
AIR 2011 Cal 222

Calcutta High Court

Case No: APO No. 75 of 2009 in Writ Petition No. 1796 of 1998

Al Haz Amir Hasan
Properties Pvt. Ltd. and
Others

APPELLANT

Vs

The Land Acquisition
Collector and Others

RESPONDENT

Date of Decision: June 17, 2011

Acts Referred:

Land Acquisition Act, 1894 " Section 4(1), 5A, 6, 6(1), 6(2)#West Bengal Premises
Requisition and Control (Temporary Provisions) Act, 1947 " Section 10B

Citation: AIR 2011 Cal 222

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Ashoke Kumar Dasadhikary, J

Bench: Division Bench

Advocate: Anindya Mitra and R.N. Dutta, for the Appellant;L.C. Bihani, S. Ganguly, for the
Respondent

Final Decision: Allowed

Judgement

Pranab Kumar Chattopadhyay, J.

The Appellants herein filed a writ petition challenging the acquisition proceedings initiated
in relation to

the premises No. 30E,Chowringhee Road, Calcutta. The said writ petition was dismissed
by the judgment and order dated 4th February 2009

passed by a learned Judge of this Court.

2. Assailing the said judgment and order passed by the learned Single Judge instant
appeal has been preferred at the instance of the writ

Petitioners.

3. The brief facts necessary for dealing with the controversies involved in this appeal are stated hereinafter:

4. Al Haj Hasan Properties Private Limited, the writ Petitioners/Appellants are the owners of Premises No. 30, Chowringhee Road, Kolkata,

which is known as " Chowringhee Mansion" situated at corner of Park Street, Chowringhee Road and Kyd Street. Rajasthali Emporium,

Respondent No. 4, by virtue of an order of requisition dated 11th June 1973 issued under the West Bengal Premises Requisition and Control

(Temporary Provisions) Act, 1947, has been occupying a room in the ground floor of the said premises. In the order of requisition, the room

requisitioned is described as No. 30E, Chowringhee Road, Calcutta.

5. Although the Rajasthali Emporium is occupying the shop room measuring about 2100 Sq. Ft. (approx.), the writ Petitioners never received any

amount of rent compensation since the date of requisition, namely 11th June 1973.

6. During the subsistence of the order of requisition, the State Government issued a notice dated 5th June, 1998 u/s 4(1) of the Land Acquisition

Act, 1894 (for short, ""LA Act"") for acquisition of the said 30E, Chowringhee Road for the purpose of permanent accommodation of Rajasthali

Emporium.

7. Al Haj Amir Hasan Properties Private Limited filed the writ petition being W.P. No. 1796 of 1998 challenging the said notice dated 5th June

1998 issued u/s 4(1) of the LA Act on various grounds.

8. On 31st August 1998, an order was passed by a learned Judge of this Court granting liberty to the writ Petitioners to file objection u/s 5A of the

L.A. Act. The relevant extracts from the aforesaid order passed by the learned Single Judge are set out hereunder:

The writ Petitioner would be at liberty to file objection in pursuance of the impugned notice being Ext. M. This filing of objection would be without

prejudice to the rights and contentions of the writ Petitioner.

Needless to mention that the objection if any, filed u/s 5A of the Act by the writ Petitioner shall be dealt with in accordance with law.

In the meantime, the Land Acquisition Collector Calcutta, Calcutta will be at liberty to proceed in the matter but no final decision should be given

effect to without the leave of the Court.

9. The LA Collector heard and rejected the objection u/s 5A and made specific observation in his order dated 12th November, 1998 to the

following effect:

So, I think, there is no bar to acquire the premises No. 30E, Chowringhee Road and declaration u/s 6 may be published with the leave of the

Hon"ble High Court.

10. Neither the State Government nor Rajasthali Emporium applied before the High Court for obtaining the leave.

11. The learned Single Judge by the judgment and order dated 4th, February 2009 dismissed the writ petition on merits.

12. Thereafter, the writ Petitioners preferred the instant appeal on 20th March, 2009 assailing the aforesaid judgment and order passed by the

learned Single Judge. On 21st April, 2009 directions were given by the Division Bench for preparation and filing of informal paper books and no

interim order was, however, passed by the said Division Bench.

13. It has been submitted on behalf of the Appellants that there was no interim order whatsoever since 4th February 2009. The proceedings to be

initiated in pursuance of the notification issued u/s 4(1) of LA Act was not stayed by any order of the Court and the State Government was free to

issue declaration u/s 6 of LA Act.

14. It has been submitted on behalf of the Appellants that the period of one year from 4th February 2009 expired on 4th February 2010 and no

declaration u/s 6 of LA Act was issued. In fact, no declaration u/s 6 of LA Act has yet been issued. More than 12 years have already passed since

the date of issuance of the notice u/s 4(1) of LA Act.

15. Mr. Anindya Mitra, learned Senior Counsel representing the Appellants submitted that no declaration u/s 6 of the LA Act has yet been issued.

Mr. Mitra specifically submitted that the notice u/s 4(1) of LA Act was issued on 5th June 1998 and a period of more than 12 years have already passed but no declaration u/s 6 of LA Act has been issued.

16. Mr. Mitra further submitted that the State Government and also the Respondent No. 4 herein did not avail of the opportunity given by the order dated 31st August, 1998 by making an application before the Single Bench for obtaining the leave to proceed u/s 6 of the LA Act.

17. Mr. Mitra, however, submitted that self created bar was imposed by the State Government as well as the Respondent No. 4 as the aforesaid

Respondents in order to remove the bar did not pray before the learned Single Judge for leave to proceed u/s 6 of the LA Act after rejection of the objection u/s 5A of the LA Act.

18. Mr. Mitra specifically urged before this Court that the aforesaid Respondent did not make any effort to seek leave of the learned Single Judge.

According to Mr. Mitra had the application been made for seeking leave of the learned Single Judge for proceeding u/s 6 of the LA Act and had

the same been rejected, then an argument could have been advanced that the order dated 31st August, 1998 was a bar for further proceeding u/s 6 of the LA Act.

19. Mr. Mitra submitted that the Respondents herein cannot take advantage of their own deliberate act of omission. Mr. Mitra however submitted

that after dismissal of the writ petition on 4th February, 2009 there was no stay of the proceedings to be taken u/s 6 of the LA Act. There is also

no dispute that more than 2 years have already passed from the date of dismissal of the writ petition i.e. from 4th February, 2009.

20. Mr. Mitra further submitted that in view of the bar imposed by Clause (ii) of the proviso to Section 6(1) of the LA Act 1894 no declaration u/s

6 in respect of the land can be issued after the expiry of one year from the date of publication of notification u/s 4(1) of the LA Act. The aforesaid

Clause (ii) of the proviso to Section 6(1) of the Act reads as under:

6. Provided that no declaration in respect of any particular land covered by a notification u/s 4 Sub-section (1) XXX

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1894, shall be made after expiry of one year from the date of

the publication of the notification:

21. Referring to the aforesaid Clause (ii) of proviso to Section 6(1) of the LA Act. Mr. Mitra submitted that the land acquisition proceedings

initiated in the present case pursuant to the issuance of the notification u/s 4(1) of the LA Act stood lapsed for non-publication of the declaration

u/s 6 of the LA Act within the prescribed time limit.

22. Therefore, the important issue which has now been raised before us for consideration is whether the land acquisition proceedings in the instant

case stood lapsed due to non-publication of the declaration u/s 6 of the LA Act within the prescribed time limit of 1 year from the date of issuance

of notification u/s 4(1) of the LA Act.

23. Mr. L. C. Bihani, learned Senior Counsel representing the Respondent No. 4 however submitted that the acquisition proceedings in the instant

case could not be lapsed due to the interim order passed by a learned Judge of this Court on 12th December, 2007 in a separate writ petition filed

by the Respondent No. 4 herein being WP No. 26951W of 2007. In the aforesaid writ petition the Respondent No. 4 challenged the notice dated

7th December, 2007 whereby the said Respondent No. 4 was directed by the State Government to hand over the vacant possession of the

premises occupied by the Respondent No. 4. The said notice dated 7th December, 2007 is set out hereunder:

Government of West Bengal

Office of The First Land Acquisition Collector, Kolkata

5, Bankshall Street, Kolkata-700 001.

Memo No. -

Date 7.12.2007

To

The Incharge,

Rajasthali,

M/S Rajasthan Handicraft Emporium,

(Rajasthan Small Industries Corporation Ltd.)

30E, Chowringhee Road,

Kolkata- 700 016.

Sub:

De- requisition of Premises No. 30E, Chowringhee Road

Kolkata- 700 016.

Whereas the above premises No. 30E, Chowringhee Road, Calcutta has been de-requisitioned u/s 10B of the West Bengal Premises Requisition

and Control Act, 1947.

Now, he is requested to hand over vacant possession of the premises in question including the portion under his occupation on 12.12.2007 at 1.00

p.m. to this office Surveyor/ Valuer Shri J.P. Saraswati and P.K. Mondal when they will attend the spot and will act on my behalf immediately

since you have failed to obtain leave of Hon"ble High Court for initiating further land Acquisition proceeding in respect of the premises within the

time granted by the government in L & L.R. Department and since the government in L & L.R. Department is unable to continue the possession of

the premises unlawfully.

Land Acquisition Collector, Kolkata.

24. The learned Single Judge passed an interim order in the aforesaid writ petition being WP No. 26951 (W)/07 on 12th December, 2007

restraining the Respondents from giving any effect or further effect to the aforesaid impugned notice dated 7th December, 2007. Relevant extracts

from the aforesaid order dated 12th December, 2007 are set out hereunder:

Having regard to the urgency pleaded in the writ petition, requirement of Rule 26 of the Writ Rules relating to service of copy of the writ petition on

the Respondents is dispensed with.

Having regard to the fact that the Petitioner has been called upon to vacate possession of the premises in question including the portion under its

occupation on 12.12.2007 at 1.00 p.m. by the impugned order dated 7.12.2007, this Court is of the considered prima facie view that unless some

interim protection is granted the Petitioner shall suffer irreparable loss.

In view thereof there shall be an interim order in terms of prayer (d) to the writ petition till one week after reopening of Court after the Christmas

vacation or until further orders whichever is earlier.

25. The aforesaid interim order was subsequently extended and the same is still subsisting and valid.

26. Mr. Bihani learned Senior Counsel of the Respondent No. 4 submitted that the writ petition filed by the Appellants herein and order impugned

in the writ petition filed by the Respondent No. 4 arise out of the same acquisition proceedings. Mr. Bihani therefore, submitted that the stay of the

notice of handing over possession, in effect, means the stay of the parent acquisition proceedings and, as such, the period of 1 year, as envisaged

u/s 6 of the Act of 1894, has not yet lapsed since the said interim order of stay is still continuing.

27. Referring to explanation (1) to the proviso to Section 6(1) of the Act. Mr. Bihani submitted that the period during which any action or

proceeding to be taken in pursuance of the notification issued u/s 4(1) is stayed by an order of a Court, shall be excluded.

28. Mr. Bihani further submitted that the steps taken by the Respondent authorities by issuing the notice to the Respondent No. 4 with a direction

to hand over the occupied portion of the premises in question were in pursuance of the notice issued u/s 4(1) LA Act, 1894. Since the said

direction has been stayed by this Court by the order dated 12th December, 2007 passed in WP No. 26951(W) of 2007 filed by the Respondent

No. 4 herein and the said stay order is still continuing, it cannot be said that the acquisition proceedings in the instant case have already lapsed due

to non-publication of the declaration u/s 6 of the LA Act within the prescribed time limit.

29. Mr. Bihani referred to and relied on the following decisions of the Supreme Court in support of his aforesaid arguments:

(i) Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others,

(ii) Venkataswamappa Vs. Special Deputy Commissioner (Revenue),

30. The learned Counsel representing the State Respondents also submitted before this Court that the prescribed limitation period for the

declaration u/s 6(2) of the LA Act has not yet expired.

31. However, no convincing argument was advanced on behalf of the State Respondents before us.

32. It is not in dispute that an interim order was passed by the learned Single Judge on 31st August, 1998 restraining the Land Acquisition

Collector from giving effect to any final decision without the leave of the Court. The aforesaid restriction therefore saved the limitation till the date

of final disposal of the writ petition i.e. on 4th February, 2009.

33. The learned Single Judge by the order dated 31st August, 1998 undoubtedly gave liberty to the Land Acquisition Collector Calcutta to

proceed in relation to the acquisition proceedings but at the same time specifically restrained the said Land Acquisition Collector from giving any

effect to the final decision without obtaining the leave of the Court. Therefore, the aforesaid interim order dated 31st August, 1998 operated as

stay of the action required to be taken for publication of the declaration u/s 6 of the LA Act. The learned Single Judge, in our opinion, has rightly

construed the aforesaid interim order as stay of the proceedings for acquisition on the basis of the notification issued u/s 4(1) of the LA Act since

the competent authority namely, the Land Acquisition Collector was not granted freehand to proceed with the acquisition proceedings in view of

the aforesaid interim order dated 31st August, 1998.

34. The competent authority however, could apply before the learned Single Judge for obtaining necessary leave in order to give effect to the final

decision but it cannot be said that as a matter of course such leave would have been granted by the Court. We, therefore, cannot ignore the fact

that the Land Acquisition Collector was specifically restrained by the aforesaid interim order dated 31st August, 1998 from giving effect to the final

decision in relation to the acquisition proceedings which was initiated pursuant to the notice issued u/s 4(1) of the LA Act.

35. For the aforementioned reasons, we have no hesitation to hold that in view of the interim order passed on 31st August, 1998 by the learned

Single Judge there was a specific bar for making any declaration u/s 6 of the LA Act till the final disposal of the writ petition i.e. on 4th February,

2009 when the said interim order merged with the final order of dismissal of the writ petition.

36. Now, we will have to consider whether the acquisition proceedings in the instant case had lapsed for not making the declaration u/s 6 of the

LA Act after final disposal of the writ petition on 4th February, 2009 when there was admittedly no interim order of stay passed by the Appellate

Court while entertaining the stay application filed in connection with the appeal preferred by the Appellant herein.

37. Undisputedly more than 2 years have already elapsed from 4th February, 2009 and no declaration has yet been made by the Land Acquisition

Collector u/s 6 of the LA Act in respect of the property in question although the proviso (ii) to Section 6(1) of the LA Act mandates that no

declaration in respect of any land covered by notification u/s 4(1) of the LA Act shall be made after expiry of one year from the date of publication

of the notification.

38. Supreme Court while construing the proviso (ii) appended to Section 6(1) of the Land Acquisition Act in various decisions have specifically

held to the following effect:

(i) The said proviso is mandatory in nature.

(ii) It is for the benefit of the owner of land and such statutory benefit cannot be taken away by a purported construction of an order of court.

(iii) Compensation will be as on the date of notification u/s 4 of LA Act. In our case valuation as in 1998.

39. Mr. Mitra, learned Senior Counsel of the Appellants placed reliance on the following decisions of the Supreme Court in support of his

arguments:

1) Ashok Kumar and Others Vs. State of Haryana and Another,

2) Vijay Narayan Thatte and Others Vs. State of Maharashtra and Others, & 22.

3) Oxford English School v. Government of Tamil Nadu and Ors. reported in AIR 1995 SCC 2398 Paragraphs 6,7 & 9. 4) State of West Bengal

and Ors. v. Asiatic Investment Limited and Ors. reported in (2009) 4 CHN 276 Paragraphs 3,4,5,6,8,17,40,41,49,50 & 51.

40. Mr. Bihani learned Senior Counsel of the Respondent No. 4 specifically urged before this Court that the period covered by the stay order

granted by the learned Single Judge in WP No. 26951 (W) of 2007 should be excluded while computing the period prescribed for making the

declaration u/s 6 of the LA Act.

41. Mr. Bihani further submitted that the acquisition proceedings in the present case could not be lapsed since the stay order granted by the

learned Single Judge on 12th December, 2007 in the writ petition being WP No. 26951 (W) of 2007 filed by the Respondent No. 4 herein has

not yet expired and the period covered by the aforesaid stay order has to be excluded while computing the period mentioned in proviso (ii) to

Section 6(1) of the LA Act.

42. Mr. Bihani submitted that the learned Single Judge by the interim order of stay dated 12th December, 2007 restrained the authorities from

dispossessing the Respondent No. 4 from the property in question and therefore the entire period covered by the stay order i.e. on 12th

December, 2007 till today should be excluded and the limitation of 1 year in terms of Proviso (ii) to Section 6(1) of the LA Act would start only

after vacating the aforesaid interim order of Stay.

43. Mr. Bihani submitted that the period of operation of the stay has to be excluded in view of the clear pronouncements of the Supreme Court in

the case of Sangappa Gurulingappa Sajjan (Supra) and Venkataswamappa (Supra).

44. The relevant extracts from the judgment of Sangappa Gurulingappa Sajjan are set out hereunder:

In other words, the period occupied by the order of stay made by a court shall be excluded. Admittedly, pending writ petition on both the

occasions the High Court granted "" stay of dispossession"". Admittedly, the validity or tenability of the notification issued and published u/s 4(1) is

subject of adjudication before the High Court. Till the writ petitions are disposed of or the appeals following its heels, the stay of dispossession was

in operation. Though there is no specific direction prohibiting the publication of the declaration u/s 6, no useful purpose would be served by

publishing Section 6(1) declaration pending adjudication of the legality of Section 4(1) notification. If any action is taken to pre-empt the

proceedings, it would be stigmatized either as "" undue haste"" or action to ""overreach the court"s judicial process"".

45. The relevant extracts from the other decisions cited by Mr. Bihani in the case of Venkataswamappa (Supra) are set out hereunder:

It is then contended that since the limitation period of one year from the date of the publication u/s 4(1) had elapsed and the stay granted by the

High Court or this Court was only of dispossession of the Appellants from the lands, the notification u/s 4(1) now stands lapsed by Explanation 1

to proviso to Section 6(1). We find no force in the contention. It is seen that the writ petition came to be filed in March 1989 in the same month in

which the substance of the publication of the notification u/s 4(1) was made and the proceedings were pending before the learned Single Judge, the

Division Bench and in this Court. Under these circumstances, the entire time taken from the date of the filing of the writ petition till the date of the

receipt of this Court stands excluded and the limitation of one year would start thereafter only.

46. Referring to the aforesaid decisions Mr. Bihani very strongly urged before this Court that the period during which the order of dispossession

was stayed by the High Court should be excluded while computing the period mentioned in proviso (ii) to Section 6(1) of the LA Act.

47. Mr. Anindya Mitra, learned Senior Counsel of the Appellants however submitted that in the present case the interim order of stay of

dispossession was granted by the learned Single Judge in favour of the beneficiary. Therefore, the period covered by the aforesaid interim order of

stay cannot be taken into consideration while computing the period mentioned in proviso (ii) to Section 6(1) of the LA Act.

48. There is no dispute that the Respondent No. 4 namely Rajasthali Emporium is in possession of the premises of question by virtue of the order

of requisition dated 11th June, 1973. By the order dated 7th December, 2007 the said Rajasthali Emporium was directed to hand over the vacant

possession of the premises in question. The said Respondent No. 4 filed a writ petition being WP No. 26951W/07 and on 12th December 2007 a

learned Judge of this Court passed an interim order in the said writ petition staying the aforesaid notice dated 7th December, 2007 whereby the

said Respondent No. 4 was directed to hand over the vacant possession of the premises in question.

49. In the present case, the acquisition proceedings was initiated by issuing the notification u/s 4(1) of the LA Act in order to take away the

ownership right of the Appellants in respect of the premises in question so that the Respondent No. 4 can get the permanent right of possession

after acquisition of the ownership of the property by the State under LA Act. There is no dispute that the Respondent No. 4 is the beneficiary and

the said beneficiary is in actual possession of the premises in question. In the instant case the acquisition proceeding was initiated by issuing

notification u/s 4(1) of the LA Act for the purpose of permanent accommodation of Rajasthali Emporium and the same has also been specifically

mentioned in the aforesaid notice issued u/s 4(1) of the LA Act.

50. The specific time limit has been prescribed for publication of the declaration u/s 6 of the LA Act after publication of the notification u/s 4(1) so

that the owner of the land may not suffer any prejudice due to the pendency of the acquisition proceedings for an indefinite period after issuance of

the notification u/s 4(1) of the LA Act. The amount of compensation in respect of the land in question is determined on assessing the value of the

land on the date of issuance of the notification under 4(1) of the LA Act and not on the date of passing of the award. Therefore, in order to

complete the acquisition proceedings at an early date after issuance of the notification u/s 4(1) of the LA Act Specific time limit has been

prescribed and mentioned in proviso (ii) to Section 6(1) of the LA Act.

51. The period covered by any litigation initiated at the instance of the land owner has to be excluded while computing the time limit for publication

of the declaration u/s 6 of the LA Act as otherwise any land owner will initiate legal proceedings and consume the prescribed time limit in order to

frustrate any acquisition proceeding which cannot be permitted. If the declaration u/s 6 of the LA cannot be published within the prescribed time

limit on account of any stay order granted by any Court of law at the instance of the land owner then the said land owner cannot turn around and

complain that the competent authority has failed to publish the declaration within the prescribed time limit although the land owner is responsible for

expiry of the prescribed time limit by initiating legal proceeding.

52. For the aforementioned reasons, specific provision has been made in the Land Acquisition Act excluding the period during which no action

could be taken pursuant to the notification u/s 4(1) of the LA Act due to any order of stay passed by the court of law. In the case of

Venkataswamappa (Supra) Hon"ble Supreme Court specifically observed that the period of pendency of the proceedings when the stay of the

dispossession was continuing should be excluded. There is no dispute that the aforesaid order of stay was granted by the concerned High Court at

the instance of the land owners and therefore the Hon"ble Supreme Court directed exclusion of the period during which the stay order was in

operation from the prescribed period of limitation and further directed that the limitation of one year would start only after the receipt of the order

passed by the Hon"ble Supreme Court.

53. In the case of Sangappa Gurulingapaa Sajjan (Supra), Supreme Court also held that the period occupied by the order of stay made by a Court

shall be excluded. It is also not in dispute that the stay order was granted by the High Court at the instance of the land owner. Therefore, by the

aforesaid decisions, Supreme Court did not allow the land owner to take any advantage by consuming time in the litigation and specifically held that

the period during which the order of dispossession granted by the High Court operated, should be excluded in computation of the limitation period.

In the present case there was no order of dispossession of the owner and the beneficiary namely Rajasthali Emporium was admittedly in

possession of the property in question.

54. Furthermore, if the acquisition proceeding is lapsed then also the Respondent No. 4 is not required to vacate the premises in question as the

interim order granted by the learned Single Judge on 12th December, 2007 will protect the right of the Respondent No. 4 to retain the possession

of property in question till the disposal of the writ petition being W.P. No. 26951 (W) of 2007.

55. The interim order granted by the learned Single Judge on 12 December, 2007 in the writ petition being W.P. No. 26951 (W) of 2007 filed at

the instance of the Respondent No. 4, therefore, could not and did not prevent the LA Collector from proceeding with the land acquisition

proceedings and publish the declaration u/s 6 of the LA Act after final disposal of the writ petition non 4th February, 2009. The limitation period of

1 year started immediately after disposal of the writ petition by the learned Single Judge on 4th February, 2009 since the appeal court did not grant

any order of stay.

56. For the aforementioned reasons, no declaration can be published today u/s 6 of the LA Act in view of the proviso (ii) of the LA Act.

Therefore, the entire acquisition proceedings initiated in the present case pursuant to the notification issued u/s 4(1) of the LA Act on 5th June

1998 stood lapsed due to non-publication of the declaration u/s 6 of the LA Act within the prescribed time limit.

57. In the result, this appeal stands allowed with the above observations.

58. In the facts of the present case, there will be no order as to costs.

59. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual

undertaking.

Ashoke Kumar Dasadhikari, J.

60. I agree