

Form No. J (2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present :

THE HON'BLE JUSTICE SANKAR ACHARYYA

Achyutnanda Mishra & Ors.

Vs.

The State of West Bengal & Ors.

W.P. 494 (W) of 2003

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C.A.N. 3621 of 2012

For the petitioners : Mr. Soumen Dasgupta; Sr. adv.
Mr. Sridhar Panja; adv.

For the State Respondents : Mr. Tapan Kumar Mukherjee;
Ld. Addl. G.P.
Mr. Bikash Kumar Mukherjee;
Ld. Addl. G.P.

Heard on : 04.06.2015

Judgment on : 17.06.2015

SANKAR ACHARYYA, J.

This writ application being No. 494 (W) of 2003 was initially filed by two petitioners viz. Achyutnanda Mishra and his mother Shyama Sundari Mishra with prayers including prayer (f) of the writ application an interim order to the effect of injunction restraining the respondents from constructing any building for any other purpose and/or transferring, alienating the lands in disputes to any other body and further restraining them from damaging standing jute crops of petitioners. An interim order in terms of prayer (f) was passed and subsequently extended. State respondents No. 1, 4 and 7 filed affidavit in opposition dated 28.4.2003 against the writ

application. An affidavit in reply was filed by petitioners on 7.5.2003. During pendency of the writ application the petitioners filed a contempt application being No. W.P.C.R.C. 6222 (W) of 2004 which has been dismissed as infructuous on 12.9.2012. C.A.N. 3199 of 2007 was filed for addition of party to legal representatives of petitioner No. 2 Shyama Sundari Mishra due to her death and said prayer was allowed on 22.8.2007. Since no one appeared for the petitioner on 16.7.2013 this writ application No. 494 (W) of 2003 was dismissed for default. Subsequently, petitioners filed C.A.N. 11818 of 2013 for recalling the said dismissal order and restoration of the writ application. On 4.4.2014 said C.A.N. 11818 of 2013 has been allowed and the writ application has been restored to the file. In said order dated 4.4.2014 order has been passed for hearing this W.P. No. 494 (W) of 2003 along with C.A.N. 3621 of 2012. Accordingly, both the matters have been heard in presence of learned counsels for both the parties. Be it mentioned that on 4.4.2012 the petitioners have filed C.A.N. 3621 of 2012 for passing appropriate order directing the respondents to declare award for the acquired property upon initiation of fresh proceeding under the Land Acquisition Act of 1894 and/or relinquish the excess land from acquisition and restore back the ownership of the lands measuring 29 cottahs (21000 Sq.ft.) in plot No. 353 of mouja – Garh Moyna with the petitioner No. 1 upon extinguishment of lease.

In these two litigations, matters of requisition and acquisition of 1.660 acres of land in plot Nos. 423 to 426, 353 to 355, 357 to 359 and 407 of mouja Garh Moyna under P.S. Moyna of the District East Midnapore for construction of Prajabarh – Bhagwanpur Arankiarana Public Road in connection with L.A. Case No. 117 of 1977-78 are involved. In the writ application W.P. 494 (W) of 2003 petitioners have made substantive prayers for derequisition and delivery back the possession of the land in question in their favour and/or withdrawal and cancellation of the order of acquisition of

the land in question in L.A. Case No. 117 of 1977-78 and/or denotify the lands found excess after completion of the project.

Some undisputed facts involved in these two matters as reveals from materials on record and arguments of learned counsels are mentioned hereunder:-

- (A) Land in question was requisitioned for construction of public road viz. Prajabarh – Bhagwanpur Road and Notification was published under Section 3 (1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (in short Act- II of 1948). L.A. Case No. 117 of 1977-78 was initiated for giving effect to the project by way of acquiring that land together with other lands by Public Works Roads Department.
- (B) Accordingly, possession of that land was taken by Government on 4.2.1983.
- (C) 80% ad hoc compensation for the land in question was paid to the petitioners on 30.4.1985 with assurance to pay residue at the time of final payment for such acquisition.
- (D) Construction of the road has been completed.
- (E) Some requisitioned land was not utilised for construction of that road.
- (F) Notice under Section 4 (1a) of the Act- II was published acquiring the requisitioned 20.915 acres land including the entire land in question of these two cases in the Calcutta Gazette on 24.5.1996.
- (G) Out of the land in question unused 21000 Sq.ft. land of disputed plot No. 353 has been given under occupation of petitioner No. 1 against payment since 1997.

Petitioners have raised controversy regarding validity of the notice under Section 4 (1a) a of The West Bengal Land (Requisition and acquisition) Act 1948 (in short Act- II of 1948) published in connection with the land in question of these matters. According to

learned senior Advocate for the petitioners said notice has lost its life when Act- II of 1948 came to an end on expiry of 31.3.1997 by operation of law. He has drawn my attention to Section 7 A of Act- II of 1948 which was introduced in the Act by way of Amendment by West Bengal Act XXV of 1996 with effect from 1.4.1994 wherein a mandate on the collector had been imposed for making an award under Sub-Section 2 of Section 7 within a period of three years from the date of publication of the notice in the official gazette under Sub-Section (1a) of Section 4 with an alarm that if such award is not made within the period as aforesaid the said notice shall lapse. He has submitted that such a notice was published on 24.5.1996 and before expiry of three years the Act- II of 1948 came to an end with effect from 31.3.1997 and consequently, said notice was lapsed. He has further argued that without issuing notice afresh, acquisition, if any, in respect of the land in question cannot have any legal value because such award is based on lapsed notice. In course of his arguments learned senior counsel for the petitioners cited two rulings reported in **AIR 2013 Calcutta 1** the case of **Mandadori Bhakat Smt. Vs. The State of West Bengal** and **AIR 2012 Calcutta 47 State of West Bengal Vs. Sabita Mandal**.

Learned senior counsel for the petitioners have also claimed that since the notice under Section 4 (1a) of the Act- II of 1948 becomes lapsed, the land in question of these two matters may be released from requisition under Section 6 of that Act. He has further submitted that at least the unutilised land of the requisitioned land may be derequisitioned lawfully and the title of the petitioners to that property is to be acknowledged. On the other hand, learned Additional G.P. for the state has argued that Act- II of 1948 was a temporary enactment and it was given life by extension time to time but not beyond 31.3.1997. He has drawn my attention to the mother enactment Land Acquisition Act 1894 in which West Bengal Amendment Act 1997 has been incorporated. He has drawn my attention to the provisions of Section 9 (3A) and Section 9 (3B) of the Land Acquisition Act 1894 (West Bengal State Amendment). He

has also submitted that the land in question was duly requisitioned and 80% ad hoc compensation was paid to the petitioners after taking possession over that land for the public purpose of construction of road. He has also argued that the notice under Section 4 (1a) of Act- II of 1948 was duly published on 24.5.1996 acquiring 20.915 acres land including the plots of land in question of the present two matters. After such acquisition of requisitioned property under Act- II of 1948, the said Act was not extended beyond 31.3.1997 but legal provisions for disposal of such matters and settlement of matters relating to compensation, State Amendment has been introduced in Land Acquisition Act (in short Act- I of 1894). His further arguments is that since the Act- II of 1948 came to an end before expiry of three years from the date of publication of notice under Section 4 (1a) and Act- II of 1948 , the clog of Section 7 A cannot affect the validity of the said notice under Section 4 (1a) of Act- II of 1948 in view of the provisions 9 (3B) of the Land Acquisition Act 1894 (West Bengal Amendment). He has also argued that the ratio of the cited cases of this Hon'ble Court cannot be applied in the instant matters. He has distinguished the reported cases submitting that in the instant case, during the valid period of notice under Section 4 (1a) of Act- II of 1948, West Bengal Amendment in Land Acquisition Act was introduced inserting the provisions of Section 9 (3A) and Section 9 (3B) of the Land Acquisition Act 1894. Further arguments advanced on behalf of the state respondent is that subsequent to such acquisition under Section 4 (1a) of Act- II of 1948, award has been prepared by the collector but not published in connection with the lands in question of the instant matters although compensation money has been kept in abeyance awaiting decision of this Hon'ble Court.

On going through the decision of the Full Bench of this High Court in ***State of West Bengal Vs. Sabita Mandal*** reported in ***2012 Calcutta 47*** it appears to me a thorough discussion on the relevant questions of law relating to requisition and acquisition in the light of the provisions of West Bengal Land (Requisition and Acquisition)

Act and its Amendment Act of 1996 and also the Land Acquisition (West Bengal Amendment) Act 1997 has been made. Said discussion is very much helpful for deciding these two matters. Said decision was also relied upon by a Division Bench of this High Court in ***Mandodori Bhakat Smt. Vs. State of West Bengal*** reported in ***AIR 2013 Calcutta 1*** has been relied on. In the cases discussed in those two rulings notice under Section 4 (1a) were issued prior to March 31, 1992 but no award was passed before 31.3.1995. Consequently, said notices were treated as lapsed in view of the provisions of Section 7A of the Act- II of 1948. In the instant case, notice under Section 4 (1a) of Act- II of 1948 was published on 24.5.1996. As such had there been valied life of the said Act by way of extension beyond 31.3.1997 the notice under Section 4 (1a) would remain valid till 23.5.1999 even for declaring award lawfully. Peculiarity in this case is that before 23.5.1999 West Bengal Land (Acquisition and Requisition) Act 1948 has come to its end as the said temporary Act was not further extended beyond 31.3.1997. Such a situation has been discussed in paragraph 19 in the case of ***AIR 2012 Calcutta 47*** **“Thus, the effect of the Land Acquisition (West Bengal Amendment) Act 1997 which came into operation on the midnight between March 31, 1997 and April 1, 1997 prevented all those notices under Sub-Section (1a) of Section 4 issued after April 1, 1994 from being lapsed by giving scope of revival by way of a notice under Sub-Section (3B) of Section 9 of the said Act if award had not been passed within three years from the date of publication of such notice and which would otherwise lapse if the said Act of 1997 would not come into operation at the midnight of March 31, 1997”**. Said observation of the Full Bench of this High Court is very much relevant and applicable in the instant matters. Said matter has been made more clear in paragraph 20 of that judgment (***AIR 2012 Calcutta 47***).

Following the aforesaid Full Bench decision I have no hesitation to hold and, therefore, I hold that in the instant matters the notice

dated 24.5.1996 under Section 4 (1a) of West Bengal Act- II of 1948 was not affected by Section 7A of that Act rather it was protected from its lapse by introduction of Land Acquisition (West Bengal Amendment) Act 1997 in this way. In these matters under my consideration the subject matter is distinguishable from the cases decided by the Hon'ble Full Bench and Hon'ble Division Bench of this High Court in **AIR 2012 Calcutta 47** and **AIR 2013 Calcutta 1**.

In my view, as soon as the notice under Section 4 (1a) of Act- II of 1948 was published the land in question was vested in the State free from all encumbrances with effect from 24.5.1996. It is the settled law that property once vested cannot be divested without due operation of law. Since the property in question has been vested lawfully in the State, there cannot be any question of derequisition under Section 6 of the West Bengal Act- II of 1948 in view of end of Act- II of 1948 and amendment (State) of Act- I of 1894 as claimed by the petitioners. In respect of the land in question or portion thereof as claimed by the petitioners, I like to reiterate that notice dated 24.5.1996 under Section 4 (1a) of the Act- II of 1948 was not lapsed rather revived under Sub-Section (3B) of Section 9 of the Land Acquisition (West Bengal Amendment) Act 1997. Under Section 9 (3B) of the Land Acquisition Act (vide West Bengal Amendment 1997) the date of reference in the instant matters as per first proviso is 24.5.1996 which is the date of publication of notice under Sub-Section (1a) of Section 4 of the West Bengal land Acquisition Act- II of 1948. In the premises, according to law the collector is placed under obligation under the second proviso of the said Section 9 (3B) of the Land Acquisition (West Bengal Amendment) Act 1997 to make an award under Section 11 in respect of the land in question only for the purpose of payment of due compensation to the persons interested in connection with the land in question of these matters. It is significant to note that the state respondent has filed some Xerox copies of the proceedings relating to final awards in connection with

the acquired land, awards in respect of the acquired property including the land in question of the instant matters and payment of compensation made to persons interested in connection with undisputed properties. Learned counsel for the state respondent has claimed that award has been prepared by the collector in connection with the lands in question of the instant matters but the award has not been passed and payment has not been made due to pendency of this case.

In the instant matters the petitioners have claimed that Executive Engineer P.W.D. has leased out 21,000 sq.ft. land out of the requisitioned land in question of this case in favour of petitioner No. 1 against his payment of Rs.4200. In support of their contention petitioners have annexed P- 1 to their writ application. In my view, said claim of the petitioners cannot be termed as lease, rather, from the said documents it may be said that it is purely a licence (vide page 30 of the writ petition). By such licence no claim of right and title to the property in question has been vested on petitioner No. 1 after vesting property in the State free from all encumbrances. Considering all the above aspects and considering the facts that the State respondent has prepared the award for payment of compensation to the persons interested in connection with the land in question of these matters under Section 11 of the Land Acquisition Act which appears to me as lawful in the circumstances of publication of notice under Section 4 (1a) of Act- II of 1948 on 24.5.1996 and non-extension of Act- II of 1948 after 31.3.1997 and introduction of Section 9 (3B) in the Land Acquisition Act 1894 by West Bengal Amendment Act of 1997. As a result, I find and hold that these C.A.N. 3621 of 2012 and W.P. 494 (W) of 2003 are liable to be dismissed but considering the facts and circumstances I am not inclined to make any order as to costs. In my view, it will be justified for the ends of justice for the state respondent to make payment of balance compensation and interest thereon in accordance with law to the persons interested with the land in question at present within two months hereof.

Accordingly, both these two W.P. 494 (W) of 2003 and C.A.N. 3621 of 2012 are dismissed without any order as to costs. The state respondent is to publish the award in connection with the lands in question and make payment of compensation with interest in accordance with law within two months hereof, failing which, on expiry of two months from this date, the state respondent will be liable to pay one per centum more interest on the awarded sum with effect from 24.5.1996 till the date of payment and will be at liberty to recover the said excess amount from the person liable for causing further delay.

Let urgent Xerox plain copy of this judgment and order duly counter-signed by the Assistant Registrar (Court) be supplied to the learned Advocates of the respective parties on usual undertaking to apply for certified copy of the same.

Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SANKAR ACHARYYA, J.)