

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 14162 of 1981

CAN 1 of 2005 (Old No: CAN 6708 of 2005)

CAN 2 of 2011 (Old No: CAN 112 of 2011)

CAN 3 of 2012 (Old No: CAN 4140 of 2012)

Rameswar Prasad Gupta

Versus

The Collector, 24 Parganas (South) Alipore & Ors.

For the petitioner : Mr. Saktinath Mukherjee
Mr. Debayan Bera
Mr. Sukumar Bhattacharyya
Mr. Dipendra Nath Chaunder
.....Advocates

For the State : Mr. Susovan Sengupta
Mr. Soumitra Bandopadhyay
Mr. Prasanta Behari Mahata
.....Advocates

For the KMDA : Mr. Satyajit Talukdar
.....Advocates

Heard lastly on : 02.05.2023

Judgment on : 17.10.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for quashing of the impugned order, not giving effect to the

impugned notice and from not disturbing the possession of the petitioner in respect of the lands in question.

2. Mr. Mukherjee, learned senior counsel appearing on behalf of the petitioner, submitted as follows. The original writ petitioner claimed to be the owner of four plots of land being plot No. 2437, 4120, 2634 and 3794 situated in Mouza- Kasba, P.S. Kasba, District- South 24 Parganas District. In view of the stand of the State respondents, now the petitioner would restrict its claim to challenging the requisition of land recorded in respect of only two plots being Plot No. 2437 and 2634 involved in Case No. LA-II/105 of 1976-77. From the affidavit-in-opposition filed on behalf of the State, it appeared that award in respect of two plots being Plot No. 2634 (entire) measuring 0.74 acres had been declared and award in respect of plot No. 2437 had been declared in two phases. In first phase, award in respect of 0.57 acres was declared and in second phase, award in respect of 1.40 acres was declared. The total area of plot No. 2437 was 2.00 acres. Out of 2.00 acres 1.97 acres were acquired leaving aside the structural portion measuring 0.03 acres. Copy of the said award had been disclosed at pages 28 to 31 of the affidavit-in-opposition of the State affirmed on 16.09.2022. The writ petitioner filed his affidavit-in-reply to the main affidavit-in-opposition of the State on 17th November, 2022 wherein it had been reaffirmed that no notice under Section 3 was served upon the petitioner. Moreover, there was no real urgency to invoke the provisions of Act II of 1948 to acquire the lands since the respondents commenced construction in 2023. It was also contended that due to non apportionment of the awarded

amount amongst the awardees, the award became bad in law and was liable to be quashed. In the rejoinder to the affidavit-in-opposition, it was contended by State that notice under Section 3 was pasted for display on a Kasba School as the same could not be served owing to absence of the interested parties viz. recorded owners/occupiers/interested parties on the spot. It was further contended that the respondent remains silent for the period from 1978 to 1981 and the writ petitioner was not in occupation of the land in 1978 and that was why requisition order could not be served upon them. It had been further contended that since the petitioner received the notice for 80% compensation they admitted that they were aware of requisition proceeding. On perusal of the award disclosed in the affidavit-in-opposition of the State, it appeared that although the award was declared but from the award itself, it would clearly appear that there were several awardees, but a consolidated award in respect of several co-owners had been declared and the awarded amount had not been apportioned amongst the awardees. It was a clear case of the writ petition that notice of requisition had not been served upon the petitioner. In the main affidavit-in-opposition in paragraph 9 the State contended that notice under Section 3(i) was issued to all interested parties, but no statement was made regarding service of notice under Section 3 upon the petitioner. However, in rejoinder to the affidavit-in-opposition, it was contended that notice under Section 3 was pasted for display on a Kasba School. No records had been produced by the State about the State about the service of notice under Section 3 upon the writ petitioner. The statement regarding non service of notice under

Section 3 could not be rebutted by the respondent by producing records showing service of notice upon the petitioner. Admittedly, the notice of 80% ad hoc compensation was served upon the writ petitioner which had been disclosed by the petitioner in the writ petition and which prompted the petitioner to come to this Court challenging the notice of non service notice under Section 3. Hence, it could be easily inferred that notice under Section 3 of the Act-II of 1948 had not been served upon the petitioner. Further 1.97 acres of plot No. 2437 was sought to be acquired. Balance 3 decimal consisting of structure was not acquired. So, notice under Section 3 could had been pasted on the structure. That had not been done. On the contrary, the notice was allegedly pasted in a nearby school. Report of process server had not been produced as a proof of service. So pasting of notice in Kasba school could not be accepted as a good service of notice under Section 3. Article 300A of the Constitution of India declared that no person shall be deprived of his property save under the authority of law. The Act II of 1948 being the law then in force, required that under Section 3(i), making of an order after proper consideration and satisfaction and sub-Section (2) thereof required the service of notice both upon the owner and occupier in accordance with the prescribed procedure. Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules 1948 prescribed the procedure for service of notices under Section 3 upon the owners and occupiers. The Act II of 1948 was treated to be and inherently was a confiscatory statute requiring strict compliances of the provisions of the said Act. There was uniformity of the view without any known dissent that non service of the order under

Section 3(i) upon the owners/occupiers would make the requisition order void and invalid. The service of notice had been declared to be mandatory by this Hon'ble Court and not directory one. Re: i) 98 CWN 1090 (Para 19) (DB), ii) 1997(1) CLJ 370 (Para 8, 9) (DB). Non service of the order would also deprive the person concerned an opportunity to make a representation as indicated by the Hon'ble Supreme Court. Re: AIR 1971 SC 961. The Hon'ble Supreme Court also held in the context of the Assam Land (Requisition & Acquisition) Act, 1948 which Act was identical to West Bengal Act II of 1948 that only requisitioned land could be acquired not otherwise. Re: AIR 1965 SC 1301 Para 4 & 5. In the instant case, it was an admitted fact that no notice under Section 3 was served upon the petitioner. Hence the order of requisition was bad-in-law and no further action could be taken on the basis of requisition order. Consequently, the Notification for acquisition under Section 4(1a) of the Act also became bad in law and consequently, the award declared on the basis of said 4(1a) notice was also bad in law. Immediately after the service of notice of ad hoc 80% compensation, the petitioner moved this Hon'ble Court and obtained an interim order upon sole allegation that no notice was ever served upon them. No contrary contention had been raised in the affidavit-in-opposition by the State nor the same could reasonably be raised. The second point of the case was that there was no real urgency to invoke the provisions of West Bengal Act-II of 1948 to acquire the land. The urgency was required to be there about the purpose as also about the necessity of taking possession. Although the possession was allegedly handed over to K.M.D.A. on 17.09.1979, but no further action was

taken to utilize the said land for the purpose for which the land was requisitioned. The construction on the land in question commenced in 2022. Hence, there was no real urgency to invoke the provisions of West Bengal Act-II of 1948 for acquisition of the land in question. Re: i) 1992(2) CLJ Page 267, ii) 1997(1) CLJ Page 370. Next point was that there had been no apportionment of the Award amongst the awardees. In absence apportionment of award, the awards became bad and acquisition also failed. Re: i) 2009(2) CLJ 636 (DB) (Para 22, 23) The said judgment had been affirmed by the Hon'ble Supreme Court by a speaking order in SLP (Civil) No. 28622 of 2009. ii) 2015(3) Cal LT 36 Para 38, 177 and 178. The contention that the decision reported in 2011(3) CHN 555 was per incuriam was also without substance in as much as the Special Leave Petition filed against the said Judgment had been dismissed by the Hon'ble Supreme Court. The decision reported in 1993 (4) SCC 369 had no manner of application since the notification under Section 4(1a) became invalid for non service of notice under Section 3. The contention of the State respondent that the name of the petitioner had not been recorded in the RS record of right was wholly incorrect. The petitioner's name was recorded in the RS Records of Right and hence the same was supposed to be known to the Government. It was submitted that there was no pleading in the writ petition except the point of non service of notice. The petitioner's case was of non service of notice under Section 3 and there was no emergency to invoke Act II of 1948. The award itself showed that there had been no apportionment.

3. Mr. Talukdar, learned counsel appearing on behalf of the respondent no. 4, submitted as follows. Although at para 2 of the writ petition, the original writ petitioner claimed himself to be the owner of the plots of land being Plot Nos. 2437, 4120, 2634 and 3794 of Kasba Mouza, but did not annex any document to show that his name was ever recorded in the ROR in respect of the said lands. Out of the aforementioned four plots being nos. 2437, 4120, 2634 and 3794 of Kasba Mouza, three (3) plots being R.S. Plot Nos. 2437, 2634 and 3794 were under acquisition and R.S. Plot No. 4120 was beyond acquisition. Amongst those three, two plots viz. R.S. Plot Nos. 2497, 2634 were involved in L.A. Case No. LA.II/105/1976-77 and the land in R.S. Plot No. 3794 was involved in L.A. Case No. LA.II/40F of 1973-74. The writ petition challenges the proceedings being L. A. Case No. LA.II/105/1976-77 only and not the L. A. Case No. LA.II/40F of 1973-74. Therefore, acquisition of the land in R. S. Plot No. 3794 remained unchallenged. The land measuring an area 1.97 acres out of total area of 2.00 acres in R. S. Plot No. 2437 and the land measuring an area 0.74 acre in R. S. Plot No. 2634 of Mouza- Kasba was requisitioned and subsequently, acquired under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 in connection with Case No. LA.II/105/1976-77 for the purpose of East Kolkata Area Development Project by the concerned Land Acquisition Collector, South 24 Parganas. Vacant possession of the said land in R. S. Plot Nos. 2634 and 2437 was delivered to the KMDA on 15.05.1978 and 01.09.1979 respectively. Notification being No. 8282

LA(PW)/IM-78/82 dated 21.11.1983 issued under Section 4(1a) of the said Act, 1948 was duly published in the Calcutta Gazette acquiring the said land permanently and thereby the right, title and interest of the erstwhile owners in respect of the said land vested absolutely to the State of West Bengal. Later on, the Government of West Bengal by a registered deed of conveyance being Deed No. 3141 dated 27.06.2000 conveyed the right, title and interest of the said land in favour of the KMDA. The land measuring an area 1.89 acres in R. S. Plot No. 3794 of Mouza- Kasba was requisitioned and subsequently, acquired under the provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 in connection with Case No. LA.II/40F of 1973-74 for the purpose of the East Kolkata Area Development Project by the concerned Land Acquisition Collector, South 24 Parganas. Vacant possession of the said land i.e. measuring an area of 1.89 acres of the said R. S. Plot No. 3794 was delivered to the KMDA on 18.12.1973. Notification being No. 21901- LA (PW)/ 2R-157/74 dated 17.10.1974 issued under Section 4(1a) of the said Act, 1948 was duly published in the Calcutta Gazette acquiring the said land permanently and thereby, the right, title and interest of the erstwhile owners in respect of the said land vested absolutely to the State of West Bengal. Later on, the Government of West Bengal by a registered deed of conveyance being Deed No. 763 dated 12.02.1996 conveyed the right, title and interest of the said land in favour of the KMDA. The R. S. Plot No. 4120 of Mouza- Kasba, J. L. No. 13, District- South 24 Parganas was beyond acquisition. From the documents submitted by the State of West Bengal in its affidavits, it is evident that Award in respect of

the aforesaid plots of land was duly passed by the concerned Collector well before expiry of the said Act, 1948. The said acquisition proceedings which were initiated, had been completed following the due process of law. Although during hearing of the writ petition, submissions were made on behalf of the petitioner on various points viz. i) service of notice under Section 3(1) of the Act, 1948; ii) purpose of acquisition/emergent situation; iii) apportionment etc. but there had been no pleadings or any ground taken in the writ petition save and except on the point 'service of notice under Section 3(1) of the Act, 1948'. Thus, the other points argued from the bar only, would not carry any value and could not be taken into consideration at all. From the affidavit affirmed on 29.11.2022 by the State, it appeared that service of notice under Section 3(1) of the Act, 1948 was duly made in terms of Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules, 1948. Several vacant plots of land including the subject plots were requisitioned and the notice/order which could not be served personally had to be pasted in some conspicuous places as was done in the instant case. It was not the case of the petitioner in the writ petition that he or his family members were residing on any of those plots of land by making any sort of construction over there. Even assuming though not admitting that the notice under Section 3(1) was not served in the manner prescribed, the same could not be construed to be an illegality, but it was an irregularity, for which the acquisition proceedings would not be vitiated. More so, the West Bengal Land (Requisition and Acquisition) Rules, 1948 did not contain any provision to the effect that non-compliance of service of notice under Section

3(1) would vitiate the proceeding itself. In this context, reliance was placed on the 5-Judges Bench decision in the case of Indore Development Authority vs. Manoharlal & Ors. reporte in (2020) 8 SCC 129 as also on the decision in the case of May George vs. Special Tahasildar & Ors. reported in (2010) 13 SCC 98. In response to the submissions of the petitioner that there was no such emergent situation for invoking the provisions of the Act-II of 1948, it is entirely an election of the concerned authority as to whether the acquisition should be made under the Land Acquisition Act of 1894 or under the West Bengal Act-II of 1948. In this context, reliance was placed on the decisions reported in i) (1992) 2 Cal L J 267; ii) (2001) C H N 531; iii) (1994) 4 SCC 192. So far the arguments of the petitioner on the point of appointment was concerned, it was submitted on behalf of the KMDA that it was the specific case of the petitioner in the writ petition that he was the sole owner of the subject plots and nowhere in the writ petition it was stated that apart from him there was any other co-owner/ co-owners. It was also evident from records that award was duly declared by the concerned Collector and compensation amount was settled in favour of the original writ petitioner in respect of the acquired plots of land and there had been no dispute as to the apportionment of the amount as there was no other claimant apart from the writ petitioner. It also appeared from records that due to pendency of this writ petition, payment could not be made. Therefore, the question of apportionment as argued from the bar did not and could not arise. In this context, reliance was placed on the decisions reported in i) (1995) 5 SCC 577; ii) AIR 1966 SC 237.

4. Mr. Sengupta, learned counsel appearing on behalf of the State respondents, submitted as follows. The petitioner was the owner of lands situated in Plot Nos. 2437, 4120, 1634 and 3795 situated within khatian No. 137, 704 and 944 of Mouza Kasba, P.S. Tollygunge, at present Kasba, within District of 24-Parganas and he had been possessing the said lands by constructing a farm house and other dwelling houses in respect of a part of the said lands and the remaining lands were being used and occupied by the petitioner as a farm by constructing brick built wall on all sides of the said lands. Recently the petitioner received notices issued by the Collector, 24-Parganas (South), under Act II of 1948, Alipur, the respondent No. 1 herein, in connection with a case being No. LA. II/ 105 of 1976-77 and your petitioner was asked to accept the 80% of the value of the property so awarded as the said property was proposed to be requisitioned under the said provisions of the said Act. No arguments and/or submissions be allowed to be canvassed by the Learned Senior Counsel representing the writ petitioner herein on a fact which had not been pleaded in the purported writ petition. Assuming but not admitting that no notice under Section 3(1) of Act II i.e. 1948 Act was served upon the predecessor of the writ petitioner herein but the evidence emerged from the documents had shown that the predecessor-in-interest of the writ petitioner was aware of such notice for requisition under Section 3(1) of Act II i.e. 1948 Act and admittedly in the said purported writ petition there was a pleading to the effect that the predecessor-in-interest of the writ petitioner herein received other notices in connection with the said acquisition proceeding as it would be evident from

the paragraph 4 of the said purported writ petition. As per records the notices were served to the owners of the respective plots in question touching the said land acquisition proceedings and so far the petitioner's lands in question i.e. plot NO. 2437 and 2634 and for some other plots, notices under Section 3(1) of Act II was pasted/ affixed for display on Kasba School as the said school situates at conspicuous part of the lands in question of the writ petitioner herein in terms of Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules, 1948 and the word namely "conspicuous part of the land" denotes a very wide connotations. Assuming but not admitting that no notice under Section 3(1) of Act-II i.e. 1948 Act was served personally to the predecessor-in-interest of the writ petitioner herein that by no means itself fatal so as to quash the said completed acquisition proceedings relating to the lands in question of the writ petitioner herein and submission was made further that no prejudice be caused in not serving the said notice since the said notice is under no circumstances can be treated as a mandatory one but the same is to be treated as a directory one by taking into account by serving the said notice, the predecessor-in-interest of the writ petitioner herein was not debarred from claiming his title regarding the said lands in question. Moreover such notice even if the word "shall" is incorporated in the said Section that does not mean it is a mandatory one regarding service of such notice and the fact remains the failure a notice under Section 3(1) of Act-II would not adversely affect the subsequent proceedings including award and title of the Government in the lands in question of the writ petitioner herein, above all

there is an admission on the part of the writ petitioner herein that the writ petitioner herein has got aware of the subsequent notices touching the said acquisition proceedings in respect of the lands in question of the writ petitioner. It is a well settled principle of law that the provisions of a statute creating public duties are directory and when the provisions of a statute relates to performance of a public duty, such as, commencing from issuance of notice under Section 3(1) of Act-II culminating to the award in respect of the land acquisition proceedings at the behest of the State respondents and to hold null and void of such completed acquisition proceedings in respect of the lands in question of the writ petitioner herein in view of the fact that no notice under Section 3(1) of Act-II i.e. 1948 Act was personally served to the predecessor-in-interest of the writ petitioner herein at the material point of time, would not promote the main object of the legislature and the provisions incorporated in the Act-II i.e. 1948 Act do not provide anything to the effect that failure to make observance of particular section would lead to specific consequences and as such even assuming but not admitting that the predecessor-in-interest of the writ petitioner herein was not aware of Section 3(1) of Act-II at the material point of time relating to such acquisition proceedings, that does not make the entire completed acquisition proceeding be treated as void ab initio and/or nullity. The West Bengal Land (Requisition and Acquisition) Re-Enacting Act, 1997 did not repeal the West Bengal Land (Requisition and Acquisition) Act, 1948 i.e. Act-II and instead re-enacted the said Act-II of 1948 and the fact remains that the said Act-II i.e. 1948 Act although it was a temporary act but it expired

on 31.03.1997 as per statute and the fact remains that as per records that one award was declared in respect of some lands in question in the year 1976 in one of the acquisition proceeding as stated above and another where an award was declared in the year 1989 in respect of some of the lands in question with regard to other acquisition proceeding as stated above. Once notice under Section 4(1a) was invoked at the behest of the State respondents with regard to the said land acquisition proceedings, State of West Bengal has become the owner of the lands free from all encumbrances on the date of issuance of such notice and here the writ petitioner herein also admitted that Section 4(1a) of Act-II i.e. 1948 Act was invoked at the material point of time in connection with the said land acquisition proceedings and the fact remained that awards were passed in such land acquisition proceedings. The petitioner's contention that apportionment be made in respect of such awards or else, such awards were to be treated as a nullity was bereft of any pleadings in the purported writ petition. Above all there is no provision in the statute in question which spoke of the award to be treated as a null and void unless apportionment be made as part of the Awards in such acquisition proceedings. It was also a fact that instead of having aware of the acquisition proceedings, the writ petitioner never came forward with the particulars of the legal heirs who claimed to be the owners of the lands in question being involved in such acquisition proceedings. So the authority being the State respondents herein at that material point of time was not aware of the ownership of the predecessor-in-interest of the writ petitioner herein in respect of the lands in

question. Reliance was placed on the judgment reported in (2010)13 SCC 98.

5. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

6. First, the ambit of challenge has to be ascertained. It is contended by the State that the original writ petitioner claimed himself to be the owner of the plots of land nos. 2437, 4120, 2634 and 3794 at Kasba Mouza, but did not annex any document to show that his name was ever recorded in the ROR in respect of the same. The writ petition challenges the proceedings being LA Case No. LA. II/105/1976-77, only and not the LA Case No. LA.II/40F of 1973-74. Therefore, the acquisition of the land in RS plot no. 3794 remains unchallenged.

7. Land was being acquired for the purpose of East Kolkata Development Project. Vacant possession of the said land in RS plot nos. 2634-2437 was delivered to the KMDA on 15.07.1978 and 01.09.1971, respectively. Notification was issued under Section 4 (1a) of the Act 1948 and duly published in the Calcutta Gazette. Therefore, the right, title, interest of the erstwhile owners in respect of the such land was absolutely vested in the State. Later on by a registered deed dated 26.06.2000 the land was conveyed in favour of the KMDA. The land in RS plot no. 3797 was requisitioned and subsequently acquired under the Act of 1948 for the same purpose vacant possession was delivered to the KMDA on 18.12.1973. A notification dated 17.10.1974 was issued under Section 4 (1a) of the Act of 1948 and was duly published in the Calcutta Gazette. This land too was

conveyed to the KMDA by a deed dated 12.02.1996. The RS plot no. 4120 was beyond acquisition. Evidently, award in respect of the aforesaid plots of land was duly passed by the concerned Collector before the expiry of the Act of 1948.

8. The Respondents contented that although other submissions were made on behalf of the petitioner like as regards the service of notice under Section 3(a) of the Act 1948, the purpose of acquisition/emergent situation and apportionment, etc., but there has been no pleadings of grounds taken in the writ petition in this regard, except on the point of service of notice. There is much merit in this submission. However, even if one deals with these issues, they are unable to clinch the case for the petitioners.

9. From the affidavit of the State affirmed on 29.11.2022 it appears that there was compliance of the provision of service of notice under Section 3(1) of the Act of 1948. There were several plots of land. The notice/order that could not be served personally had to be pasted at a conspicuous place. 'Conspicuous part' of the land as contained in Rule 3 of the West Bengal Land (Requisition and Acquisition) Rules 1948 has a very wide connotation. There is also a presumption under Section 114 of the Evidence Act, Illustration (e) about official acts being performed regularly. Even if for argument's sake it is found that such notice was not served exactly in the manner prescribed, in the instant facts the same may not vitiate the proceeding. A reference may also be made to the decision in *May George* (supra).

10. Moreover, one has to attach due credence to the Gazette Notification in respect of Section 4(1a) of the Act II of 1948 so far as knowledge of all concerned about the proceeding in question and the impending vesting.

11. In the Constitution Bench decision of Hon'ble Apex Court in Indore Development Authorities Case (supra), it was clearly held that the vesting of a land in the State would not be vitiated if either the possession of the land is taken over or the compensation is paid. In May George (supra), it was held that once Award was passed and possession was taken, land stood vested in the State. To an extent, the spirit of the principle will also be relevant. But, unlike in the 1894 Act, here the starting point of vesting is not mere possession, but publication of the Gazette Notification of the Acquisition Notice by virtue of Section 4(1a) of the Act II of 1948. Such notification was duly made in this case.

12. As regards the question of emergent situation for invoking the provisions of Act II of 1948, it is indeed entirely a decision of the concerned authority as to whether such acquisition should be made under the said Act or under the Act I of 1894. In fact, an emergent situation that might have inspired an acquisition may not survive after the acquisition of such land. However, that was not the case here.

13. It is also evident from the records that the concerned Collector duly declared award and the compensation amount was settled in favour of the original writ petitioner. It also appears that due to pendency of the writ petition payment could not be made. It is the petitioner's case that purportedly no other claimant was there apart from the petitioner.

Therefore, the question of apportionment did not arise. The petitioner cannot be permitted to make roving and fishing enquiry, alter stands and rely on untested and non-pleaded records. Moreover, no ground as regards apportionment had been taken up in the pleadings. The decision in M/s Asiatic Investment Limited (supra) was also not rendered on the question of apportionment alone.

14. In view of the above discussions, I do not find any merit in the application.

15. Accordingly, the writ petition is dismissed. The connected applications also stand disposed.

16. However, there shall be no order as to costs.

17. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)