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**(1997) 04 CAL CK 0002**

**Calcutta High Court**

**Case No:** C.R. No. 9063 (W) of 1983

Rekharani Maitra and  
Others

APPELLANT

Vs

Additional District  
Magistrate and Others

RESPONDENT

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**Date of Decision:** April 10, 1997

**Hon'ble Judges:** Basudeva Panigrahi, J

**Bench:** Single Bench

**Advocate:** M.K. Manna and Ramapati Roy, for the Appellant; A.K. Chatterjee and K.M. Chakraborty for CMDA, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Basudeva Panigrahi, J.

This writ petition is directed against the order for acquisition of the petitioner's lands as mentioned in Schedule "A" to this petition issued by Opposite Party nos. 1 and 2. The writ petitioners are the owner, of the land described in Schedule "A" attached to the writ petition who have been residing in the houses situated on the land. They purchased the lands from different owners and after the purchase they had duly applied for a mutation of their respective names in the rent-roll kept and maintained by the opposite party/State and accordingly their names have been mutated. After mutation, they have been paying rent as evidence of their occupation. The copy of the said mutation certificate and the rent receipt are annexed to the writ petitioner as Annexure "B".

2. It is, inter alia, stated that some of the writ petitioners had received the notices issued by the L.A. Collector, South 24 Parganas informing them that the opposite party- State would take possession under the Act II of the Estate Acquisition Act, 1948. It is the further case of the petitioners that on 26.3.83 the respondents through their agents had threatened the petitioners that they would take possession of the lands covered under the writ. Therefore, they had filed the instant writ application for issuance of writ of mandamus directing the opposite party that they cannot/should not take possession of the property

mentioned in Schedule "A" as the requisition/acquisition is invalid, unlawful and whimsical. It is, further stated that the petitioners had not received notices of acquisition and/or requisition of the said land and structure and, therefore, it was beyond their knowledge that the opposite parties were intending to acquire such property. Since the purpose of acquisition of land is vague, indefinite, mala fide and motivated, the land could not have been acquired by the State. The respondents and its officer should not have resorted to the provisions of Act II of 1948 since the provisions of West Bengal Land (Requisition and Acquisition Act) are no longer necessary and applicable. It is further stated that since the provisions of original Act II of 1948 were no longer in force, those could not have been revalidated by subsequent Amendment. Therefore, the action of the state Government for requisition/acquisition of the land is motivated, unlawful and invalid.

3. Respondents/Opposite Party nos. 1 and 2 filed their affidavit-in-opposition through the land acquisition Kanungo attached to office of the Collector and District Magistrate, South 24 Parganas. It is, inter alia, stated that the provisions of Act II of 1948 continues to be in force, as from time to time the said provisions has been extended. The land was acquired for public "Utility" or Public Purpose" which rests upon the maxim "Solus Populi est Suprema Lex" which would otherwise mean the "welfare of the people" is paramount consideration. Public necessity is greater than private and therefore to subserve such public interest, the individual inconvenience if any, shall have to be sacrificed. The purpose of land acquisition has been stated by the respondent nos. 1 and 2 was for the project popularly known as "East Calcutta Area Developed Project which has been sponsored by the World Bank and intended to be completed by a time bound programme and under that scheme an area of approximately 500 acres adjacent, to Eastern Metropolitan Bypass and Rash Behari Avenue Connector has been proposed to be developed into a new township with all infrastructural and community services mainly for the benefit of the economically weaker-section of the society and to create better living condition to the area by way of developing the land, providing roads, underground, sewerage, electricity, drainage etc.

4. It is further reiterated that the area proposed to be developed was a shallow, low-land and marshy area without any road, drain or sewerage facility. It was therefore, essential to develop the area contiguous to the city of Calcutta with a view to removing the congestion of the city and to save it from further unhygienic environment.

5. In the affidavit, it has been further stated that the authorities have already taken vacant possession and subsequently such possession has been delivered to the "Calcutta Metropolitan Development Authority". Since the above mentioned institution is purely social welfare organisation therefore, the petitioner cannot claim the action of the State and its officers to be discriminatory, mala fide and arbitrary.

6. Respondent No. 3 through its Deputy Secretary Acquisition, Calcutta Metropolitan Development Authority (in short CMDA) filed an affidavit-in-opposition stating that the land mentioned in the schedule "A" to the writ petition was legally acquired and the

possession of the same was delivered to the Metropolitan Development Authority by the Land Acquisition Collector on 15.5.78, 11.9.79, 17.9.79 and 3.4.80. Prior to the said acquisition of the land, the notices were served upon the land owners and thereafter, it was acquired by the opposite party nos. 1 and 2. Had any individual owner any objection as regards acquisition, he ought to have made protest against such action before the authority. The owners had observed total silence for such a long time which would raise a reasonable inference that they had no objection to the said acquisition.

7. The opposite parties base filed their supplementary affidavit by stating that they could not attach the notification along with writ application. It has been further stated in the notification that the land in question was necessary for maintaining the essential to life of the community and for providing proper facilities like establishment of Commercial and Industrial Estate and for raising better living condition in rural, urban areas by construction or reconstruction of dwelling places for people. But it has been claimed by the petitioners that the "CMDA" has created small plots for selling the same to various persons for which lottery was conducted. The land proposed to be acquired has been used other than the purpose for which it was sought to be acquired.

8. Mr. Manna, the learned advocate appearing for the petitioners has strongly urged that since there was no notice u/s 3 of the Act II of 1948, the entire proceeding initiated under the Act must be held to be invalid. It is further urged that since the preamble of the said Act is for the purpose of requisition and speedy acquisition of land, the authorities could not deprive the owners without strict compliance of the provisions of this Act, and any deviation therefrom would vitiate the entire proceeding.

9. Mrs. Hansi Ghosh Sinha had appeared for the State but she did not participate in the hearing which continued on 4 or 5 occasions. But when the matter was closed and was reserved for judgement, Mrs. Ghosh had requested for recalling the order and further give her an opportunity of hearing. Accordingly, the case was reopened. Thereafter, again, when the case was called she however, could not appear in Court and the matter was again closed. The State Government as well as the CMDA were directed to produce the entire record relating to the acquisition of the land. Despite several opportunities they significantly failed to produce the case record.

10. It is true that for requisition and speedy acquisition of land the primary object of the Act and the individual notice would be required to be served upon the owner, the purpose of this Act will be otiose. This is why the acquisition of the land under the West Bengal Act can only be made on the basis of requisition made by the other Authority.

11. The very fact that the principles of natural justice is not required to be complied with, such requisition must be resorted to in the manner in which the requisition and acquisition has been made. Special circumstances must be shown that the provision of this Act has been strictly complied with. In case of any deviation from the requirement of law shall render the entire proceeding invalid. Had the principles of natural justice been applicable

prior to issuance of notice under the Act, it could have been possible for the concerned person to show that such requisition is unnecessary or impossible in law.

12. Mr. Manna's contention that the authorities failed to serve individual notice before such acquisition is bound to be spurned inasmuch as such contention was subject to scrutiny by a Division Bench of this Court reported in 1996 (4) ICC, 161 in the case of Bengal Peerless Housing Development Co. Ltd. vs. Bijendra Prasad Gupta.

13. In the instant case. Mr. A.K. Chatterjee, the learned senior advocate appearing for the CMDA, has invited my attention to the averment of the writ petition. In the writ petition paragraph 5 the petitioners have stated that some of the petitioners had received notice issued by L.A., Collector. South 24 Parganas. Therefore, in this background, the non-receipt of notice as complained by Mr. Manna, however, cannot be accepted. I notice another striking feature in this case that the petitioners in their supplementary affidavit have annexed the copy of the notice served upon. Some of them which would reveal that CMDA would take possession on different dates. Therefore, it further strengthened the contention of the respondents that there was valid notice issued u/s 3 of the provision of Act II of 1948 prior to acquisition of such land.

14. The preamble of the Act runs as follows :

Whereas it is expedient to provide for requisition and speedy acquisition of land for the purpose.....

It is, therefore, manifest that the above legislation was enacted with a view to make speedy acquisition of land by requisitioning the property so that possession can be taken before complying with the other provisions of Act. In the instant case, from the affidavit-in-opposition, it is revealed that the land intended to be acquired for development of a new township with all infrastructural and community services mainly for the benefit of the economic weaker sections of the society and to create a better living condition in the area by way of developing the land by providing roads, underground sewerage, electricity, drainage etc thereon.

15. In the supplementary affidavit, it has been indicated that the scheme was published in the Economic Times, Calcutta on August 2nd 1986 wherein it was indicated that the plots acquired were divided which shall be distributed interms of the lottery. The scheme also further indicated that the plots will be given to the different persons i.e. the medium income group and higher income group and a few plots to economic backward sections and lower income group. It was published in the Gazette on 29th November 1983 that the lands have been requisitioned for the public purposes for creation of better living condition in rural and urban area by construction and reconstruction of dwelling places and for the purposes communication therewith incidental thereto as also for establishment of Commercial and Industrial Estate. On a reading of the brochure issued by CMDA and also the notification published in the gazette, different purposes have been

narrated for such acquisition. Though I asked the Learned Counsel appearing for the State for producing the entire file that it could be determined for what purpose the lands was sought to be requisitioned. The notification u/s 3 of the Act was published on 29th November, 1983. It appears from the affidavit-in-opposition filed by the respondent No. 4 that the possession has been taken on 15.5.75, 11.9.79, 17.09.79 and 3.4.80. I am at a loss to understand as to how the CMDA took possession of those plots prior to the notification issued in the gazette which was published in the year November, 1983.

16. In the case of [Indian Metals and Ferro Alloys Ltd. and Another Vs. State of West Bengal and Others](#), the Division Bench of this Court held that there on the face of the records two different stands for the purposes of requisition are taken, there could not be any definite stand taken for the purpose of which it was sought to be requisitioned. In the light of the above principle, if the instant facts are examined it appears that the purpose of acquisition was only for a better living condition in the area by way of developing land by building and rebuilding and providing roads, underground sewerage, electricity, drainage etc. thereon. But in the brochure, some schemes were evolved exposing it to lotteries. Therefore, two different purposes were set-out by the State Government and CMDA.

17. In the case of Sandip Bhakat vs. State of West Bengal, reported in (1992) CLJ, 267 it has been held :

The alleged requirement was permanent in nature. The authorities concerned ought to have proceeded under the Land Acquisition Act, 1894. The provision of the 1948 Act had been enacted for the purpose of requisition and speedy acquisition for certain specified purposes. There was no need for any haste in the present case. Since a specific law existed for acquisition namely the 1894 Act the State Government could not travel beyond the scope of the 1948 Act and acquire property which could have been acquired 1894 Act.

If the land is required for public purpose it could be acquired under the provision of land acquisition Act which is general law for the acquisition of the property but when there is a special law which prescribes the circumstances and the purposes for which summary procedure for requisition and acquisition of the property could be made, the same should be strictly construed and the property cannot be acquired under the provisions of the said Act which is a special statute enacted for a special purpose and that the authorities concerned could not travel beyond the purpose specific in the statute.

18. It is pertinent to note that the notice was issued in the year 1980 by stating therein that the property was requisitioned for creation of better living conditions in rural or urban areas by construction and reconstruction of dwelling places for people residing in such area. It appears at the first blush that the authorities had not applied their mind as to for which purpose the land was sought to be acquired. Since, it is stated in the notice that for better living condition in rural or urban area by construction or reconstruction or the same was acquired for dwelling places for the people residing in such area. The purported

public purposes evidently has been given a go-by when it was transferred to CMDA. I am not required to examine the validity of purpose mentioned in the brouchers as to whether it was for public purposes or not Therefore, in the aforesaid circumstances, I am constrained to hold that neither the opposite party nos. 1 and 2 nor the opposite party nos. 3 and 4 could validly acquire the land by initiating proceeding under the Provisions of Act II of 1948. I must make it clear that the State is not precluded from taking further steps in acquiring the property if it is otherwise required for public purpose by initiating appropriate proceeding under any other law for the time being in force and after complying the provisions of that Act. My findings are further strengthened from the observation of a Division Bench of this Court reported in 1996 (4) ICC 161 :

However, before us a different copy of the said Brouchure has been produced by Mr. Samanta. In the said Brouchure which has been handed over to us, four types of housing complex are contemplated Type Code A provides for 3 bed rooms, 1 living-cum-dining room, kitchen, 2 toilets and car parking space, measuring about 1283 sq. ft. the price whereof is Rs. 8,85,000/- per flat. Type Code 8 provides for 3 bed rooms 1 living-cum-dining room kitchen, 2 toilets and car parking space, measuring 1234 sq. ft. price whereof is Rs. 8,50,000.00. So far as Code C is concerned it provides for 2 bed rooms, 1 living-cum-dining room, kitchen, 2 toilets and car parking space, measuring 840 Sq. ft. and price depend upon the accommodation allotted in different floors ranging from Rs. 4,35,00.00 to Rs. 4,80,000.00. However, in the brouchure which has been annexed with the stay petition, only type Codes D and E have been mentioned providing for 2 bed rooms, 1 living-cum-dining room with kitchen, bath and W.C. measuring 636 sq.ft. price whereof is Rs. 3,20,000.00 to 1,10,000.00 and type Codes E provides for 1 bed room, 1 living-cum-dining room with 1 kitchen and toilet having 325 sq.ft. price where of ranges from 1,10,000.00 and 1,17,000.00. It, therefore, cannot be said that such a housing complex which would serve the purpose of the rich men would require invocation of the provision of the said Act, by passing the provision of the Land Acquisition Act. Evidently even there was no emergency as is evident from the sequence of events.

It is pertinent to note that in the notice dated 22nd July, 1994 the property was requisitioned allegedly for creation of better living conditions in rural or urban areas by construction or reconstruction of dwelling places for people residing in such area, namely, for construction of Housing Complex. Apart from the fact that the notice ex facie depicts non-application of mind on the part of the authorities, inasmuch as, he was not sure as to whether such requisition was made for creation of better living condition in rural area or urban area by construction or reconstruction or the same was acquired for dwelling places for the people residing in such areas, namely for construction of housing complex. The purported public purpose evidently has been given a complete go-by when it was transferred to the Housing Board on 8.12.94 whereafter a Joint Sector Company was incorporated and the housing complex was sought to be put up for rich persons. We are not concerned as to whether the purpose mentioned in the brouchures of the Bengal Peerless would be public purpose or not. We may however take into consideration the

contention of Mr. Gupta, Learned Counsel, to the effect that on 1-1-95 the foundation stone of the project Anupama was laid by the Hon"ble the Chief Minister, Government of West Bengal in presence of Smt. Sheila Kaul, the then Minister of Urban Development, Government of India. Our attention in this connection has been drawn to pages 85, 86, 88 and 90 of the stay application for the purpose of showing that a wide publication had been given thereto. Mr. Gupta contended that the petitioner was not in actual possession of the land in question. The submission of Mr. Gupta cannot be accepted for more than one reason apart from the fact that the notices were not issued in the name of the petitioners. So far as the publication in the newspaper in respect of the inauguration by the Hon"ble Chief Minister is concerned, therein the plot numbers have not been mentioned and thus by reason of such publication the petitioner cannot be said to have any direct or constructive notice. In any event as the said notice does not satisfy the requirement of law, the same has no application to the facts and circumstances of this case. Therefore, in the above backdrop of the case, I allow the writ petition directing to quash the notice and subsequent possession taken by the Opposite Parties 1 to 4 under Schedule "A" attached to writ petition, but in the circumstances without cost.