

(2009) 08 CAL CK 0017

In the Calcutta High Court

Case No : F.M.A. No. 432 of 2007, M.A.T. No. 347 of 2006, C.A.N. No. 1224 of 2006, C.A.N. No. 9939 of 2008 and C.A.N. No. 3931 of 2008

The Calcutta Metropolitan Development Authority and Others APPELLANT
Vs

Smt. Minerva Biswas RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 3A, 3B, 4(1), 5
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 4, 4(1), 6
West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977 — Section 1(2), 1(3), 16, 4, 4(1)

Citation : (2010) 1 CALLT 9

Hon'ble Judges : Pinaki Chandra Ghose, J; I.P. Mukerji, J

Bench : Division Bench

Advocate : Malay Kumar Basu, Partha Sarathi Basu and Fazlul Haque, Prafulla Kr. Ghosh and Amrita Sinha, for the Appellant; Saktinath Mukherjee and A.N. Das, for the Respondent

Judgement

I.P. Mukerji, J.—This is an appeal from a judgment and order dated 27th September, 2005 in C.O. No. 6836 (W) of 1987, by which the appellants have been directed to return to the respondent her land, under requisition by them, in exercise of powers under The West Bengal Land (Requisition and Acquisition) Act 1948, within a period of two months from the date of communication of the order. In the event such land was returned to the respondent within the time specified in the order the respondent would have no right to claim compensation for wrongful occupation of the said land by the appellants.

2. In this judgment reference to appellants would include the state proforma respondents.

3. The respondent claims to be the owner of 0.36 acres (the appellant claims that it is 0.43 acres) of land in the Kasba area of Kolkata. On 6th September, 1979 an order of requisition of the said land was made under The West Bengal Land (Requisition and Acquisition) Act 1948. This order of requisition covered

0.22 acres of it.

4. The avowed purpose of this requisition was:

For the purpose of providing proper facilities for transport/communication/irrigation/drainage or for the creation of better living conditions in rural or urban areas by construction or reconstruction of well known places for people residing in such area....

5. The respondent denies that any such purpose was in the contemplation of the requisitioning authorities when the requisition was made.

6. Sometime in 1979, the respondent challenged this requisition on many grounds by filing a writ petition before this Court. That writ petition was disposed of by an order dated 11th December, 1979 by directing the requisitioning authorities to release immediately a part of the land requisitioned and to release the balance if the same was not required by C.M.D.A. (by which name K.M.D.A. was then known). Accordingly, one part was forthwith released but the rest of the land was kept under requisition.

7. The respondent says that only 0.06 acres of the balance land was ever utilised by the appellants and the rest of the requisitioned land was kept idle. The respondent further says that in or about February 1987 the appellants proposed to sell the remaining land by public auction. As the land was requisitioned, and not acquired, the respondent alleged, that the appellants had no title to sell such land.

8. Complaining inter alia of the above threatened act, the respondent filed the instant writ petition being C.O. 6836(W) of 1987. In this writ application this Court passed an interim order directing the appellant authorities not to change the status quo of the land until further orders. This order of status quo regarding the land has continued till disposal of the writ on 27th September, 2005 as stated above.

9. It is plain from the title of The West Bengal Land (Requisition and Acquisition) Act 1948 that it was intended to be of limited duration. Section 3 of it contained the power of requisition, which could be made by an order in writing. The requisition order was to be followed by delivery of possession by the owner to the State Government. After requisition of any land the State Government could use the land for the purposes of the Act till a notice of acquisition u/s 4 was published. Thereafter, the Act deals with payment of compensation. Section 6 stated that where requisition of land was not required to be continued the State Government would order return of it to the owner.

10. The West Bengal Land (Requisition and Acquisition) Act 1948 was stated to expire with the expiry of 31st March, 1997. However, the State Government wanted to reserve its rights to deal with requisitioned land. Since, the subject of legislation falls in the concurrent list of the Constitution of India, an amendment was sought to be introduced in Section 9 of the Land Acquisition Act, 1894 by

way of addition of Sub-sections 3A and 3B by way of State Amendments. The amending Act was duly passed by the State legislature but it received the assent of the President of India on 2nd May 1997. Then by a notification dated 22nd May 1997 published in the Calcutta Gazette on 4th June, 1997, the Act was deemed to have come into force on 1st April, 1997. In this connection it must be mentioned that Section 1(2) of the Amending Act provided that the amendment would come into effect on such date as the State Government may by notification in the Official Gazette appoint.

11. A very interesting situation has arisen after expiry of The West Bengal Land (Requisition and Acquisition) Act 1948 and amendment of The Land Acquisition Act 1894. The respondent has raised very interesting arguments based on the above developments. On the basis of the above developments the writ application was also allowed to be amended to bring the above developments on the record. Mr. Malay Kumar Basu, Senior Counsel appearing for the appellants contends that the requisition under The West Bengal Land (Requisition and Acquisition) Act 1948 was lawfully continued by the said amendment, as an Act could be given retrospective effect. Here, the retrospective effect was duly given by the said notification stating that the said Amending Act would have effect from 1st April, 1997. Therefore, the land is properly vested in the authorities. Further, the authority should be given opportunity to utilise the land for public purposes under the Land Acquisition Act.

12. The foremost contention of Mr. Saktinath Mukherjee, Senior Counsel appearing for the respondent is that The West Bengal Land (Requisition and Acquisition) Act 1948 expired with the expiry of 31st March, 1997. Upon expiry of the term of the Act all requisitions made under the Act lapsed as there was no repealing Act or new legislation which continued the requisition. He cited the decision *Rabindra Nath Mahapatra and Others Vs. Gour Mondal*, . In the alternative, he submitted, even if the amending Land Acquisition Act retrospectively validated the requisition there was no notice given which was required to be given under amended 3A so as to continue the requisition. Therefore the requisition lapsed. Further the amending Act provided that it would come into force on the day specified by notification. Now this date according to the respondent has to be a date after the date of coming into force of the Act, citing decisions reported in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, , *The Accountant General and Another Vs. S. Doraiswamy and Others*, and *Sterling Stock Brokers Pvt. Ltd. and Ors. v. State of West Bengal and Ors.* 2001(1) CHN 531. In the above manner no retrospective effect can be given to the State Amendments of Section 9 of the Land Acquisition Act.

13. Therefore, according to the respondent the said requisition of land of the respondent has lapsed.

14. Mr. Mukherjee further contends that it is plain from a perusal of the title of The West Bengal Land (Requisition and Acquisition) Act 1948 and the decision reported in *Jiwani Devi Paraki Vs. First Land Acquisition Collector, Calcutta and*

Others, ; Sushila Devi v. State 1989 (2) CHN 232; Sandeep Kumar v. The State of West Bengal 1992 (2) CLJ 267; Samarendra Nath v. Collector, Hooghly 1997(1) CLJ 370; Swapan Mondal v. The State of West Bengal and Ors. 1994(2) CHN 50 that requisition under this Act could be made for urgent purposes and had to be made speedily. If the land could not be used for any such purpose then the land had to be released within reasonable time. Since no such use of the land was ever made, after requisition the land ought to have been released long ago.

15. Hence, the respondent claims return of her land and compensation. The West Bengal Land (Requisition and Acquisition) Act 1948 was to expire with the expiry of 31st March, 2007. Now land requisition and acquisition is a subject in the concurrent list. Both Parliament and State legislature have competence to enact laws on the subject.

16. When a Land Acquisition Act lapses by efflux of time and there is no new Act enacted to continue provisions of a lapsing Act, normally, the requisition or acquisition made under the Act would also lapse see Rabindra Nath Mahapatra and Others Vs. Gour Mondal, .

17. The Government of West Bengal wanted to retain the land requisitioned under the Act of 1948. In order to enable them to do so the State legislature inserted an amendment to Section 9 of the Land Acquisition Act 1894 by adding Sub-sections 3A and 3B.

18. Sub-sections 3A and 3B read thus:

(3A) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition u/s 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter refer to in this section as the said Act), as re-enacted by the West Bengal Land (Requisition and Acquisition) Reenacting Act, 1977 and, in every such case, the provisions of Sub-section (1) of Section 4, Section 5, Section 5A, Section 6, Section 7 and Section 8 of this Act shall be deemed to have been complied with:

Provided that the date of notice under this Sub-section shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that when the Collector has made an award u/s 11 in respect of any such land, such land shall, upon such award, vest absolutely in the Government, free from all encumbrances.

(3B) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition u/s 3 of the said Act, and notice for acquisition of such land has also been published under Sub-section (1-a) of Section 4 of the said Act, and, in every such case, the provisions of Section 4, Section 5, Section 5A, Section 6,

Section 7, Section 8 and Section 16 of this Act shall be deemed to have been complied with: provided that the date of publication of notice under Sub-section (1-a) of Section 4 of the said Act shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that in every such case, the Collector shall make an award u/s 11 in respect of such land only for the purpose of payment of due compensation to the persons interested in such land has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances.

19. The effect of such amendment would be that the lands of which possession had been taken would be dealt with under the Land Acquisition Act 1894, Sections 4(1), 5, 5A, 6, 7 and Section 8 deemed to have been complied with. Action or proceeding continuing the land requisition could be commenced by service of a notice. Thereafter, acquisition proceedings were to follow the procedure prescribed by the Land Acquisition Act, 1894.

20. This amendment Act titled The West Bengal Land (Requisition and Acquisition) Act 1948 was duly passed by the West Bengal legislature. In order to be operative, as the subject is included in the concurrent list the assent of the President was required. The assent of the President of India was published in the Calcutta Gazette, Extraordinary on 2nd May 1997.

21. Now, with the expiry of 31st March, 1997, the Act of 1948 had lapsed by efflux of time.

22. However, it was provided u/s 1(2) of the Amending Act, that "it shall come into force on such date as the State Government made by notification in the Official Gazette appoint." A copy of the Calcutta Gazette dated 4th June 1997 has been produced before us which shows that on that day the notification by the Government of West Bengal dated 22nd May 1997 that the Act would come into force on the 1st day of April 1997 was published.

23. Now the question is whether by this enactment and the subsequent notification the lapsing of The West Bengal Land (Requisition and Acquisition) Act 1948 was saved. In the case of A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, the Supreme Court said:

...Section 1(3) authorises the Government to bring the Act into force on such date as may, by Notification appoint. In exercise of the power conferred by this Section the Government surely had the power to issue the Notification bringing the Act into force on any date subsequent to the passing of this Act.

24. Again in The Accountant General and Another Vs. S. Doraiswamy and Others, the same Court held:

It is settled law that unless a statute conferring the power to make rules provides for the making of rules with retrospective operation, the rules made

pursuant to that power can have prospective operation only (paragraph 7)

25. Again our Court in *Sterling Stock Brokers Pvt. Ltd. and Ors. v. State of West Bengal and Ors.* 2001 (1) CHN 531 while considering the self same amending Act held that there was nothing in the Act to show that the legislature intended that it should have a retrospective effect and in the absence of such intention it could not be held that the Act was to have retrospective effect. (See para 107 of the judgment).

26. Therefore, in our considered opinion on an appreciation of the above Supreme Court cases *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, The Accountant General and Another Vs. S. Doraiswamy and Others*, the Division Bench decision of our High Court in *Sterling Stock Brokers Pvt. Ltd. and Ors. v. State of West Bengal and Ors.* 2001(1) CHN 531 the State Government could only appoint a date of coming into force of the Act which was subsequent to the date of enactment that is 2nd May 1997.

27. Therefore, further since in our view the amending Act had no retrospective effect, the notification specifying the appointed date of coming into force of the Act 1st April, 1997 had no effect and consequently The West Bengal Land (Requisition and Acquisition) Act 1948 expired with the expiry 31st March, 1997. The requisition made of the respondent's land also lapsed.

28. Sub-sections 3A and 3B are very carefully worded. It says that the Collector would initiate proceedings under the Land Acquisition Act 1894 by issuing notice on persons whose land has been taken possession of on requisition u/s 3 of the 1948 Act. The draftsman could never have meant that possession retained by the Government or its agencies after requisition had lapsed, that is land in wrongful possession, would also fall under the operation of Sub-section 3A. The only reasonable interpretation can be made is that only land under a valid requisition and lawful possession would come within the operation of 3A. The requisition of the respondent's land having lapsed with the expiry of 31st March 1997 and the possession consequently becoming wrongful, before Sub-section 3A came into force, the respondent's land never came within the operation of Sub-section 3A.

29. Furthermore, to continue the requisition and acquisition proceeding under the Amending Act a notice had to be issued under the amended Section 9(3A) which was also never issued. Failure to issue such notice has also resulted in lapsing of the requisition, even if it is theoretically assumed that the amending Act was validly made.

30. Now the question which needs to be answered is that whether the requisition proceeding itself was properly taken, and whether the Acts which were to be done post requisition were done within reasonable time.

31. No sufficient evidence has been placed before the Court by the respondent by which the Court can come to the conclusion that in making the requisition, the appellants never had any intention of fulfilling the objectives of the Act, or that

there was some infirmity in the requisition proceedings. Further no sufficient evidence has been brought on record to show that the requisition proceedings were not continued with reasonable despatch to enable the Court to declare that the requisition was bad or to pass an order setting aside the requisition. In fact the respondent/writ petitioner obtained an order of this Court on 10th August, 1987 requiring the appellants to maintain "the status quo of the land until further orders". In such circumstances we are unable to make any order in favour of the respondent declaring the requisition up to 31st March, 1997 bad.

32. However, in view of our findings above, the requisition of the respondent's above land has lapsed with The West Bengal Land (Requisition and Acquisition) Act 1948 with the expiry of 31st March, 1997. We hold that from 1st April, 1997, the Appellants are in wrongful possession of the respondent's above portion of the property.

33. For the above reasons, we uphold the judgment and order of the Court of first instance and dismiss the appeal with the only clarification that the liability to pay compensation for wrongful use of the respondent's property is unconditional and would not be extinguished by handing over possession by any particular day as mentioned in the trial judge's order. The respondent is at liberty to claim compensation in any forum as she may be advised, in accordance with law. Connected applications are disposed of accordingly.

34. Urgent certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Pinaki Chandra Ghose, J.

35. I agree.