

(2001) 02 CAL CK 0046**Calcutta High Court****Case No:** Writ Petition No's. 11615 (W) and 11616 (w) of 1998

Calcutta Metropolitan
Development Authority

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT**Date of Decision:** Feb. 7, 2001**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 41, 50, 54
- West Bengal Land (Requisition and Acquisition) Act, 1948 - Section 3, 4, 4(2)

Citation: AIR 2001 Cal 117 : 105 CWN 1015**Hon'ble Judges:** K.J. Sengupta, J**Bench:** Single Bench**Advocate:** S. Gupta and P.S. Basue, for the Appellant; Amar Nath Banerjee, Saktinath Mukherjee, Sadananda Ganguly, Santimoy Panda, Bhaskar Ghosh, Deba Prasad Mukherjee, Soumen Dasgupta, Monoranjan Basu, Subrata Kumar Dutt and Latika Ghosh, for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

K.J. Sengupta, J.

Both the aforesaid two writ petitions have been taken out by Calcutta Metropolitan Development Authority challenging two Awards dated 26th June, 1996 passed in LRA Case No. 541 of 1993 (v) dated 26th June, 1996 in LRA Case No. 487 of 1993 (v).

2. In both the petitions grounds for challenge are identically same and so the same are heard together in order to decide the same by a common Judgment.
3. The case of the petitioner can be put in a narrow compass.

4. For the benefit of CMDA the plots of land were acquired by the State Government under provision of West Bengal Land Requisition and Acquisition Act 1948 (hereinafter referred to as 1948 Act) which provides amongst other for speedy acquisition of land. The CMDA being requiring body was not served with any notice by the Collector for reference to Court, nor by the Reference Court itself. It is incumbent upon the reference Court to issue notice of the reference case upon the petitioner as "an interested person" within the meaning of the 1948 Act.

5. Mr. Samarjit Gupta, learned Senior advocate, appearing for the writ petitioner contends that it was the duty of the learned District Judge being the Reference Court to serve notice upon the CMDA at whose instance the plots of land in question have been acquired. But no notice was served. Consequently amounts of compensation have been enhanced without affording any opportunity of being heard to the petitioner, had the notice been served the petitioner in both the cases could have produced materials to show that there was no warrant to enhance the amount of compensation. Actually there was no material before the reference Court to determine the market value of the lands in question @ Rs. 10,000/- per cottah.

6. He contends though the State Government failed to challenge the aforesaid decree and order of the reference Court on separate appeals as the same become barred by limitation, still It is open for the CMDA to initiate collateral proceeding by the instant petition to challenge the decree passed by reference Court.

7. He submits though CMDA did not prefer any appeal still its right to challenge the decree is not forbidden under Article 226 of the Constitution of India. He contends by virtue of Sub-section (2) of Section 8 of 1948 Act provisions of Section 19 to 22 of Act-I of 1984 are applicable. Section 20 Clause (b) of Act-I of 1894 makes incumbent upon the Reference Court to serve notice upon the petitioner being the "person Interested" in the objection. So, the petitioner was entitled to be served with notice. Admittedly no notice was served so entire action of Reference Court enhancing amount of compensation is vitiated as being null and void. In support of his contention he relies on Supreme Court decisions reported in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., and Krishi Upaj Mandi Samiti Vs. Ashok Singhal and others .

8. Following the aforesaid decisions of Supreme Court a learned Single Judge of this Court has held in a case reported in (1996) 1 Cal. LJ 355 amongst other that as no notice was served upon C.I.T. being the local authority and person interested, the award was without jurisdiction.

9. Further contention of Mr. Gupta is that since the petitioner paid considerable amount for compensation of the acquisition of the said land and to bear entire expenditure for the said land and to bear entire expenditure for the said acquisition, but the petitioner ought to have been impleaded as party in the impugned reference proceeding. In support of this plea he relies on the following decisions :--

(1968)1 SCR 362 : Sunder Lal Vs. Paramsukhdas, , Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead) by LR"s., , U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., and M/s. Neyveli Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyveli and others, .

10. Mr. Amar Nath Banerjee and Mr. Saktinath Mukherjee, learned Senior Advocates while opposing this application submit that this application is thoroughly misconceived. They submit that this land was initially requisitioned under 1948 Act following procedure u/s 3 thereof and thereafter this Instant land was acquired under the aforesaid 1948 Act. Unlike 1894 Act the acquisition proceeding under this Act is done absolutely at the instance and for the benefit of the State. Under the provision of the Act 1894 through the Instrumentality of the State, acquisition of land is possible for and on behalf of the company, Local body and in that case service of notice at the time of determination of compensation of the land in question, upon the person at whose instance the land is acquired is necessary. But in this case no such situation is contemplated as the land is acquired under the provision of 1948 Act. Even assuming the petitioner has right to object the petitioner waived its right of objection inasmuch as the Civil Appellate Court has already made decree of the Reference Court, final as appeal sought to be preferred by the State was not entertained by dismissing application under S. 5 of Limitation Act, 1963.

11. The CMDA had full knowledge about the aforesaid proceedings and it could have come within the period of limitation in a separate appeal as a third party before this Court. In spite of having full knowledge of the pendency of the previous appeal of the State Government and about the decree and or order of reference court the CMDA sat tight over the matter and in fact stood by. By this act and conduct the CMDA has waived its right. As on today the determination of the market price had reached its finality. When such situation is prevailing the order which has been passed cannot be reopened in view of the Supreme Court decision cited by Mr. Gupta.

12. The other State respondents adopt the argument of Mr. Mukherjee. Therefore, Mr. Mukherjee submits the writ petition is liable to be dismissed.

13. I have heard the arguments of the learned Advocates and considered the materials. In these two cases the short point is that the writ petitioner claiming to be the requiring body for acquisition of land was to be served with notice by the Collector or the reference Court in the matter of determination of compensation in the context of acquisition of land under the Land Requisition and Acquisition Act, 1948; if so, whether the entire exercise of the reference court determining compensation is vitiated by non-service of notice or not.

14. In order to decide the first issue I will have to address first the locus of the CMDA vis-a-vis right of objection in this case of acquisition of land. Admittedly the land was first requisitioned and thereafter it was acquired under Sections 3 and 4 respectively

of the Land Acquisition Act, 1948 (hereinafter referred to as the said Act). Though admittedly under the provisions of CMDA Act the land could be acquired by the Government enforcing provision of Act-I of 1894 as CMDA is a local authority within the meaning of the Act-I of 1894. Though there is no dispute that the requirement of the CMDA is always for the public purpose. I find there is basic difference of acquisition of land under the 1948 Act and under the Land Acquisition Act, 1894. Any person interested in land sought to be acquired, has right of objection u/s 5A of Act-I of 1894. u/s 3 of the 1948 Act the requisition of land followed by acquisition u/s 4 of the aforesaid Act the owner has no such right to object under the statute.

15. Under the Act 1894 I find there are provisions for acquiring of the land by the State enforcing the machinery of the aforesaid Act on behalf of companies and in some cases on behalf of local authority and this is recognised by the provision of 1894 Act itself. But in 1948 Act there is no such provision. Under this law State Government is the only requiring authority and the land really vests in the State Government upon acquisition and there is no further provision under this statute to transfer to the real requiring body and/or authority, unlike under provision of Section 41 of the Act 1894. This position is clear from Sub-section (2) of Section 4 of 1948 Act which is quoted hereunder :

"4. Acquisition of land.-(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the (State) Government free from all incumbrances and the period of requisition of such land shall end."

16. In this case the writ petitioners claim they are the real requiring body and/or authority and deposited money with the State Government who on its behalf has acquired the land. This requirement of the writ petitioner in acquisition of the land under the 1948 Act cannot be equated with the requirement of the local body or authority or company under the provision of 1894 Act simply because 1948 Act does not envisage acquisition of land on behalf of any authority or company excepting State. In my view in the event any local body for public purposes wants to acquire any land through the machinery of 1948 Act then they cannot have any say as regard the determination of compensation unlike the provisions of Section 50 of the Land Acquisition Act, 1894. In this case had the writ petitioner asked the Government to acquire the land under the aforesaid Act then this requiring body would have some right under the aforesaid Act of 1894. The Supreme Court decision reported in M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyvely and others, on which much reliance has been placed by Mr. Gupta has decided in the context of the provision of Section 50(2) of the Land Acquisition Act, 1894. It was a case where the local body, viz., U. P. Abash Bikash Parishad sought to acquire the land under the special Act itself through the machinery of 1894 Act. So it was held under the provision of Section 50(2) the requiring body has some say and is entitled to receive notice from the Collector and naturally from the reference

Court. The Supreme Court in that case has explained the scope and purview of Section 50 of the aforesaid 1894 Act. If the provision of Section 50 of the Act 1894 is read carefully then the pronouncement of the Supreme Court would be clear to anyone that it has only recognised the requiring body's right of having received notice under the statute itself. So I quote Section 50 of 1894 Act.

"S. 50. Acquisition of land at cost of a local authority or Company. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the costs of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or of such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation.

Provided that no such local authority or Company shall be entitled to demand reference u/s 18."

17. The law laid down by the Supreme Court in that case cannot be disputed nor I am doing so but I am not applying the same in this case, inasmuch as, the petitioner being the local authority did not seek to acquire the land enforcing the provisions of the Land Acquisition Act, 1894 as a local authority. Nothing has been placed before me to show that how the petitioner CMDA sought help of Government for acquisition of the land. If the Government has decided to acquire the land under the 1948 Act then CMDA cannot complain. If there be any grievance then it should be dispute between CMDA and the State Government. It is true that there are advantages and disadvantages for acquiring the land in both the Acts. As I have already observed that the petitioner would have say had the land been acquired under the Act 1894 as regard determination of compensation either by the Collector or by the Court. Section 50 of the said Act strictly confines to the cases where the lands are sought to be acquired enforcing the provision of the aforesaid 1894 Act and application of the aforesaid Section is not extended to any other Act unless of course it is adopted by other Act.

18. I find u/s 7 & 8 of the 1948 Act adopted the provisions of Section 23, 31 to 33 of the 1894 Act as a methodology for determination of compensation and apportionment and distribution thereof to the person interested, and further for reference to the court has adopted Section 19 to 22 and 25 to 28 of 1894 Act for resolving the dispute in case of any objection to the amount of compensation so determined by the Collector.

19. Mr. Gupta, however, contends that his client is entitled to be served with the notice as a person interested as mentioned in Section 18 of the Land Acquisition Act, 1894 as well as in view of the Supreme Court decision and a decision of a learned single Judge of this Court. I am of the view that person interested should be

construed, in this case, in the context of the definition made in 1948 Act not in the context of the definition of the Act 1894. The Supreme Court decision was rendered as I have already said in the context of the provision of Land Acquisition Act, 1894 since the land was sought to be acquired through the machinery of 1894 Act.

20. I am of the opinion as rightly said by Mr. Banerjee and Mr, Mukherjee that in this case the only interested person is the State of West Bengal and none else, and the State of West Bengal was admittedly served with a notice and challenged the decree unsuccessfully. So it has reached its finality. There is nothing impropriety or illegality in the procedure. Therefore, I am unable to accept the argument of Mr. Gupta that petitioner is an interested person or is entitled to be served with notice. The decision of the learned single Judge of this Court reported in (1998) 1 Cal. LJ 355 was rendered in the context of the Acquisition of Land under Calcutta Improvement Act by the Calcutta Improvement Trust who sought to enforce the machinery of land Act 1894 and it was not a case of acquisition of land under 1948 Act. Moreover the aforesaid decision relied on the Supreme Court decision (Supra) and both the cases are distinguishable in this case.

21. The other decisions of this Court, viz. 1982 CLJ 19, (1992)1 Cal.LJ 205, (1979)1 Cal.LJ 212 and the Supreme Court decision reported in AIR 1980 SC 118 are absolutely irrelevant in this case. In those cases the issues was whether the very requisition and acquisition of land was valid or not and in that context the aforesaid decisions were rendered and respective laws were laid down. In this case needless to mention the validity and legality of the requisition followed by acquisition are not the issue. Therefore, I do not apply the aforesaid decision.

22. Next the decision of the Supreme Court reported in AIR 1981 SC 1893 has sought to be relied on by Mr. Gupta on the point that in case of difference of opinion between myself and Justice Kundu I should refer this matter to larger Bench is wholly misplaced here. Mr. Gupta perhaps anticipated that 1 had taken a different view from that of Justice Kundu. So, he relied on the aforesaid decision. I do not entertain nor I dare entertain the different views adopted by Justice Kundu but the views expressed by Justice Kundu is inapplicable here. So the aforesaid judgment on the point of precedent is not applicable at all.

23. Moreover, I find the petitioner is guilty of laches if not acquiescence as in spite of having received notice the petitioner did not challenge the decree passed by the reference court before this Court. It was open for the petitioner to challenge the decree as being a third party with the leave of the Court and all these questions including non service of notice could have been ventilated before the Civil Appellate Court in appellate jurisdiction. The petitioner stood by and stared at the development and progress on the appeal preferred by the Government and that resulted in unsuccessful. Having found the misadventure of the State of West Bengal belatedly the petitioner has taken a chance by filing this writ petition. The indolent litigant, may be a statutory body, cannot be given any premium for its own

laches and negligence. It is true that the statutory body and the Government always function through human agencies having no personal interest but then negligence and laches of the persons who are manning these bodies cannot jeopardize the interest of the adversary litigant in whose favour valuable right has been accrued.

24. Therefore, this writ petition is dismissed. All interim orders stand vacated.

25. There will be no order as to costs.

26. Since the writ petition has been dismissed so the money which has already been deposited in terms of the order of this Court shall be handed over to the learned advocate on record of the private respondents within a period of one week from date who shall hold the same and the private respondents would be at liberty to make appropriate application for disbursement.

27. The operation of the judgment and order shall remain stayed for a period of seven days from date, as prayed for.

28. Let xerox certified copy of this order be given to the learned lawyers for the parties on urgent basis, if applied for.