State issued the appropriate notice u/s 6. We are told that the awarded amount has already been deposited in the Treasury earmarked for payment to the owners. We are also told that owners have filed appropriate proceeding challenging the quantum u/s 18 of the said Act of 1894 which is pending as on date.

12. Mr. Santimay Panda, learned senior counsel appearing in support of the appeal raised two points before us which are as follows:-

i) When the notice of requisition dated August 25, 1981 appearing at page 94 of the paper book was kept pending the State could not have issued notification u/s 4 of the said Act of 1894 dated June 24, 1988 appearing at page 126 of the paper book.

ii) In accordance with the provisions of the said Act of 1894 the State must issue notification u/s 6 within one year from the date of issuance of the notice u/s 4. In the instant case notification u/s 6 was published beyond one year period and as such the entire proceeding was vitiated by illegality.

13. The second point raised by Mr. Panda relates to a fresh cause of action which arose during pendency of the appeal. Hence, the learned single Judge did not have opportunity to consider such plea. The Division Bench also, in our view, is not competent to deal with the same without a formal amendment to the Memorandum of Appeal. We are also not sure whether such amendment could be lawful or not. However, considering writ Court being a Court of Equity and the appeal being an extension of the original proceeding we permitted Mr. Panda to raise such plea, ignoring the technicality. We must also admit that both Mr. Banerjee appearing for the State and Mr. Bhunia for the beneficiary in their usual fairness did not raise any objection on that score.

14. Elaborating his argument Mr. Panda contended in his usual fairness that it was now well-settled principle of law that an educational institution, irrespective of its status was considered as a public institution set up for public purpose. Hence, the plea taken in the Memorandum of Appeal to that extent was not

available to the appellant at the present moment.

15. On the first issue Mr. Panda also in his usual fairness conceded that when notice of requisition was followed by regular acquisition proceeding the earlier notice must be treated to have been abandoned. He, however, contended that in the instant case, despite the notice of acquisition was issued, the State preferred appeal against the order of the learned single Judge quashing the order of requisition. Hence, once this State challenged the order of the learned single Judge before the Division Bench trying to uphold the notice of requisition the subsequent notice of acquisition was bad in law.

16. On the second issue Mr. Panda contended that under the provisions of the said Act of 1894 the State was not entitled to issue any notification u/s 6 (1) or proceed further beyond one year period computing from the date of issuance of the notification u/s 4. Mr. Panda however, conceded that the period when the State was restrained by an order of injunction should be excluded while computing the period. He contended that the initial interim order was limited for three weeks and on expiry of three weeks" period such interim order ceased to have any effect in its natural course and there could be no subsequent revival, as a result the notification u/s 6 was bad in law. He distinguished the order dated November 14, 1988 by contending that the learned Judge was specific to the extent that if there had been an interim order subsisting on that date such interim order would continue till the disposal of the writ petition. Since there had been no subsisting interim order as on that date the State was not entitled to take the benefit of the order of continuation dated November 14, 1988.

17. Mr. Panda lastly contended that since the entire proceeding was vitiated by illegality the subsequent action on the part of the State including the award published u/s 11 of the said Act of 1894 was of no consequence. He prayed for quashing of the entire proceeding initiated by this State.

18. Opposing the appeal, Mr. Samar Kumar Banerjee, learned counsel appearing for the State relied on the decision of this Court in the case of Employees" State Insurance Corporation vs. The Calcutta Municipal Corporation and Others reported in 2002, 2 CLJ 232. Mr. Banerjee contended that once the award had been passed and money was deposited in Treasury the appellant having challenged the award u/s 18, their plea raised now in this appeal challenging the Section 6 notification could not be entertained by this Court. He prayed for dismissal of the appeal.

19. Mr. Swadesh Ranjan Bhunia learned senior counsel appearing for the College Authority adopted the contentions raised by Mr. Banerjee, in addition Mr. Bhunia contended that it was settled principle of law that an acquisition proceeding could be initiated without handing over possession of the property back to the owner by derequisitioning the property. He also contended that since the matter was pending for consideration before the learned single Judge the State did not proceed any further in view of the interim order. The judgment was delivered on

November 21, 2000 and Section 6 notification was published within one year from the said date i.e. July 2, 2001. Hence, the said notice could not be said to be bad.

20. In support of his contention Mr. Bhunia relied on the Apex Court decision in the case of *The Collector of Akola and Others Vs. Ramchandra and Others*, and a decision of this Court in the case of *Messers. Radha Films Private Ltd. vs. State of West Bengal* reported in 1980, 2 Cal LJ 265.

21. In the case of *the Collector, Akola and Others vs. Ramchandra and Others* (Supra), Apex Court observed, "there is no antithesis between the power to requisition and the power of compulsory acquisition under the Land Acquisition Act. Neither of the two Acts contains any provision under which it can be said that if one is acted upon, the other cannot. The exercise of power under the Requisitioning Act does not exhaust or make incompatible the exercise of power under the Land Acquisition Act. The initiation of proceedings under the Land Acquisition Act after requisitioning the lands under S. 5(1) of the Act does not and cannot mean the abuse of the power under the provisions of the Act."

22. In the case of *Messers. Radha Films Private Ltd. vs. State of West Bengal* (Supra), the learned single Judge of this Court held that there was no legal bar in the way of the State acquiring a property which was already under requisition. The learned Judge further held that the requisition would obviously end the moment the property vested upon the State under the Land Acquisition Act.

23. In the case of *Employees' State Insurance Corporation vs. The Calcutta Municipal Corporation and Others* (Supra), the learned single Judge of this Court observed that a person who simply entered into an agreement for sale with the owner could not be described as a person interested in an acquisition proceeding under the said Act of 1984 and as such, such a person could not challenge a notification u/s 4.

24. It is now well-settled that merely because the order of requisition was in force the notification issued u/s 4 of the said Act of 1894 could not be held to be bad per se. Mr. Panda tried to distinguish such ratio by contending that once the State went on ventilating their stand to uphold the order of requisition even after issuance of notification u/s 4 such notification could not be held to be valid as the State understood that the order of requisition still existed. We are unable to accept such contention. The order of requisition was followed by the notice of acquisition u/s 4. Hence, by issuance of such notification u/s 4 the notice of requisition issued earlier stood abandoned. It is true that the State preferred appeal from the judgment and order of the learned single Judge quashing the notice of requisition. They might have done so to defend their action. They might have done so objecting to any of the observations of His Lordship. That would not, per se, upset the well-settled principle of law as discussed above. Mr. Panda's first contention is, thus, rejected.

25. It is true that no declaration could be made u/s 6 beyond one year period

from the date of issuance of a notification u/s 4 Sub-section 1 as per proviso to Sub-section 1 of Section 6 of this said Act of 1894. The Explanation 1 to such proviso however makes it clear that in computing the period the order of injunction staying further proceeding in terms of Section 4 notification would be excluded. We have already discussed that Section 4 notification was stayed by the learned single Judge vide order dated September 9, 1988. It is also true that the said interim order was initially for three weeks. Hence, when the matter was taken up by the Court on November 14, 1988 such interim order was directed to be continued till the disposal of the writ petition. There might have been break in between as the Court either could not list the matter in time or could not take it up despite being listed for that purpose. That would not per se vitiate the process and the notification u/s 6 could not be said to have been vitiated by illegality. The writ petition was disposed of on November 21, 2000 by the learned single Judge. Then Section 6 notification was published in July 2001 well within one year period. Hence, the second plea of Mr. Panda is also rejected being devoid of merit.

26. There is one more salient feature that we cannot overlook. Section 6 notification was not challenged by the appellant contemporaneously, at least we have not been told on that score. Such notification was followed by further act of the State which culminated in a logical conclusion when award u/s 11 was published. We are told, a proceeding u/s 18 of the said Act of 1894 is pending at the instance of the appellant. It is not clear whether the appellant reserved their liberty to proceed with this appeal after obtaining necessary leave from this Court before initiating any proceeding u/s 18. If we take note of such fact we would have no option but to hold that the present appeal has become fruituous.

27. In any event, we have already gone into the contentions of the parties on merit and dealt with the same in the preceding paragraphs. We do not find any scope of interference.

28. The appeal fails and is, hereby, dismissed.

29. There would be no order as to costs.

30. Urgent Xerox certified copy would be given to the parties, if applied for.

Kalidas Mukherjee, J.

31. I agree.