

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P.A. 1065 of 2011

Sri Bhola Nath Koley

Versus

The State of West Bengal & Ors.

For the Petitioners : Mr. Ashok Kumar Banerjee, Sr. Adv.
Ms. Tapojit Dey, Adv.

For the State : Sk. Md. Galib, Adv.
Mrs. Subhra Nag, Adv.

For the respondent No.
5 & 6 : Mr. Debabrata Banerjee, Adv.
Mr. Samir Chakraborty, Adv.

Hearing concluded on : 27.06.2022

Judgment On : 06.07.2022

Saugata Bhattacharyya, J.:

Writ petition relates to acquisition vis-a-vis derequisition of the land of the petitioner measuring 35 decimal under LR Dag No. 265, 270 and 299 in Mohisgot Mouja, Rajarhat, District North 24 Parganas. The petitioner by presenting this writ petition has claimed release of aforesaid land by the

concerned authorities of the state-respondents and return of the same.

The proposal for acquisition of the aforesaid land was mooted by the Housing Directorate, Government of West Bengal and accordingly LA Case No. 4/14 of 1999-2000 was initiated in the year 1999. Based on such proposal for acquisition of the land of the petitioner for Rajarhat New Township Project preliminary investigation was carried out and report was prepared on 19th July, 1999 and thereafter notification under section 4(1) of the Land Acquisition Act, 1894 (for short "Act of 1894") was published. While issuing such notification under section 4(1) it was specifically stipulated therein that the provisions under section 17(4) of the said Act of 1894 would apply in the acquisition proceeding thereby the requirement as contemplated under section 5A of the said Act of 1894 was dispensed with.

On 12th August, 1999 there was newspaper publication of the said notification under section 4(1). The contents of the said notification under section 4(1) was circulated by notifying the same in the conspicuous places e.g. office of SDLRO Barasat, office of BDO Rajarhat, office of BL&LRO Rajarhat, Rajarhat Police Station, Rajarhat Gopalpur Municipality and Mahisbathan-II Gram Panchayat as well as it was pasted on the notice-board of the office of the Collector. Such circulation of the notification under section 4(1) was made on 12th August, 1999.

Subsequently, declaration was made under section 6 of the said Act of 1894 on 17th August, 1999 which was published in the Calcutta Gazette on 23rd August, 1999 and in addition thereto such declaration under section 6 was published in local newspaper on 20th August, 1999.

Mr. Ashok, Kumar Banerjee, learned senior advocate appears on behalf of the petitioner and submits that a writ petition being W.P.A. 16001 of 1999 was preferred by the petitioner challenging notification under section 4 and the

same was dismissed as withdrawn by a coordinate Bench vide order dated 11th August, 2010. The coordinate Bench while dismissing the writ petition on 11th August, 2010 granted liberty to the petitioner to file writ petition afresh on the selfsame cause of action, if so advised. It has been submitted on behalf of the petitioner that pursuant to the leave granted by the coordinate Bench the present writ petition has been instituted with the prayer to derequisition the land of the petitioner since the same remains unutilized till date.

During pendency of the previous writ petition it further appears that notice under section 9(3) was issued in the month of December 1999, however, it appears from page 9 of the affidavits-in-opposition affirmed on 12th June, 2019 on behalf of the state-respondents that such notice was refused by the petitioner. Subsequently, verification was held on 13th January, 2000 and award under section 11 of the said Act of 1894 was declared on 22nd May, 2001. Accordingly, the award money was paid to the verified awardees while the sum under such award could not be paid to the petitioner being non-verified awardee and the same was deposited before the learned LA Judge on 14th July, 2006 under memo no. 1403. The possession of the land of the petitioner was handed over to the requiring body on 27th July, 2001 under section 16 of the said Act of 1894.

Mr. Banerjee, learned senior advocate has submitted that though the land was proposed to be acquired under the relevant provisions of the said Act of 1894 on the basis of urgency as contemplated under section 17(4) for Rajarhat New Township Project but the land of the petitioner remains unutilized. It has also been contended that failure to utilize the land by the respondent authorities goes to show that there was no necessity to invoke section 17(4) of the said Act of 1894 dispensing with the requirement under section 5A which is the only protection given to the petitioner granting right to lodge objection against the proposed acquisition of such land. The attention of this Court has been drawn to one memo dated 26th July, 1996 issued by the

Collector, North 24 Parganas, Barasat addressed to the Secretary, Housing Department, Government of West Bengal and it has been submitted that there is indication in the said memo dated 26th July, 1996 that the alignment was changed on several occasions as per advice of the member of the Legislative Assembly of Rajarhat on demand of local people facilitating return of certain lands to the owners. It is contended since twenty years the land of the petitioner remains unutilized which warrants similar consideration as it has been considered in case of others which appears from the said memo dated 26th July, 1996, for return of the land of the petitioner on initiating process of derequisition. It has been stated in affidavit-in-reply affirmed on 15th February, 2022 by the writ petitioner that land measuring 3.335 acres comprised in sixteen plots and partly three other plots were selectively returned without proceeding with the process of acquisition which relates to LA Case No. 4/4 of 1995-96. On referring to such incident of returning the land to some other similarly circumstanced land owners it has been argued on behalf of the petitioner the steps taken for acquiring land of the petitioner by the respondent-authorities unleash colourable exercise of power on wrongly applying section 17(4) of the said Act of 1894 though there is no such urgency as contemplated under section 17.

In addition thereto failure to serve notice under section 9(3) as per provisions under section 45 of the said Act of 1894 has been argued on behalf of the petitioner. It has been submitted that the concerned respondent-authorities did not serve notice upon the petitioner complying the formalities as contemplated under the relevant provisions of the said statute.

On behalf of the petitioner following judgments have been relied upon:-

i) **(2007) 9 SCC 304 (Vyalikaval Housebuilding Coop. Society By Its Secretary vs. V. Chandrappa And Others)**, paragraph 6, 7 and 9, for explaining the delay caused in approaching the Court for derequisition and return of land;

ii) **(2021) SCC Online (SC) Page 1115 (Hamid Ali Khan (D) Through LRS & Anr. vs. State of U.P. & Ors.)**, paragraphs 22 and 23 on the issue relating to derequisition of the land on account of no urgency as contemplated under section 17 of the said Act of 1894;

Sk. Mohammad Galib, learned advocate is representing the state-respondents and Mr. Debabrata Banerjee, learned advocate is representing West Bengal Housing Infrastructure Development Corporation (for short "HIDCO") being the respondent no.5 and 6. Both the authorities through their learned advocates though made submissions but this Court finds most of the points taken by them while opposing the prayer made in the writ petition are common. Therefore, it is not necessary to record their submissions separately. The respondents have questioned the maintainability of the writ petition in view of the order of the coordinate Bench dated 11th August, 2010, whereby the previous writ petition being W.P.A. 16001 of 1999 was dismissed. It has been submitted that though leave was granted to the petitioner to file writ petition afresh, but that leave was confined to the cause of action relating to that writ petition. Since only challenge was made in that writ petition was against section 4 notification dated 26th July, 1999, the petitioner is estopped from questioning any other issue excepting said section 4 notification since entire process of acquisition under the said Act of 1894 was complete upon handing over possession of the acquired land to the respondent no.5 and 6 on 27th July, 2001. Therefore, according to the respondents in view of substantial delay made by the petitioner other steps taken by the respondent authorities based on section 4 notification cannot be questioned at the belated stage, in the year 2011.

In addition thereto it has been argued on behalf of the respondents that there is no scope of returning the land to the petitioner on derequisition as the possession of the same has been taken in view of the provisions of section 48 of the said Act of 1894. In the present case indisputably under section 16 of the

said Act possession has already been taken and the same has been handed over to the requiring body on 27th July, 2001.

In the same breath it has also been submitted that there is no concept of derequisition of land under the said Act of 1894 with a rider that return of land is possible when the possession is not taken in terms of section 48.

Attention of this Court has also been drawn to two representations one dated 4th August, 2009 and another dated 7th September, 2010 which are annexed to the writ petition in order to point out that petitioner by preferring these representations approached the authorities for returning the land on derequisitioning the said land since the land of the petitioner was not utilized for Rajarhat New Township Project and in order to counter such claim it has been contended that in view of section 48 of the said Act of 1894 after the possession of the land being taken by the authority on compliance of necessary statutory formalities the same cannot be derequisitioned and the prayer of the petitioner for returning the land also is not supported by statutory provisions.

It is also contended that pursuant to the notice under section 9 dated 28th December, 1999 the petitioner was asked to appear before the authority on 13th January, 2000 and accordingly the petitioner appeared before the authority on the said date but refused to sign due to pendency of the previous writ petition being W.P.A. 16001 of 1999. In this regard reliance has been placed on page 9 of the affidavits-in opposition affirmed on behalf of the state-respondents to the writ petition on 12th June 2019. Subsequently, award under section 11 was declared and since the petitioner was not agreeable to accept such award by treating him as non-verified awardee the amount was deposited on 14th July, 2006 before the LA Judge. However, possession of the land in question was taken on 27th July, 2001 by the respondents.

It has also been submitted that in the writ petition prayer has been made for derequisitioning the land of the petitioner for releasing the same since according to the petitioner the land in question has not been utilized under Rajarhat New Township Project but no challenge has been thrown to the steps taken by the concerned state-respondents in terms of the relevant statutory provisions under the said Act of 1894. It is submitted by the respondents that by filing supplementary affidavit which has been affirmed on 14th December, 2021 for the first time the acquisition proceeding is questioned to the extent of invocation of section 17(4) whereby the requirement under section 5A has been dispensed with denying the right of the petitioner to make objection before the authority against such acquisition. It has been contended on behalf of the respondents in view of failure to raise the aforesaid challenge relating to the acquisition proceeding followed by the respondents in respect of land of the petitioner by filing supplementary affidavit that too in the year 2021 it is not open to the petitioner to point finger at the said acquisition proceeding when entire process was complete by taking possession far back on 27th July, 2001.

Since on behalf of the petitioner reliance has been placed on memo dated 26th July, 1996 issued by the Collector, North 24 Parganas, Barasat, addressed to the Secretary, Housing Department which is at page 21 of the affidavit-in-reply affirmed on behalf of the writ petitioner on 15th February, 2022 in order to bring it to the notice of the court that upon changing alignment on several occasions the relevant notification was withdrawn in order to return the land to some of the adjacent owners, it has been submitted on behalf of the respondents that the steps taken as indicated in the said memo dated 26th July, 1996 relates to different LA case being no. LA 4/4 of 1995-96 whereas the case of the writ petitioner comes under LA case being no. 4/14 of 1999-2000. Therefore, the memorandum dated 26th July, 1996 of the Collector, North 24 Parganas has no bearing on the present case. In addition thereto it has also been submitted that change of alignment was made at the verification stage before publication of award but in the present case the award has been

published in connection with LA case no. 4/14 of 1999-2000 and possession of the land has been taken on 27th July, 2001. Therefore, in terms of the relevant provisions of the statute there is no scope left to derequisition the land in view of the express bar as contained in section 48(1).

Reliance has been placed on the following judgments on behalf of the respondents:-

- i) **AIR 1976 Cal 149 (P.K. Shaikh vs. State of West Bengal and others)**, paragraph 15;
- ii) **(2022) 2 SCC 25 (Union of India & Others vs. N. Murugesan And Others)**, paragraphs 20, 21 to 27 and 28;
- iii) **(2013) 4 SCC 524 (Mahadeo (Dead) Through LRS. And Others vs. State of Uttar Pradesh And Others)**, paragraphs 1, 2, 14, 15 and 16 ;
- iv) Full Bench judgment of the Supreme Court reported in **(2020) 8 SCC 129 (Indore Development Authority vs. Manoharlal And Others)**, paragraphs 123, 128, 129, 133, 134, 136, 138 to 140, 142, 144, 145, 146, 147, 148, 258, 259, 264, 346 to 349, 352 to 356, 364, 366.5 and 366.9;
- v) **(1975) 4 SCC 285 (Aflatoon And Others vs. Lt. Governor of Delhi And Others)**, paragraphs 9, 10 and 11;
- vi) **(1996) 2 SCC 549 (Chameli Singh And Others vs. State of U.P. And Another)**, paragraphs 4, 15 and 19;

On consideration of the submissions made by the learned advocates representing the respective parties and upon perusal of the relevant materials available on record and pleadings exchanged by the parties including the supplementary affidavit affirmed on behalf of the petitioner it appears that previously petitioner filed one writ petition, inter alia, challenging section 4 notification being W.P.A. 16001 of 1999 which stood dismissed as withdrawn upon granting liberty to the petitioner to file afresh on the selfsame cause of action. The said writ petition was filed in 1999 and was dismissed as withdrawn on 11th August, 2010, after eleven years. Meanwhile, pursuant to

such notification under section 4 of the said Act of 1894 steps were taken by the respondent authorities as enumerated in the preceding paragraphs and finally possession was taken by the authorities on 27th July, 2001 and on 14th July, 2006 the award money was deposited with the learned LA Judge since the petitioner was classified as non-verified awardee. Therefore, on the date of dismissal of the first writ petition on 11th August, 2010 the entire process of acquisition was complete upon completing all necessary formalities but the petitioner chose to withdraw the said writ petition on obtaining leave to file fresh one on the selfsame cause of action. Subsequently, present writ petition has been filed, inter alia, on following prayers:-

“a) A writ in the nature of Mandamus commanding the respondents, their agents and/or subordinates to show cause or sufficient cause as to why the lands of your petitioner as mentioned in Paragraph No.2 to this application be not released and/or derequisitioned in favour of your petitioner forthwith;

b) A writ in the nature of Mandamus restraining the respondents, their agents and/or subordinates not to create any disturbance for constructing the dwelling house of your petitioner at L.R. Dag No. 265 as mentioned in Paragraph No.2 till the disposal of this application pending before this Hon’ble Court;

c) A writ in the nature of Mandamus commanding the respondents, their agents and/or subordinates not to create any disturbance of the lands of your petitioner as mentioned in Paragraph No.2 till the disposal of this Writ application pending before this Hon’ble Court;”

The nature of the prayers couched in this writ petition goes to show that challenge pursuant to the leave granted by the coordinate Bench on 11th

August, 2010 was not confined to section 4 notification but in effect petitioner prayed for derequisitioning the land upon returning the same to him.

Before entering into the arena of permissibility of returning the land to the petitioner on derequisition as per the scheme of the said Act of 1894, this Court cannot shut its eyes to the time consumed by the petitioner in approaching the Court by filing the present writ petition with the said prayer of return of land. Admittedly, the possession was taken far back on 27th July, 2001 in terms of section 16 and the award money was deposited on 14th July, 2006 and approximately five years thereafter the present writ petition was filed.

Whether such delay made by the petitioner in approaching the Court for return of his land on the plea of failure to utilize his land by the authorities can be condoned keeping in view of the relevant provisions as contained in the said Act of 1894. In this regard reliance has been placed on Full Bench judgment of the Apex Court reported in **(2020) 8 SCC 129 (Indore Development Authority vs. Manoharlal And Others)** paragraph 346 onwards, wherein the Hon'ble Apex Court has succingly held as follows:-

“346. In matters of land acquisition, this Court has frowned upon, and cautioned courts about delays and held that delay is fatal in questioning the land acquisition proceedings. In case possession has not been taken in accordance with law and vesting is not in accordance with Section 16, proceedings before courts are to be initiated within reasonable time, not after the lapse of several decades.”

While considering the impact of delay in approaching the Court in land acquisition matters the Full Bench referred to several other leading judgments of the Apex Court on the point of delay and laches and ultimately held that

courts cannot invalidate acquisition which stood concluded. It has also been decided therein that it is the duty of the Court to preserve the legal certainty and doctrine of laches would always preclude indolent party, who chooses not to approach the Court or having approached the Court, allows an adverse decision to become final, to reiterate the issue of acquisition of his holding.

Attempt has been made on the part of the writ petitioner to explain the delay in approaching this Court while instituting the present writ petition chiefly on placing reliance on the judgment of the Apex Court reported in **(2007) 9 SCC 304 (Vyalikaval Housebuilding Coop. Society By Its Secretary vs. V. Chandrappa And Others)** paragraph 6, 7 and 9. It appears from the said judgment of the Apex Court that considering a situation where notification issued by the authority which was adversely commented by the Court in other connected matters wherein it was held that the whole acquisition proceeding stood vitiated on account of fraud and the appellant-society was also found to be not bona fide housing society the Apex Court proceeded on such premise and upheld the decision of the Hon'ble Division Bench of the High Court of Karnataka and it was decided therein that since the Court was satisfied that the issue of notification was mala fide and it was not for public purpose, nothing turns on question of delay and acquiescence. The issue decided by the Hon'ble Apex Court in **Vyalikaval Housebuilding Coop. Society (Supra)** is of no help since no case has been made out in this writ petition that the relevant notification is vitiated by fraud and the requiring body is not found to be bona fide society.

In view of the aforesaid discussions indolent approach of the petitioner in questioning the steps taken by the respondent-authorities in terms of the scheme of the said Act of 1894 appears to have made his claim of return of land on derequisition since there is no urgency in invoking section 17(4) based on non-utilization of land of the petitioner, has become stale.

Another facet of argument advanced by Mr. Banerjee representing the petitioner is necessity to invoke provisions under section 17(4) by the dint of which requirement under section 5A was given go-by. It has been argued that failure to utilize the land of the petitioner till date, twenty years after issuance of notification under section 4, goes to show that there was no such urgency. In support of such argument by way of illustration notice of this Court has been brought to memo dated 26th July, 1996 issued by the Collector, North 24 Parganas in order to demonstrate before this Court that on several occasions alignment of land was changed for acquiring land under Rajarhat New Township Project and similarly circumstanced some other land owners got back their lands. It has been submitted that since the land of the petitioner remains unutilized as on date similar course could have been adopted as it emanates from said memo dated 26th July, 1996 which could lead to return of land of the petitioner, if necessary, on derequisition.

The course which is required to be followed in the matter of applying “urgency” clause as contemplated under section 17 of the said Act which in effect denies the right of the person interested in land to stave off compulsory acquisition of his property being the only statutory safeguard under section 5A being given go-by, has been emphasized upon placing reliance on the judgment dated 23rd November, 2021 of the Hon’ble Apex Court in Civil Appeal No. 1267 of 2012 (**Hamid Ali Khan (D) Through LRS & Anr. vs. State of U.P. & Ors.**). In the said judgment it has been held by the Hon’ble Apex Court that existence of the exceptional circumstances justifying invocation of section 17(4) must be established in the wake of challenge.

It is an established principle that judgment is an authority on what it decides and not what can be deduced therefrom. In the present case the act of invoking section 17(4) of the said Act of 1894 on the ground of urgency has not been questioned in the writ petition when the same was instituted in 2011. Subsequently, on affirming supplementary affidavit ten years thereafter on 14th

December, 2021 faint attempt has been made to question the acquisition proceeding. Meanwhile, the entire process of acquisition stood complete on taking possession of the land on 27th July, 2001. In view of these facts section 48(1) comes into play wherein it has been provided the government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. In the present case since the possession was taken far back on 27th July, 2001 the exercise of examining the issue whether urgency as contemplated under section 17 existed or not, as prayed for by the petitioner, appears to be impermissible. In this regard reliance is placed on paragraph 128 and 129 onwards of **Indore Development Authority (Supra)**.

In this regard reliance has also been placed on the judgment of the Hon'ble Apex Court reported in **(1996) 2 SCC 549 (Chameli Singh And Others vs. State of U.P. And Another)** paragraph 4 and 15. The principle has been enunciated in the said judgment on the context of invocation of section 17(4) in view of urgency thereby dispensing with requirement under section 5A to the extent that urgency formed by the appropriate government to take immediate possession is a subjective conclusion based on the material before it and it is entitled to great weight unless it is vitiated by mala fides or colourable exercise of power. It was further held that it must be remembered that the satisfaction under section 17(4) is a subjective one and that so long as there is material upon which government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. In the present case nothing is found which establishes that the formation of opinion on urgency under section 17(4) while issuing notification under section 4 is vitiated by mala fides or colourable exercise of power.

Since after making award and handing over possession on 27th July, 2001 the present writ petition was filed on 17th January, 2011 and the question has been raised by Mr. Banerjee while advancing argument on behalf of the petitioner that on the ground of urgency section 17(4) ought not to have

been invoked by the respondent authorities denying the right of the petitioner to make deliberation under section 5A this Court finds it apt to rely upon a judgment of the Hon'ble Apex Court reported in **(1975) 4 SCC 285 (Aflatoon And Others vs. Lt. Governor of Delhi And Others)** paragraph 9, 10 and 11. Paragraph 9 and 11 of the said judgment runs infra:-

*“9. Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under Section 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them. In the concluding portion of the judgment in *Munshi Singh v. Union of India* (supra), it was observed: [SCC p. 344, para 10]*

In matters of this nature we would have taken due notice of laches on the part of the appellants while granting the above relief but we are satisfied that so far as the present appellants are concerned they have not been guilty of laches, delay or acquiescence at any stage.

We do not think that the appellants were vigilant.”

“11. Nor do we think that the petitioners in the writ petitions should be allowed to raise this plea in view of

*their conduct in not challenging the validity of the notification even after the publication of the declaration under Section 6 in 1966. Of the two writ petitions, one is filed by one of the appellants. There was apparently no reason why the writ petitioners should have waited till 1972 to come to this Court for challenging the validity of the notification issued in 1959 on the ground that the particulars of the public purpose were not specified. A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and the declaration under Section 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see *Tilokchand Motichand v. H.B. Munshi and Rabindranath Bose v. Union of India*).*”

In view of the aforesaid decision of the Hon’ble Apex Court in **Aflatoon And Others (Supra)** this Court finds there is no need to dilate further on the ground of challenge in the present writ petition. Since the petitioner has filed this writ petition long after completing process of acquisition under the relevant provision of the said Act of 1894 such challenge in the writ petitioner has become still born due to passage of time.

Accordingly, this writ petition does not merit consideration and stands dismissed. However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)