

(2006) 12 CAL CK 0039
In the Calcutta High Court
Case No : F.M.A. No. 600 of 2005

State of West Bengal and Others

APPELLANT

Vs

Gafur Sk.

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 16, 17, 17(1), 17(2)

Citation : (2007) 4 CHN 295 : 111 CWN 181

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

Bench : Division Bench

Advocate : Anwar Hosain and Sapan Pal, for the Appellant;Taimur Hossain and Sibani Bhagat, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—Both the appeals are directed against the common judgment and order dated 28th June, 2004 passed by the learned Single Judge of this Court. By the aforesaid common judgment, the learned Single Judge decided two writ petitions where common question of law is involved on identical facts.

2. In both the writ petitions the petitioners prayed for a direction upon the concerned respondent for publication of the award and payment of compensation in respect of the lands covered under the Land Acquisition Cases being Nos. LA/39/IV/2000-2001 and LA/40/TV72000-2001 respectively.

3. While deciding the said writ petitions, the learned Single Judge directed the concerned respondents to complete the acquisition proceedings by passing appropriate award and also to pay the compensation and other amounts in terms of the Land Acquisition Act to both the writ petitioners.

4. On examination of the judgment under appeal and scrutinising the copies of the available documents it appears that notifications were issued u/s 4 of the Land Acquisition Act, 1894 and also for application of Section 17(1) and Section

17(4) of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) in respect of the lands in question of the writ petitioners. It was also submitted on behalf of the writ petitioners before the learned Single Judge that the concerned respondents took possession of the lands in question of the petitioners and excavated earth from the said lands. It was specifically urged before the learned Single Judge on behalf of the petitioners that the Government cannot bypass responsibility to pay compensation on the plea that subsequently the acquisition proceedings were dropped.

5. It was, however, submitted on behalf of the State-respondents that although the notification u/s 4 read with Section 17(1) and Section 17(4) of the said Act was published in respect of the lands in question of the petitioners but within a period of three weeks from the date of publication of the said notification, the concerned authority, namely, the Executive Engineer, Malda Irrigation Division by written communication dated 25th August, 2000 intimated the Special Land Acquisition Officer, Malda regarding cancellation of the acquisition proposal in respect of the lands in question and pursuant to the said intimation, the Special Land Acquisition Officer, Malda informed the Executive Engineer, Malda Irrigation Department that the land acquisition cases have already been dropped. The learned Single Judge, however, came to the conclusion that there is no order of the State Government to withdraw from the proceedings and land acquisition proceedings cannot be said to be cancelled and/or withdrawn on the basis of the Memo dated 25th August, 2000 issued by the Executive Engineer, Malda Irrigation Division.

6. The learned Single Judge further observed that no decision was reached by the State Government to withdraw and/or cancel the land acquisition proceedings. The learned Single Judge referring to the Joint Enquiry Report specifically observed that the excavation of earth was done from the lands of the petitioners. The learned Single Judge also specifically held that just after issuance of the notification u/s 4 of the said Act, the possession of the lands were taken by the Government and it was the Government's responsibility to oppose the entry of the outsiders into the lands in question of the said petitioners. The learned Single Judge also held that the lands of the petitioners which were under acquisition proceeding were utilised as the contractors engaged by the Irrigation Division excavated the earth from the said lands and therefore, the State Government cannot deny that possession of the land in question was not taken. Since the learned Single Judge specifically held that the acquisition proceeding was not cancelled and/or withdrawn following the valid procedures, the respondents were directed to complete the acquisition proceedings by passing appropriate order within three months from the date of the said judgment and also to pay compensation and other amounts.

7. The short points raised in these appeals are whether the learned Single Judge was justified in holding that there is no order of the State Government to withdraw from the land acquisition proceeding and the State Government cannot

deny that the possession of the land was taken.

8. It is not in dispute that a notification was issued u/s 4 of the said Act. The provisions of Section 4 and Section 17 of the Land Acquisition Act, 1894 is set out hereunder:

4. Publication of Preliminary Notification and Powers of Officers thereupon.--(1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company] a notification to that effect shall be published in the Official Gazette, [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language] and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification].

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen-
to enter upon and survey and take levels

of any land in such locality; to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches;
and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed Court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

17. Special powers in cases of urgency.--(1) In cases of urgency, whenever the [appropriate Government] so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), [take possession of any land needed for public purpose]. Such land shall thereupon [vest absolutely in the (Government)], free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the

maintenance of their traffic or for the purpose of making thereon a riverside or ghat station, or of providing convenient connection with or access to any such station, [or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity,] the Collector may, immediately after the publication of the notice mentioned in Sub-section (1) and with the previous sanction of the [appropriate Government], enter upon and take possession of such land, which shall thereupon [vest absolutely in the (Government)] free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours" notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in Section 24; and, in case such offer is accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under provisions herein contained. (3A) Before taking possession of any land under Sub-section (1) or Subsection (2), the Collector shall, without prejudice to the provisions of Subsection (3),--

(a) tender payment of eight per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, Sub-section (2),

and where the Collector is so prevented the provisions of Section 31, Subsection (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

(3B) The amount paid or deposited under Sub-section (3A), shall be taken into account for determining the amount of compensation required to be tendered u/s 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector u/s 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the [appropriate Government], the provisions of Sub-section (1) or Sub-section (2) are applicable, the [appropriate Government] may direct that the provisions of Section 5A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time [after the date of the publication of the notification] u/s 4,

Sub-section (1).

9. It is also not in dispute that apart from issuance of notification u/s 4, no other step was taken by the concerned respondents under the Land Acquisition Act, 1894. In the instant case, the possession of the land cannot be taken even u/s 17(1) of the said Act as no notice was published u/s 9 of the said Act. As a matter of fact, the learned Single Judge in the impugned judgment specifically admitted the aforesaid position. The relevant extract from the said judgment of the learned Single Judge is quoted hereunder:

...In the instant case, it is an admitted position that in terms of Section 17(1) of the said Act, no notice u/s 9 for taking possession of the land was issued and published....

10. There is no scope to take possession of the lands u/s 4 of the Land Acquisition Act, 1894. The possession of the land can be taken by the concerned Collector u/s 16 of the said Act when, the concerned Collector has made an award u/s 11 of the said Act. The Collector is, however, empowered to take possession in case of urgency u/s 17(1) of the said Act but such possession can be taken on the expiration of 15 days from the publication of notice mentioned in Section 9(1) of the said Act.

11. In the present case, although notification was issued for exercising power u/s 17(1) and Section 17(4) of the said Act on the ground of urgency but as a matter of fact, the concerned Collector had no occasion to take possession of the lands in question u/s 17(1) as the condition precedent regarding publication of notice mentioned in Section 9(1) of the said Act was never fulfilled apart from the fact that before taking possession, the Collector is also required to make necessary payment u/s 17(3A). In the instant case, since no step has been taken after publication of the notification u/s 4 of the said Act, question of taking possession of the lands in question of the petitioners by the concerned Collector did not arise at any point of time and therefore, it cannot be said that the State Government took possession of the lands in question or the writ petitioners, were dispossessed from the lands in question by the State Government.

12. Before taking possession of the lands in question in accordance with law, the officers of the State Government have no responsibility to protect the lands mentioned in the notification u/s 4 of the said Act. The petitioners-being the lawful owners in respect of the lands in question should have taken necessary steps to protect its own property in accordance with law and if any damage has been done in respect of the lands in question by or at the instance of any individual then the petitioners may recover such damage upon initiating appropriate proceedings before the competent Civil Court in accordance with law.

13. The learned Single Judge although held that the acquisition proceeding was not cancelled and/or withdrawn following the valid procedures of law laid down u/s 48 of the said Act and the Memo dated 25th August, 2000 issued by the Executive Engineer, Malda irrigation Division has not made any effect of

cancellation of the acquisition proceedings but from the records we find that the said Executive Engineer by the aforesaid Memo dated 25th August, 2000 only informed the Land Acquisition Collector about the decision regarding cancellation of the land acquisition proposal submitted earlier and the Special Land Acquisition Officer, Malda by the subsequent Memo dated 14th September, 2000 intimated the Executive Engineer that both the land acquisition cases have been dropped. In the aforesaid circumstances, it cannot be said that there was no notification regarding cancellation and/or withdrawal of the acquisition proceedings.

14. In our opinion, the learned Single Judge did not consider the effect of the aforesaid Memo issued by the Executive Engineer, Maida Irrigation Division dated 25th August, 2000 in its correct perspective and also did not consider the subsequent Memo issued by the Special Land Acquisition Officer, Malda on 14th September, 2000. The Special Land Acquisition Officer, Malda by the aforesaid Memo dated 14th September, 2000 has specifically informed that the land acquisition proceedings in respect of the lands in question of the petitioners have already been dropped.

15. In the aforesaid circumstances, we hold that no land acquisition proceeding is still pending in respect of the lands in question of the petitioners pursuant to the issuance of the earlier notification u/s 4 of the Land Acquisition Act, 1894 and therefore, no direction can be issued to the respondents to complete the land acquisition proceedings.

16. For the aforementioned reasons, these appeals must succeed and the same are therefore, allowed. The judgment of the learned Single Judge is set aside. There will be no order as to costs. 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.

Arunabha Basu, J.

17. I agree.