
(2007) 06 CAL CK 0007
In the Calcutta High Court
Case No : F.M.A. No. 543 of 2005

Sudip Srimal and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 29-06-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 23, 4, 49

Citation : 111 CWN 760

Hon'ble Judges : Tapas Kumar Giri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Samar Kumar Banerjee, for the Appellant; Indrajit Sen, Bhudeb Bhattacharjee, Leena Majumdar and Manju Saha, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—On August 18, 1961 a portion of the ground floor comprising three rooms in a three-storyed building situated at premises No. 16/2, Gariahat Road, Kolkata was requisitioned by the State to be used as police barrack of Gariahat Police Station. The, said portion was de-requisitioned by the State on March 19, 1992. Despite order of de-requisition possession was not handed over to the owner of the premises in question despite repeated request being made therefor. On June 6, 1997 State issued a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act of 1894"). The said notice was published in Calcutta Gazette on July 23, 1997 appearing at page 48 of the Paper Book. The notification reads as follows : "Whereas it appears to the Governor that land is likely to be needed for a public purpose/not being a purpose of union namely for Housing the Gariahat Out Post, Calcutta and Barrack accommodation of some Calcutta Police Men in Police Station, Gariahat, District Calcutta, Ward No. 68 of Calcutta Municipal Corporation, it is hereby notified that the piece of land comprising premises No. 16/2, Gariahat Road (ground Floor portion) and measuring more or less 0.0084 hectare (0,0208 acre)....."

The owners filed objection appearing at pages 49-55 of the Paper Book. It was

categorically pointed out in the said objection that by the proposed acquisition a part of the premises was sought to be acquired whereas the said premises was being used by number of persons having their office and/or offices and/or for residential purpose in the other part of the said premises in question. It was contended that part acquisition of the said premises was impracticable. They also sought compensation by way of damages u/s 23 of the said Act of 1894.

2. Notice u/s 5A was issued to the owners. Ultimately by notice dated July 23, 1998 a declaration was made u/s 6 of the said Act of 1894 by the State. Challenging the notification u/s 4 as also the declaration u/s 6 writ petition was filed being W.P. No. 16889 of 1998 by the owners and an interim order of stay was granted by the learned Single Judge. Despite interim order of stay the State sought to issue notice u/s 8 which gave rise to a contempt proceeding. Subsequent steps were taken to complete the acquisition proceeding under Sections 9 and 10 of the said Act of 1894. By the time the writ petition was finally heard and disposed of the acquisition proceeding attained finality.

3. The writ petition was finally heard and disposed of by the learned Single Judge by judgment and order dated July 22, 2003 impugned in the instant appeal.

4. The learned Single Judge by the said judgment rejected all the contentions of the writ petitioners and held that the writ petition had no merit. His Lordship dismissed the writ petition.

5. On perusal of the judgment and order under appeal it appears that the writ petitioners raised three issues before His Lordship which are as follows :

(i) The declaration u/s 6 was published beyond the stipulated period of one year from the date of issuance of the notice u/s 4 and as such was void.

(ii) The property sought to be acquired was unsuitable for the purpose as it was a very small one.

(iii) The State was under obligation to deliver possession of the property in question after de-requisition. Without handing over possession after de-requisition they were not entitled to initiate acquisition proceeding.

6. All the three contentions were negated by His Lordship in His Lordship's well-versed judgment.

7. We have heard Mr. Samar Banerjee, for the appellant being the owners of the premises in question and Mr. Indrajit Sen, learned standing counsel for the State. We have also considered the judgment and order impugned in this appeal. We find on perusal of the record brought before us through the pleadings that the entire acquisition proceeding was vitiated by illegality starting from issuance of notice u/s 4.

8. The Learned Single Judge, however, did not consider the issue from this angle although specific plea was taken in the grounds mentioned in the writ petition. Ground 1 of the writ petition is quoted below:

"For that only a few rooms comprised in a multistoried building cannot be acquired. In the present case the area of the ground floor of the premises notified for acquisition is not separable by metes and bounds or for separate ownership, independent use and occupation as the said rooms, under the notification for requisition, are fractional unit of the entire three storied building, therefore a fractional unit in a multistoried purpose cannot be fulfilled in a fractional unit within the ambit of the Land Acquisition Act."

9. On a combined reading of the said Act of 1894 we find that part acquisition is permissible in law. Section 49 of the said Act provides for option to the owner to compel the State to take the property as a whole. However, such option is to be exercised by the owner at any time before an award is passed u/s 11. Section 23 provides for compensation by way of damages for the value of the land as well as damage if sustained by the person interested in the property in question meaning thereby not only the owner is entitled to the market value of the land u/s 23 but also any person interested in the property either movable or immovable or in any other manner deprived of his means of livelihood would be entitled to damage.

10. Relying on these two sections Mr. Sen sought to contend before us that the appellants being the owners of the premises in question could compel the State to acquire the property as a whole before the award was published u/s 11. Since no such option was exercised, part acquisition could not be questioned. In any event the owners were entitled to compensation u/s 23 not only for the value of the property but also for other difficulties which might be faced by the owners and/or other persons interested in the property due to such part acquisition. He also drew our attention to the award to show that compensation was awarded by taking into account for such eventualities.

11. Mr. Sen relied on the 3 Judges Bench decision of the Apex Court reported in All India Reporter 1964. Supreme Court. Page 350 (State of Bihar & Anr. vs. Kundan Singh & Anr.) to support his contention part acquisition was permissible in law. The Apex Court held that where land is acquired and it results in the acquisition of a part of the house connected with the land, the owner can make a claim for additional compensation u/s 23, or he may require, before the acquisition has taken place, that the whole of the house should be acquired. In the said case there were two buildings on a land, a portion of which was sought to be acquired by the State for the purpose of installing of ropeway. The owners were dissatisfied with the award which was based on the value of the land on the ground that by such acquisition they were deprived of user of the house as it would be dangerous for human habitation because of installation of ropeway. The Apex Court in such a case held that there had been two options to the owners either to ask for additional compensation u/s 23 or to compel the State to acquire the property as a whole.

12. Relying on the said decision Mr. Sen contended that the owners did not opt u/s 49. They, however, claimed compensation u/s 23 as would appear from the

objection raised in respect of Section 4 notification. Hence, the acquisition could not be questioned at this stage. They were, however, entitled to take appropriate steps with regard to enhancement of compensation if they were so advised.

13. In the case before us the problem is much more complicated than the one before the Supreme Court in the case of State of Bihar (Supra). The premises is having one municipal holding number. It is one integrated unit being three-storyed building housing various persons who were using the same for residential and/or commercial purpose. State sought to acquire a portion of the ground floor along with the land on which such portion was constructed. If the acquisition is allowed to stand the upper floors on the acquired portion would have no title whatsoever in law. Moreover, we are not sure whether under the municipal rules such separation would be permissible or not. It is true that the appellants did not opt u/s 49. Had they done so the problem could have been eased out. The State also should have, in our view, visualized the situation. By passage of time mode of habitation has taken a drastic change. Now-a-days multistoried buildings are coming up consisting of various owners having ownership right in respect of the flats in question. In such cases the owners occupying respective flats are given undivided proportionate ownership on the land. In the instant case if the State was akin to take only the portion which was under their occupation they should have mentioned in the notification that they intended to acquire the portion of the ground floor including proportionate share in the undivided land on which the building is situated. They did not do so. If the acquisition is allowed to stand as it is today it would create more complication not only to the appellants being the owners of the premises and the other persons occupying the said premises but also the portion which would be under the ownership of the State after acquisition. The premises being an integrated unit might be having single sewerage connection and water connection. The premises might be having one entrance having one staircase. If the acquired portion is taken out from the integrated unit such partition would not be viable and workable. We feel that both the parties being the appellants as well as the State and/ or beneficiary for whom the State sought to acquire the portion would be in difficulty because of the complicated situation. We feel that subject acquisition is vitiated by illegality and/or irregularity in view of such vague, if not incorrect, notification u/s 4.

14. In our view, the learned Single Judge should have approached the problem also from this angle. On perusal of the judgment we find that this point was not discussed. We are not sure whether this point was at all urged by the appellant before His Lordship. We, however, feel that for the reasons discussed above whether the appellants pressed this point or not before His Lordship may not be a relevant factor as we find that this acquisition as it stands to-day, would not inure to the benefit of the appellants or the State.

15. The notification u/s 4 dated July 23, 1997 and notification u/s 6 dated July 23, 1998 appearing at pages 48 and 59 respectively and the subsequent action

of the State in furtherance of the said notification as well as the award published u/s 11 are quashed and set aside. We. however, give liberty to the State to issue fresh acquisition notice in the light of the observation made by us herein.

16. There would be stay of operation of this judgment and order for a period of four weeks from date. Urgent xerox certified copy would be given to the parties, if applied for.

Tapas Kumar Giri, J.

I agree.