
(1996) 06 CAL CK 0013
In the Calcutta High Court
Case No : F.M.A.T. No. 1507 of 1994

West Bengal Housing Board

APPELLANT

Vs

Bharwarlal Mundhra and Others

RESPONDENT

Date of Decision : 07-06-1996

Acts Referred:

West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 3, 3(1), 3(2)

Citation : (1996) 06 CAL CK 0013

Hon'ble Judges : S.N. Chakraborty, J;S.B. Sinha, J

Bench : Division Bench

Advocate : L.C Bihani, Suchandra Mukherjee and N.K. Das, for the Appellant;
N.K. Poddar, Samar Banerjee and Debasish Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—This appeal is directed against a judgment and order dated 18-04-94 passed by Ajit Kumar Sengupta, J. in C.R. No. 3210(W) of 1983 whereby and whereunder the said learned Judge allowed the writ application filed by the writ petitioner. The fact of the matter lies in a very narrow compass.

On 09-11-95 the writ petitioner/respondent No. 1 purchased the plot number 1790 under Monza Manoharpur, J.L. No. 96 in the District of Hooghly measuring about 63 acre by a registered deed of conveyance. Thereafter his name was recorded as owner of the said plot in all the relevant settlement records as well as in the record of right On. 21-12-81 the Additional District Magistrate, Hooghly, requisitioned the said land in question in purported exercise of his power u/s 3 of the West Bengal Land (Requisition) Act, 1948 (hereinafter referred to for the sake of brevity as the said Act). The said order states that the requisition was made for implementation of the Housing Project at Manoharpur. The possession of the land was taken on 07-01-82 but admittedly prior thereto no notice in terms of sub-section (2) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act. 1948 as well as Rule 2 framed thereunder was served upon him. The petitioner filed a writ petition before this Court which was marked as C.R.

No. 5252(W) of 1982, inter alia, on the ground of non-service of notice. B.C. Ray, J (as His Lordship then was) issued a Rule and passed an interim order directing that the status-quo as on date he maintained for a period of two weeks from 17th February. 1983. The said interim order was extended from time to time. By a Judgment and order dated 23-02-83 Manoj Kumar Mukherjee, J. (as His Lordship then was) directed the respondents to serve copy of the impugned notice of the requisition purportedly issued u/s 3 of the said Act upon the writ petitioner and thereafter to proceed with the proceeding in question in accordance with law.

2. The notice u/s 3(2) of the said Act was served upon the petitioner on 27-03-83 whereafter the petitioner filed another writ application on 05-04-83. Again an order of status-quo was passed by Manoj Kumar Mukherjee, J.

3. The Court Directed the State as well as the other respondents to file affidavit-in-opposition. No affidavit-in opposition was filed by the State of West Bengal or by the Collector under the said Act. One affidavit was filed by Md. Nasiruddin Khan, Assistant Housing Commissioner West Bengal, inter alia, alleging therein that the requisition was made as Housing Board has undertaken a housing scheme as "Dankuni Housing Project" for providing residential accommodation mainly for people belonging to weaker sections, middle income and low income groups. It was further stated that suitable access is to be given through the land in question relating to the various constructions required to be raised by the Housing Board for the said Housing Project. However it was stated that Durgapur Express Highway was not complete and therefore the access through the impugned plot was required to be maintained. It was the contention of the deponent that no notice was therefore required to be served upon the petitioner. An affidavit-in-reply was filed to the said affidavit-in-opposition denying and disputing the statements made therein. By order dated 12-07-88 P.K. Mukherjee, J. observed that Durgapur Express Highway was also complete. The teamed Judge however noted the contention that there was no need to requisition the impugned plot of land only for the purpose of pathway since suitable access was already available to the Housing Board through Uttarpara Kalipur Road as well as through Durgapur Highway. It was also noted that nobody had appeared on behalf of the State Government to file affidavit. The learned Trial Judge further recorded that if neither the State nor the Collector filed any affidavit, the Court would presume that there was no application of mind on behalf of the State particularly having regard to the fact that the impugned notice was issued under a non-existent Act, namely West Bengal Land (Requisition) Act, 1948. The petitioner pursuant to the leave granted by the learned Judge filed an application for amendment of writ application taking additional grounds. Two learned Advocates of this Court were appointed as Special Officer who visited the plot in question and submitted a report. It appears that N.K. Podder, Sr. Advocate and P.K. Chatterjee, Advocate, submitted their reports to this Court By reason of the impugned judgment and order dated 18-04-94 the learned Trial Judge allowed the writ petition, inter alia, on the ground that no notice was served upon the

petitioner prior to taking over the possession of the land in question as also on the ground that there has been a total non-application of mind on the part of the Collector. The learned Judge further held that the purpose for which requisition was made was not a public purpose.

4. Mr. L.C. Behani. Learned Counsel appearing en behalf of the appellant submitted that keeping in view the order passed by M.K. Mukherjee, J. dated 23-02-83 the appellant as also the Collector understood that the illegality, if any, could be cured by service of notice upon maintenance of status-quo and in that view of the matter notice was served upon the petitioner. According to the Learned Counsel keeping in view the fact that the housing project has been undertaken by the appellant in the neighbouring area, this Court should not interfere with the impugned requisition and allow the appeal. The Learned Counsel in support of his aforementioned contention has relied upon a decision in the case of Rajasthan Housing Board and Others Vs. Shri Kishan and Others, Grahak Sanstha Manch and others Vs. State of Maharashtra, and H.D. Vora Vs. State of Maharashtra and Others,

5. Mr. Poddar, Learned Counsel appearing on behalf of the respondent, on the other hand, submitted that the service of notice prior to taking of the possession of the land in question is mandatory as has been held by this Court in the case of Tarak Nath Sen vs. First Land Acquisition Collector, reported in 1983(1) CLJ 371, Bhineshar Pvt. Ltd vs. State of West Bengal & Ors. reported in 1992(2) CLJ 222 and Sandeep Kumar Bhakat & Ors. vs. State of West Bengal & Ors. reported in 1992(2) CLJ 267 . It was further urged that the Collector as well as the State were bound to disclose the materials before this Court by filing affidavit or by placing the records so as to enable it to arrive at a conclusion as to whether the Collector had applied his mind before passing the impugned order. The teamed Counsel in this connection has placed reliance on the case of Union of India and Others Vs. Rai Singh Deb Singh Bist and Another, It was further submitted that from a perusal of the notice of requisition it would be evident that the same does not sub serve the requirement of the preamble as well as Section 3(1) of the said Act.

6. In our opinion, it is not necessary to deal with all the contentions raised by the Learned Counsel for the parties, inasmuch as, this appeal can be disposed of on a short question.

7. It is not in dispute that notice upon the owner or the occupier is mandatorily required to be served before the possession of the land in question is taken. Reference in this connection may be made to the cases reported in 1993(1) CLJ 371, 1992 (1) CLJ, 222 and 1992(2) CLJ 267 as well as the recent Division Bench decision in F.M.A.T. No. 2894 of 1995 with F.M.A.T. No. 3379 of 1995 (Bengal Peerless Housing Board vs. State of West Bengal).

8. It is admitted that whereas the possession of the land in question was taken over on 07-01-82 the copy of the notice was served upon the petitioner only on

24-03-83. In that view of the matter there cannot be any doubt whatsoever that the entire proceeding was vitiated in law.

9. The submission of Mr. Bihani, Learned Counsel, to the effect that the appellant/ State proceeded on the basis of the order passed by M.K. Mukherjee, J. dated 23-02-83 cannot be accepted. In the said order the learned Judge had come to the finding that the petitioner was entitled to a notice despite the contention raised on behalf of the State that he was not so entitled. The learned Judge came to the aforementioned conclusion in view of the fact that the petitioner purchased the land in question by reason of a registered deed dated 09-11-65. Although the learned Judge directed the respondent to serve a copy of the notice of the requisition upon the petitioner, it was recorded that His Lordship had not decided any other points raised by the parties in support of their respective contentions. His Lordship also directed that status-quo in respect of the land in question be maintained. Upon service of notice, as noticed hereinbefore, the petitioner filed the writ application to question and Manoj Kumar Mukherjee, J. himself passed an interim order.

10. The contention of Mr. Bihani, Learned Counsel, to the effect that the concerned authority proceeded on the basis that service of notice of requisition would cure the defect, if any, cannot be accepted. This Court cannot pass an order contrary to or inconsistent with a statute. If service of order in terms of Section 3(2) of the said Act as well as Rule 2 framed thereunder is mandatory in nature, only because in the said order this Court directed service of notice upon the petitioner; the same, in our opinion, would not mean that the respondents were not required to serve a prior notice at all. The legal infirmity, if any, remains despite the said order. In fact Mr. Bihani, Learned Counsel, in view of the decision of this Court as referred to hereinbefore, did not and could not dispute that service of such prior notice was mandatory in nature.

11. However, as indicated hereinbefore in the said order dated 23-02-83 the lis between the parties was not finally disposed of as His Lordship clearly recorded that the point raised in the writ application and the respective contentions of the parties in support of their cases were not being decided. Thus the question which has been raised by the petitioner in the writ application remained open.

12. In the instant case, as indicated hereinbefore the State neither filed any affidavit nor produced any records. In terms of the provision of the said Act the principle of natural justice is not required to be complied with. Unlike the provision of the Land Acquisition Act, a detailed procedure including the hearing to the affected person are not contemplated under the said Act and thus the order of requisition passed by the Collector in terms of the provision of the said Act must be decided on the basis of the materials which were placed before the said authority at the time of passing of the said order. Such order, if invalid, cannot be supported either by filing additional materials or by filing affidavit. The Collector under the said Act acts as a statutory authority. He must, therefore act within the four corners of the statute or not at all.

13. Evidently he has failed to do so. The appellant although is an aggrieved person, in our opinion, cannot place material from his own record to support the order. We can accept the contentions of Mr. Bihani in view of the findings arrived at hereinbefore.

14. Before parting with the case, however, we may consider the decisions cited by Mr. Bihani, Learned Counsel. In the case of Rajasthan Housing Board and Others Vs. Shri Kishan and Others, the Apex Court held that the Government's satisfaction being subjective, when there is material upon which it could have been formed fairly, the Court would not interfere nor would it examine the materials as an appellate authority to see existence of urgency. In the instant case, as noticed hereinbefore, no material has been placed before this Court despite warning given by this Court on an occasion that unless materials are placed before this Court adverse inference shall be drawn. The said order is dated 12th July, 1988 which has been taken note by the learned Trial Judge. In the case of Grahak Sanstha Manch and others Vs. State of Maharashtra, the Supreme Court made a distinction between the words "requisition" and "acquisition" and held that whereas requisition can be made for permanent public purpose; an order of requisitioning cannot continue beyond a reasonable period. Reasonable period would depend upon the facts and circumstances of the case. The Court clearly held that continuance of requisition for a period as long as 30 years or more is unreasonable. The said decision, in our opinion, has no application to the facts of the present case.

15. In the case of H.D. Vora Vs. State of Maharashtra and Others, the Apex Court clearly held that it is not necessary that the order of requisition must explicitly set out the public purpose for which it is made but it categorically held that the only requirement of the law is that the requisitioning must be made for a public purpose and so long as there is a public purpose for which an order of requisition is made, it would be valid irrespective of whether such public purpose is recited in the order of requisition or not. The Apex Court further observed that the State Government would have to show that the order of requisition was made for a public purpose and the necessary facts; showing the public purpose for which the order of requisition was made would have to be established by the State Government to the satisfaction of the Court. The aforementioned decision of the Apex Court, therefore, instead of assisting, the appellant, militate against its contention. We may, however, note that the Supreme Court in the case of Union of India and Others Vs. Rai Singh Deb Singh Bist and Another, while considering a notice issued for reopening of assessment in terms of Section 34 of the income tax Act, 1922 held that when the income tax Officer was called upon by the assessee to produce the report made by him to the Central Board of Revenue thereon but despite the same, neither the Union of India nor the income tax Officer cared to produce the report made by the income tax Officer to the Central Board of Revenue; the Apex Court despite a plea that the records were not traceable drew an adverse inference against the department. In this case, as indicated hereinbefore, the Court in terms of its order dated 12th July, 1988

cautioned the respondent to the writ petition that such an adverse inference would be drawn. As despite the same no record has been produced, in our opinion, the learned Trial Judge has rightly drawn adverse inference against the respondents in the writ application. For the reasons aforementioned, we do not find any merits in this appeal which is accordingly dismissed.

There will be no order as to costs.

Satya Narayan Chakraborty, J.

I agree.