

(2010) 08 CAL CK 0100

Calcutta High Court

Case No: Writ Petition No. 18579 of 2009

Basudeb Naskar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Aug. 17, 2010

Acts Referred:

- Land Acquisition Act, 1894 - Section 11A, 16, 4, 5, 5A
- West Bengal Land (Requisition and Acquisition) Act, 1948 - Section 1, 3, 3(1), 4, 4(1)

Citation: (2011) 2 CHN 318

Hon'ble Judges: Indira Banerjee, J

Bench: Single Bench

Advocate: Saugata Bhattacharyya, Swapan Kumar Kar, for the Appellant; K.N. Nabi for the State., for the Respondent

Judgement

1. In this writ petition, the Petitioner has sought orders directing the Respondents to forthwith initiate and complete land acquisition proceedings and release compensation to the Petitioner in respect of land described more fully in paragraph 2 of the petition, which has been under the occupation of the State Government since 1982.

2. Notices were issued u/s 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948, requisitioning the land. Mr. Nabi, appearing on behalf of the State Respondents, submits that notice u/s 4(1a) was issued on 5th October, 1989, whereby the said land was acquired. The said Act expired by efflux of time on 31st March, 1997.

3. The State Legislature, however, amended the Land Acquisition Act, 1894 as applicable in the State of West Bengal by incorporation of Sections 9(3A) and 9(3B), which are set out hereinbelow for convenience:

(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 referred to in this section as the said Act), as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting 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 (4a) 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 (1a) 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 where such land has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances.

4. The following proviso was added to Section 11A of the Land Acquisition Act, 1894:

Provided further that in respect of the acquisition of the land referred to in Sub-section (3A) and Sub-section (3B) of Section 9, the award shall be made within a period of two years from the date of the issue of the public notice u/s 9.

5. Mr. Nabi, appearing on behalf of the State-Respondents, submits that notice having been issued u/s 4(1a) of the Act of 1948 on 5th October, 1989, the land in question vested in the State of West Bengal on and from that date. There being notice u/s 4(1a). Section 9(3B) of the Land Acquisition Act would be attracted.

6. The Collector might serve notice u/s 9(3B) of the Land Acquisition Act, 1894 to all persons known or believed to be interested in the land of which possession has

been taken on requisition u/s 3 of the Act and notice for acquisition of such land has also been published under Sub-section (1a) of Section 4 of the said Act and in every such case, the provisions of Sections 4, 5, 5A, 6, 7, 8 and 16 of the Land Acquisition Act, 1894 shall be deemed to have been complied with. Mr. Nabi points out that in view of the first proviso to Section 9(3B), the date of publication of notice under Sub-section (1a) of Section 4 of the Land Acquisition Act, 1894 is to be the date of reference for the purpose of determining the value of such land.

7. In a case where possession of land has already been taken on requisition u/s 3 of the West Bengal Land (Requisition and Acquisition.) Act, 1948, but there is no notice of acquisition u/s 4(1a) of the 1948 Act, notice might be issued u/s 3A and the provisions of Sub-section (1) of Section 4, Section 5, Section 5A, Section 6, Section 7 and Section 8 of the Land Acquisition Act, 1894 shall be deemed to have been complied with. The date of notice u/s 9(3A) is to be the date of reference for the purpose of determining the value of such land under this Act.

8. It is not in dispute that the State has taken possession of the land in 1982. It is also not in dispute that the acquisition proceedings are liable to be completed and compensation paid to the Petitioner. The issue is whether notice is required to be given u/s 3A, as contended by Mr. Bhattacharyya, appearing for the Petitioner or u/s 38, as contended by Mr. Nabi, appearing on behalf of the State-Respondents. If notice were given u/s 9(3A) of the Land Acquisition Act, 1894, the date of reference for determination of the value of the land would be the date of that notice. If notice were given u/s 9(3B), the date of reference would be the date of the notice u/s 4(1a) of the 1948 Act, that is, 5th October, 1989.

9. It is true, as argued by Mr. Nabi, that where notice u/s 4(1a) of the 1948 Act has been issued, further notice might be issued u/s 3B of the said Act and the date of publication of the notice u/s 3B would be the date of reference for the purpose of determining the value of such land. However, for attraction of Section 9(3B), the notice u/s 4(1a) has to be a valid notice. Where the notice u/s 4(1a) has lapsed, the effect is that there is no notice in the eye of law as on the date of enforcement of the amended provisions of Sub-sections (3A) and (3B) of Section 9 of the Land Acquisition Act.

10. As pointed out by Mr. Bhattacharyya, appearing on behalf of the Petitioner, the State Legislature enacted the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996 to amend the West Bengal Land (Requisition and Acquisition) Act, 1948 as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977 incorporating Section 7A, which is set out here in below for convenience:

7A. Award by Collector.-- The Collector shall make 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 (hereinafter referred to as

the said notice), and if such award is not made within the period as aforesaid, the said notice shall lapse:

Provided that in a case where the said notice has been published more than two years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, (West Bengal Act 14 of 1994), the award shall be made within a period of one year from the date of commencement of that Act.

Explanation.--In computing the period of three years or one year as the case may be, under this section, the period during which any action or proceedings to be taken in pursuance of the said notice is stayed by an order of a Court having jurisdiction, shall be excluded."

11. As provided in the Amendment Act of 1996 itself, the Amendment Act is to be deemed to have come into force on the first day of April, 1994. With the enforcement of the 1996 Act, notices under Sub-section (1a) of Section 4 of the 1948 Act lapsed in cases where the award had not been published within three years from the dates of publication of the notices in the Official Gazette. In view of the first proviso to Section 7A, where a notice u/s 4(1a) had been published more than two years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 (West Bengal Act 14 of 1994), the notice would lapse unless the award were made within a period of one year from the date of commencement of that Act.

12. Admittedly, the notice u/s 4(1a) of the 1948 Act was issued in October, 1989, that is, over two years before commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act of 1994. The award had to be made within a period of one year from the date of commencement of that Act. Mr. Bhattacharyya has drawn my attention to Memorandum No. 6456(19)-LA/3M-13/88III dated Calcutta, the 16th October, 1996 issued to all Collectors by the Government of West Bengal, Land and Land Reforms Department, Land Acquisition Branch clarifying that by virtue of incorporation of Section 7A in the principal Act by the Amendment Act of 1996, notices published under Sub-section (1a) of Section 4 of the 1948 Act on or before 31st March, 1992 had lapsed, where awards had not been made by 31st March, 1995. To salvage lapsed cases, the Collectors were requested to immediately publish notice afresh under Sub-section (1a) of Section 4 of the 1948 Act and to complete the entire process by declaring the award latest by 31st March, 1997. It is absolutely clear that it was the intention of the Legislature that notices published before 31st March, 1992, should lapse unless awards had been made by 31st March, 1997. In such cases, fresh notice under Sub-section (1a) of Section 4 would have to be issued.

13. No further notice was issued u/s 4(1a). The 1948 Act expired by efflux of time on 31st March, 1997. There could be no question of issuance of any notice u/s 4(1a) after the 1948 Act lapsed. Recourse would now have to be taken under the Land Acquisition Act, 1894, as amended by the Land Acquisition (West Bengal

Amendment) Act, 1997. Notice u/s 4(1a) having lapsed long ago, notice would now have to be issued u/s 9(3A) of the Land Acquisition Act and the date of notice u/s 9(3A) would have to be deemed to be the date of reference for determining the value of the land.

14. Having regard to the fact that the State-Respondents have been in possession of the land since 1982, the Respondents are directed to take immediate steps to complete the acquisition by immediate issuance of notice u/s 9(3A) of the Land Acquisition Act, 1894, as amended by the Land Acquisition (West Bengal Amendment) Act, 1997. The acquisition proceedings shall be completed expeditiously and the award shall be made and published within six months from date.

15. The writ application is disposed of.