

Niva Halder and ors. Vs. the State of West Bengal and ors.

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Court : Kolkata Appellate

Decided On : Dec-24-2010

Judge : Bhaskar Bhattacharya; Sambuddha Chakrabarti, JJ.

Appeal No. : F.M.A. No. 821 of 2010 C.A.N. 4084 of 2010

Appellant : Niva Halder and ors.

Respondent : The State of West Bengal and ors.

Advocate for Def. : Mr. Ashok Banerjee; Mr. Saptangsu Basu; Mr. Ayan Banerjee; Mr. Udaynarayan Betal, Advs

Advocate for Pet/Ap. : Mr. Soumen Bose; Mr. Tapas Dutta; Mr. Arindam Mondal, Advs

Judgement :

1. These two appeals were heard analogously, as in both these appeals, the selfsame order passed by the learned Single Judge is the subject-matter. These two Mandamus-Appeals are preferred by third parties to the writapplication with a prayer for leave to prefer such appeals and are directed against order dated February 22, 2010, passed by a learned Single Judge of this Court by which His Lordship disposed of the writ-application by directing that within six weeks from the date of communication of the said order, the Refugee Relief & Rehabilitation Department, Government of West Bengal, should hand over vacant possession of the land in question to the Collector, Hooghly and the said Collector shall

determine after hearing the authorized representative of the writ-petitioner the rent-compensation payable for using the requisitioned land and pay the amount and deliver vacant possession of land to the writ-petitioners within a fortnight from the day, he received possession.

2. Being dissatisfied, the appellants, who are third parties to the writ-application, have come up challenging the aforesaid decision.

3. The case made out by the writ-petitioners out of which these appeals arise, may be summed up thus:

a) The writ-petitioners along with others are the owners by inheritance of the plots of land, which formed a part of 400 cottahs, more or less, about 6.5 acres of land which was requisitioned in the year 1941 under the Defence of India Act, 1939 read with Rule 79 of the said Act during the Second World War by the then British Government on the ground of Public Safety Order and efficient prosecution of War effort etc.

b) By invoking power under the provisions of Defence of India Act, 1939 as also Rule 79 of Defence of India Rule, 1939, the then Collector of Hooghly requisitioned the land in question for the purpose of construction of Anti-Aircraft Gun Layout by the Military Department of the then Government of India in the year 1941-1942.

c) By virtue of the said order, the land in question was placed at the disposal and under the control of the Military Estates Officer, Barrackpore, and in the said order of requisition, it was directed that the owner of the land would not without the written permission of the Collector, Hooghly, in anyway, dispose of the said land as long as the said order would remain in force.

d) The aforesaid order of requisition automatically stood vacated after 15th August, 1947, but the Government of West Bengal and the Union of India decided to give temporary shelter and to rehabilitate Hindu destitute women who migrated from East Pakistan and with that view, set up Womens Home under the name of Bhadrakali Destitute Womens Home.

e) In course of time, except 36 Hindu Women, the others left the said Womens Home as they were permanently rehabilitated elsewhere by the State Government, but in the meantime, as many 120/125 other families forcibly trespassed and occupied the said Womens Home without any resistance from the Superintendent of Refugee Rehabilitation Camp at the site.

f) The Collector, Hooghly, in exercise of his power under Sub-section (1) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 in Requisition Case No. 1-14/90-91 issued notice dated 16th November, 1990, thereby requisitioned the said property and directed that possession would be taken on 28th November, 1990 at 12.00 noon for the purpose of creating better living condition by construction and re-construction of dwelling place for settlement of the Refugee Families at Bhadrakali, who had migrated from the erstwhile East Pakistan.

g) It was, therefore, apparent that the British Government requisitioned the land in 1941 with the understanding that the requisition would be valid until six months after the end of war which came to an end in 1945 but kept the land under occupation until 1947 and, thereafter, the land remained under the possession of the respondents to give temporary shelter and rehabilitation to the destitute refugee women and decided to keep it in their possession until 1990 without any order of acquisition or requisition and finally in 1990 notice for fresh requisition was issued but no compensation either for requisition or for acquisition till date was given.

h) One L.R. Case No. 1-14/90-91 was initiated under Act-II of 1948 for acquisition of 6.85 acres of land and the same was handed over to the Refugee Rehabilitation Department on 28th November, 1990.

i) After the lapse of Act-II of 1948, the case has been converted to Land Acquisition Act-I of 1894 under the provision of Land Acquisition (West Bengal Amendment) Act, 1997.

j) One Rita Dey and others filed a writ-petition being W.P. No. 79 (W) of 1999, thereby praying for direction upon the respondents to take step for payment of

compensation including enhanced compensation in respect of the land of the writ-petitioners and to declare that the writ-petitioners were very much entitled to get compensation of the requisition land.

k) In compliance with the said judgment and order dated 11th January, 1999, no action had been taken and the matter was brought to the notice of the Deputy Secretary, Refugee Relief and Rehabilitation Department with a prayer for release of the fund but no result came out.

l) Subsequently, the writ-petitioners received from M/s. RDB Enterprises Pvt. Ltd., a developer authorized by some of them to deal with the Government to retrieve the land through negotiation.

m) After promulgation of the 1997 amendment of the West Bengal Land (Requisition and Acquisition) Act, 1948, the respondents had no legal authority to continue to hold the land of the writ-petitioners and the respondents are required to de-requisition the plot of land and hand over vacant possession to the petitioners which were requisitioned under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948.

4. The writ-petitioners, therefore, prayed for direction upon the respondents to pay rent-compensation which is due and payable for requisition of the land and also for declaration that requisition under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 has lost its validity in view of the subsequent repeal of the said Act.

5. At the time of hearing of the writ-application, the learned counsel appearing on behalf of the State-respondent, submitted before the learned Single Judge that he had received a letter from the Assistant Secretary, Refugee Relief & Rehabilitation Department, Government of West Bengal, dated 23rd September, 2009 recording that the department decided not to acquire the land in question. It was further pointed out in the said letter that by using the requisitioned land, the Government set up Bhadrakali Womens Home and the Government has decided to shift the inmates of the Bhadrakali Womens Home.

6. The learned counsel for the State submitted before the learned Single Judge that the Refugee Relief & Rehabilitation Department might be directed to give possession of the land to the Collector, Hooghly and the Collector, Hooghly may be directed to assess the rent-compensation payable for using the requisitioned land and to give possession of the land to the writ-petitioners. In view of such stance taken by the State Government, the learned Single Judge disposed of the writ-application by passing directions as indicated earlier. In these two appeals, the appellants claimed to be refugees from erstwhile East Pakistan and residing there for long 60 years. According to the learned counsel for the appellant, the learned Single Judge could not dispose of the writapplication on the basis of the concession made by the State-respondent by passing direction for giving vacant possession of the land in favour of the writpetitioners. According to the learned counsel for the appellants, the learned Single Judge erred in law in passing direction in a writ-application where the actual occupants were not made parties. The learned Advocate for the appellants, therefore, prayed for setting aside the order impugned and remanding the matter back to the learned Single Judge after giving an opportunity of hearing to his clients.

7. Therefore, the questions that arise for determination in these appeals are whether the appellants are necessary parties to the writ-application and whether they have any right over the land in question which was at the time of commencement of possession was under the order of requisition and in the possession of the Collector, Hooghly, who undisputedly did not hand over possession to the owner after the first order of requisition in the year 1941. After hearing the learned counsel for the parties and after going through the materials on record, we find that the ownership of the writ-petitioners in the land is not in dispute. It is also not in dispute that initially the land was requisitioned by the Military Authority through the order of the Collector, Hooghly and subsequently in the year 1990, the State Government has officially requisitioned the land over again by taking recourse to the West Bengal Land Requisition and Acquisition Act, 1948.

8. It is now settled law that once requisition of the land has been admitted by the State-respondent and it has also taken decision not to acquire the land, in view of

the repeal of the West Bengal Land (Requisition and Acquisition) Act, 1948, there is no scope for further continuation of the requisition after the amendment of the year 1997.

9. We, therefore, find that the learned Single Judge was quite justified in passing direction upon the respondents to hand over the vacant possession of the property in question in favour of the writ-petitioners.

10. Mr. Bose, learned Senior Counsel appearing on behalf of the appellants, strenuously contended before us that original requisition order having been passed under the Defence of India Act, 1939 at the instance of the British Government, the Union of India is a necessary party and, therefore, we should pass appropriate direction either for impleading the Union of India as party or for giving liberty to the writ-petitioners to file a fresh writ-application after dismissing the present one.

11. In our opinion, the State-respondent having taken its responsibility of requisition from the year 1990, we are not required to enter into the question of the effect of the earlier requisition under the Defence of India Act which has since come to an end. Once the State Government has taken decision not to acquire the land after passing an order of requisition under the Act of 1948, it is left with no other alternative but to give vacant possession of the property in question to the lawful owners and also to pay rent-compensation.

12. We find no substance in the contention of Mr. Bose, the learned Senior Advocate appearing on behalf of the Appellants, that his clients are either necessary or proper parties to these proceedings. The appellants having derived benefit of requisition and having claimed shelter under the State of West Bengal as admitted in the application for leave to appeal, their position is no better than that of a licensee under the State of West Bengal and, thus, they cannot have any right over the land in question when their licensor has decided to deliver vacant possession in favour of the lawful owners of the property by conceding the aforesaid position of law and by not preferring any appeal against the order impugned.

13. We, therefore, find that within the narrow scope of the writ-applications, there is no necessity of making the appellants who are the licensees under the State or the Union of India, as parties.

14. We, therefore, hold that having regard to the averments made by the appellants in their application for leave to appeal that they are claiming under the State Government, they have no independent right over the property in question and, therefore, it is a fit case where direction should be given for delivery of vacant possession of the requisitioned property in favour of the lawful owners by the respondents and also for making payment of rent-compensation. The appeals are, thus, devoid of any substance and are dismissed. In view of dismissal of the appeals, all interim orders earlier granted stand vacated. We make it clear that dismissal of these appeals will not stand in the way of the appellants in seeking other appropriate remedy, if available, against the State Government. However, we make it clear that the appellants have no right over the land in question nor have they any right to challenge the decision of the State Government to surrender the land in question in favour of the lawful owner. The appeals are, thus, disposed of with the above observations.

15. The state-Respondents are directed to implement the order of the learned Single Judge within two months from today.

16. In the facts and circumstances, there will be, however, no order as to costs.

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