

Vs. Land Acquisition Collector and Others... Respond

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Court : Kolkata

Decided On : Jan-16-2017

Judge : C. S. Karnan

Respondent : Land Acquisition Collector and Others... Respond

Judgement :

IN THE HIGH COURT AT CALCUTTA CONSTITUTIONAL WRIT JURISDICTION
Original side **** Present: The Honble Justice Chinnasamy Swaminathan Karnan
G.A.No.2443 of 2016 WP No.1042 of 2000 WP No.1045 of 2000 W.P. No.3003 of
2000 Punalur Paper Mills Limited and another Petitioners Versus Land Acquisition
Collector and others For the petitioner Respondents : Mr. Shaktinath Mukherjee,
Sr. Advocate Mr. ShyamalSarkar, Sr. Advocate Mr. Deepak Kr. Jain, Advocate For
the respondent nos.1 to 4 : Mr. SadanandaGanguly, Ld. Additional Govt. Pleader,
Mr. S. N. Biswasfor State. For the respondent no.5 : Mr. Ashok Kr. Banerjee, Sr.
Advocate, Mr. Sanjay Saha, Advocate. The Honble JUSTICE C.S. KARNAN Date
:

16. h January, 2017 This writ petitions have been filed under Article 226 of the
Constitution of India assailing the requisition and impugned notification dated 10th
August,1999 and published in the Calcutta dated 4th August, 2000 Gazette on 5th
August, 2000 and the declaration under Section 6 dated 10th August, 2000. The
factual matrix of the case is that the 1st petitioner is the owner of the land and
building situated at No.13, Nellie SengupataSarani, Calcutta. The said building
consists basement, ground floor and 9 upper floors. The 2nd petitioner is a

shareholder and a director of the 1st petitioners company. The 2nd floor of the building measuring 7000 Sq. Ft. was requisitioned under the West Bengal Premises Requisition and Control (Temporary Provision) Act 1947. The said premise was occupied by the 5th respondent herein namely West Bengal Mineral Development and Trading Corporation who is in possession from 16th August 1973. The period of requisition is limited to 25 years. The said period had expired on 16.08.1998. The said property is located in the prime area of Kolkata town which is classified as a commercial area. In the course of the proceeding the Respondents have raised preliminary objection as to maintainability of the writ petition by filing supplementary affidavit and also by the requiring authority Respondent No 5 by filing G.A.No.2443 of 2016. The preliminary objection as to maintainability of the writ petition is taken up first. The learned counsels for the Respondents in their arguments have raised the following common preliminary objections.

1. One Kunal Dalmia, the petitioner No.2, who has affirmed the writ petition was not authorized to do so inasmuch as no affidavit of competency was filed and no board resolution was disclosed in spite of point being taken in the supplementary affidavit by State and in the application being G.A.No.2443 of 2016 by the requiring body. The respondents relied upon an unreported judgment dated 12.02.2015.

2. Kunal Dalmia, the petitioner No.2 sold his shares in the petitioner No.1 in the year 2010 and also ceased to be a director of the petitioner No.1.

3. The Honble Bombay High Court had appointed receiver from 1986 till 2010 against the petitioner No.1 in an application filed by ICICI Bank and no leave of the Honble Bombay High Court was taken before filing the present writ petitions, which are not maintainable.

4. The petitioner No.1 was and still is under BIFR and hence, the writ petitions are not maintainable. The learned Senior Advocate for the writ petitioners submitted that the preliminary objections raised by the respondents are frivolous to avoid hearing on merits. Further submitted that the Affidavit-of-Competency was filed, which is on record. A true copy of the extract of the resolution of the Board of

Directors of the petitioner No.1 dated March 22, 2000 was annexed to the Affidavit-in-Reply affirmed on June 8, 2016. The objections are contrary to records disclosed. On scrutiny of the records, I find that the Affidavit-ofCompetency is on record and the true copy of the Board Resolution is also on record. From the records, I also find that submissions made by State that Mr. KunalDalmia executed a power of attorney in favor of Mr. Ranoj Roy Chowdhury and none of the director of Petitioner Company authorized Mr. Ranoj Roy Choudhury is not correct. I find that the board of directors vide its board resolution dated 19.10.2011 authorised one Mr. T. K. Sundaresan, whole time director of the petitioner no.1 company to execute power of attorney in favor of Mr. Ranoj Roy Choudhury. Therefore, the submission has no merits and factually incorrect. Coincidentally, the State in affidavits and also in written submission admitted that Mr. T. K, Sundaresan is the whole time director in the petitioner company since 14.05.2010. The counsel for the petitioner submitted that the property belongs to the petitioner No.1 and the petitioner No.1 alone can maintain the writ petition. In any event, by a Board Resolution dated 19th October 2011, true copy whereof is annexed in the Affidavit affirmed on behalf of the petitioners on June 8, 2016. The Board of Directors of the petitioner No.1 has authorized the Chairman and Director of the petitioner No.1, one T K Sundaresan to execute Power of Attorney in favour of KunalDalmia and Ranoj Roy Chowdhury to act on behalf of the petitioner No.1. In compliance with the said Board Resolution, the said Mr T K Sundaresan has granted a Power of Attorney dated 21st November 2011 to KunalDalmia and Ranoj Roy Chowdhury to act solely or jointly. Therefore, the affidavits filed by Ranoj Roy Chowdhury on behalf of the petitioner No.1 were competent and he had the authority on behalf of the company to represent the company duly authorized by the Board of Directors. From the records, I find that all notifications were issued to the petitioner No.1 and there is no dispute that the property belongs to the petitioner No.1. It is not the case of the respondents that at the time of filing of the writ petition, the petitioner No.2 was not a shareholder and director of the petitioner No.1. Their case is that he sold his shares in the year 2010. Therefore, on the date of filing of the writ petition, there was no infirmity. I am of the view that on this flimsy ground the petitioner company cannot be non-suited. A wrong has been alleged against the properties of the company and even, a shareholder can bring the illegalities to the

notice of the Court. No relief has been claimed in favour of the petitioner No.2. The unreported judgement cited by the counsel for the state has no application in the present case as the extract of Board Resolution is disclosed in the affidavit dated 8.06.2016 filed by the petitioners. This objection is also devoid of any merit and rejected accordingly. On the third objection, the counsel for the petitioner submitted that the alleged objection as to receiver is misconceived. No receiver was appointed over the petitioner No.1 Company or the property in question i.e. 13, Nellie Sengupta Sarani, Kolkata at any point of time. The burden of proof is on the respondents and no document has been disclosed to that effect. I agree to the contentions of the petitioners that the objection as to necessity of obtaining leave due to appointment of receiver is also devoid of merit. The respondents have not disclosed any documents to prove that any receiver was in actual physical possession of the said premises No.13, Nellie Sengupta Sarani and therefore, no leave was necessary. The objection by the State relating to section 291 and 292 of the Companies Act 1956 is misconceived and has no merit in the present case. The board of director of the petitioner company by a resolution authorised one of the directors to execute the power of attorney to represent the petitioner company and he had executed power of attorney authorised by irregularity or infirmity. the board resolution. There was no On the 4th objection by the respondents, the counsel for the petitioners submitted that when a proceeding is pending before BIFR in respect of a company, it does not prohibit the company to protect its rights and properties. I agree with the submissions of the petitioners and hold that assuming any proceeding in respect of the petitioner No.1 is pending before BIFR or AAIFR, it will not be a bar for the petitioner No.1 to challenge acquisition of its property. This objection by the respondents is also devoid of merit and accordingly rejected. The learned Senior counsel submitted that it is true that in affidavit in reply affirmed on 18.03.2016, the name of Kunal Dalmia appears as petitioner no.2, that to as a shareholder and director. Records reveal that petitioner company authorised Mr. T. K. Sundaresan whole time director to execute the power of attorney and he has executed power of attorney in favor of Kunal Dalmia and Ranoj Roy Choudhury jointly or severally. Therefore, mention of name of Kunal Dalmia in the cause title is not a gross irregularity. The cause title was mechanically reproduced. It is not such a grave irregularity calling for dismissal of

writ petition. Admittedly, the petitioner company is entitled to challenge the acquisition proceedings against one of its property. Even if we ignore the petitioner no 2, the writ petition is maintainable. In this connection, I would like to quote from the celebrated case of Jai Jai Ram Manoharlal reported in AIR 1969 SC1267 A party cannot be refused relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. In this regard I would also like to refer to the decision of Apex court reported in (1996) 6 SCC660 (United Bank of India vs. Naresh Kumar & Ors.) The Learned Senior Advocate appearing for the petitioners also submitted that the writ petitions were filed in the year 2000 and in the Affidavits-in-Opposition filed by State or the requiring body, none of these points were taken and the respondents are estopped and precluded from taking these objections after 16 years, that too after the petitioners have concluded their submissions on merits. The alleged preliminary objections are afterthought and should not be considered at all. The petitioners rely on the following decisions:

1999.

1) Calcutta Law Journal 538 para 9 (2003) 7 SCC693 para 29 and 30 2010(1) CHN673 para 21 Since I have dealt with all the preliminary objections raised by the respondents, it is not necessary to deal with this submission of the petitioners on maintainability, though the ratio of law laid down in the judgements cited by the petitioners are binding on me on the principles of stare decisis and I fully agree with the submission. The submissions by the petitioners, on merit, are as follows: On 16.8.1973 the entire second floor of 13, Lindsay Street, Kolkata, measuring about 7000 sq.ft. was requisitioned by the Government of West Bengal under West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (in short,

194. Act.) the possession was handed over to the respondent No.5, the requiring body. On 25.3.1997, the respondent No.5 issued a letter to the State Government that the requisition will expire in August 1998 and requested to extend the requisition for a further term till it is able to arrange for a suitable accommodation in the locality. By a letter dated 23.9.1997 the Land Acquisition Collector informed the respondent No.5 that there is no provision to re-requisition the premises and it

has to vacate the premises after 25 years of requisition, alternatively, the respondent No.5 may send proposal for acquisition. respondent No.5 made a proposal sometime in February 1998. The requisition made on 16.8.1973 lapsed under section 10B of the 1947 Act on 16.08.1998. It is the grievance of the petitioner that the respondent No.5 even after requisition has lapsed, did not vacate the premises though advised by the Land Acquisition Collector by his letter dated 23.9.1997 to vacate. A notification dated 10.8.1999 under section 4 of the Land Acquisition Act, 1894 (in short, LA Act.) was issued and notification under section 5A was issued in respect of the said premises. In April 2000, the petitioner No.1 filed a writ petition being W.P.No.1042 of 2000 for handing over possession. The petitioner No.1 also filed another writ petition being W.P.No.1045 of 2000 challenging the section 4 notification dated 10.8.1999. It is admitted fact that the section 4 notification dated 10.8.1999 was cancelled and a fresh notification dated 4.8.2000 under section 4 read with section 17 of the LA Act was issued. According to me, the second writ petition being W.P.No.1045 of 2000 became infructuous and it is not necessary to deal with the same and the same is hereby disposed of. The fresh notification under section 4 read with section 17 dated 4.8.2000 and the declaration under section 6 dated 10.8.2000 have been challenged in the third writ petition being W.P.No.3003 of 2000. In the meantime, some orders were passed in W.P.No.1042 of 2000, which are very relevant for disposal of the third writ petition being W.P.No.3003 of 2000. Both the parties have made substantial submissions on the orders passed in W.P.No.1042 of 2000. The said orders are reproduced herein below: Order dated 28.4.2000 Heard the Learned Counsel appearing on behalf of the parties. During the course of submission, the Learned Counsel for the parties suggested a method to settle the whole matter. The persons who were instructing them in Court also stood by them. But then in order to get full instruction in the matter of settlement the Learned Counsel for the parties sought some time and accordingly I fix this matter as part heard under the heading For Orders. to be listed on Wednesday week i.e. 10.5.2000 at 2.00 P.M. as No.1 item. All parties to act on a Xerox signed copy of this dictated order on the usual undertakings. Order dated 10.5.2000 The Learned Counsel appearing on behalf of the State wanted little more time to consider the proposal to sort out this matter, as was suggested on the last occasion. I think such time should be granted

and accordingly, I direct the matter to be listed on 14.6.2000 as For Orders.. In the meantime, however, if the Ld. Counsel for the State is of the view that the matter may not be sorted out in the manner as was suggested on the previous occasion, the respondents shall file their affidavit-in-opposition on 6.6.2000 and reply, if any be filed on 13.6.2000. The interim order already passed shall continue till 16.6.2000 or until further order whichever is earlier. All parties are to act on a signed copy of the order on usual undertaking.

. Order dated 22.6.2000 The Learned Counsel Mr.Bhattacharjee appearing on behalf of the respondent no.4 as well as the learned counsel Mr. Dutt appearing on behalf of the State submitted that three months time should be granted to the respondent No.4 to vacate the premises in question without prejudice to its rights to take such appropriate legal steps as are available to it to acquire the property in question, accordingly such an order is passed with the consent of the learned counsel appearing for the petitioners. The learned counsel have also submitted that in so far as the compensation is concerned the same may be decided by the Court on materials to be placed by them by filing separate affidavits. Let such affidavit be filed within two weeks from date, reply, if any, within two weeks thereafter with liberty to mention the matter before me as and when I will be sitting singly. The writ petition is kept alive only for the purpose of determination of the amount of compensation to be paid by the respondent no.4 to the writ petitioner for occupying the property in question subsequent to coming to an end of the order of requisition until delivery of possession thereof is effected in terms of this order. This order has been passed by consent of all parties and the counsel appearing for the parties have signed a copy of the same in acknowledgement thereof and the same is kept with the record. All parties are to act on a signed Xerox copy of this dictated order on the usual undertaking.

. The Learned Additional Government Pleader appearing for the State referring to the order dated 22.6.2000, submits that this Court has directed to acquire the premises within three months and hence, urgency provision, i.e. section 17 of the LA Act was rightly invoked.He also submits that the acquisition was by consent of the parties and hence, cannot be challenged and the writ petition being W.P.No.3003 of 2000 is liable to be dismissed. The learned senior counsel for the

petitioners made the following submissions:1. There was no urgency at all and invocation of section 17 was bad which render the notification under section 4 dated 4.

8. 2000 and the declaration section 6 dated 10.8.2000 illegal and liable to be set aside. following submissions:- The learned counsel made the a. Section 17 is an exceptional and extraordinary powerwhereby enquiry under section 5A is dispensed with,that is, a citizen is deprived of his property without any opportunity of hearing. The urgency provisions can be invoked only if even small delay of few weeks or months in taking possession, may affect the public purpose for which the land is sought to be acquired. Section 17 can be invoked in an unforeseen emergency.None of those pre-conditions for invoking section 17 was fulfilled in the present case. There was no justification for the State to invoke urgency provision under section 17 and was invoked without application of mind. b. The premise was requisitioned on 16.8.1973 and since then the respondent No.5 was in possession. From the letter dated 25.3.1997 it is apparent that the respondent No.5 was aware beforehand that the requisition will expire in August 1998. The respondent No.5 was in possession from 1973 to 1998 and had sufficient time to make alternative accommodation and the urgency provision of section 17 of the LA Act could not be invoked and provisions of section 5A could not be dispensed with.He submits that invocation of urgency clause cannot be a substitute for the laxity on the part of the State administration andto make up the delay caused on the part of the administration. The counsel for the petitioner relies upon a decision reported in - Delhi Reported Judgments 1991(Supp.) 317 (Banwarilal& Sons Pvt Ltd Vs. Union of India &Ors.). He submits that this decision was upheld by the Honble Supreme Court in the decisions reported in(2002) 7 SCC98(Union of India &Ors. Vs. Shakuntala Gupta), and (2004) 8 SCC453(Union of India Vs. KrishanLalArneja). c. It is next submitted by the counsel that the respondent No.5 in its affidavit has stated that the proposal for acquisition of the premises was accepted on 9.2.1998. The delay of more than two years, between the proposal of acquisition, i.e. 9.2.1998 and the section 4 read with section 17 notification dated 4.8.2000, proves that there was no urgency. Dispensation of section 5A of the LA Act was bad, hence, the acquisition was illegal and unconstitutional. In this connection he relies upon the following decisions - (2012) 2 SCC327[DarshanLalNagpal (dead) by LRs

Vs. Government of NCT of Delhi and Ors.)]. (2014)13 SCC721(Prabhawati&Ors. - vs- State of Bihar &Ors) d. The counsel for the petitioner submitted that the contention of the respondents that by the order dated 22.6.2000 this Honble Court directed the State to acquire within three months is misconceived and contrary to the said order. By the said order, at the request of the respondents, this Honble Court merely allowed the respondent No.5 to vacate the premises within three months without prejudice to its rights to take such appropriate steps as are available to acquire the property in question, to which all the parties consented. There was no direction by the Court to acquire the premises within three months or at all. For acquisition of the premises, no consent of the petitioner was necessary, neither it was the intention of the Court. The Court did not grant three months time to acquire the premises illegally by invoking section 17 as is being contended by the respondents. A liberty granted by the Court cannot be treated as an order by Court. He relies upon a decision reported in - (2005) 5 SCC230(Subhadra Rani Pal Choudhury Vs. Sheirly Weigal Nain &Ors.).

2. On 22.6.2000 when the respondents sought for time to vacate the premises within three months, already acquisition proceeding was pending and notification under section 4 dated 10.8.1999 was already issued. The respondent No.5 was already in possession. There was no necessity to obtain further leave from this Honble Court as obtained in the order dated 22.6.2000. The leave was obtained with an ulterior motive to retain possession by any means and section 17 was invoked malafide as there was no reason to invoke section 17 or any need to take urgent possession and there was no real urgency.

3. The occupation of the State was wrongful and illegal since the requisition came to an end on 16.8.1998. Since the urgency provision was invoked without any real urgency and after a delay of about 27 years, the acquisition proceeding was bad and illegal and liable to be set aside. Therefore, since 17.8.1998 the State is in wrongful possession till handing over possession to the petitioner No.1 and is liable to pay damages for such wrongful occupation. As already directed by the order dated 22.6.2000 and consented to by the respondents, the damages for wrongful occupation is to be decided by this Honble Court. I have heard the parties at length. I have perused the various affidavits filed by the parties and the

documents annexed thereto. I have also gone through the judgments cited by the parties. In their affidavit-in-opposition affirmed on 6.8.2014 surprisingly the State has not disclosed any document whatsoever. However, in their affidavit-in-opposition affirmed on 26.9.2000 the respondent No.5 has disclosed two documents dated 11.7.2000 and 1.8.2000 to justify the invocation of section 17 by the State. The document dated 1.8.2000 also finds place in the supplementary affidavit filed on behalf of State affirmed on 9.12.2015. The letter dated 11.7.2000 from Joint Secretary, Commerce and Industries Department to Joint Secretary, Land and Land Reforms Department requesting to take up the matter with the First L.A. Collector, Calcutta for expeditious completion of requisition and acquisition proceedings in respect of the demised premises in favour of WBMDTC Ltd.

. The document dated 1.8.2000 is a direction issued by the Joint Secretary, Land and Land Reforms Department, merely records satisfaction regarding urgency. It does not contend any reasons for invoking section 17. Hence, the only document giving reasons for invoking section 17 is the letter dated 11.7.2000. The reason given in the letter dated 11.7.2000 is that by the order of this Honble Court dated 22.6.2000, this Honble Court has directed the respondent no.5 to vacate the premises by 21.9.2000 and the normal requisition and acquisition proceeding is not likely to be completed within 21.9.2000. From the above documents, it appears that respondents case was that by the order dated 22.6.2000, this Honble Court has given liberty to acquire the premises within three months. On a perusal of the order dated 22.6.2000, I am of the view that this Honble Court did not direct to acquire the premises. The respondents prayed for three months time to vacate the premise which was allowed without prejudice to the rights of the respondents to take such appropriate legal steps as are available to it to acquire the property in question. A liberty was granted which cannot be equated with a direction by Court as laid down in the decision reported in (2005)5 SCC230 There was no consent for acquisition as wrongly contended by the counsel for Respondents. I hold that the respondents have misinterpreted the order dated 22.6.2000 and cannot be taken as a reason for invocation of urgency provision of section 17. Therefore, invocation of section 17 on the plea of the order dated 22.6.2000 was bad and misconceived and hence, the notification dated 4.8.2000 under section 4 read with section 17 and the declaration under section 6 dated 10.8.2000 are bad and

without justification. In the case reported in Delhi Reported Judgments 1991(Supp.) 317 (Banwarilal& Sons Pvt Ltd Vs. Union of India &Ors.), certain parts of a building was requisitione

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