

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**WPA 5409 of 2009
Sri Girija Prasanna Cotton Mills Limited
VS.
The State of West Bengal & Ors.**

For the petitioner	: Mr. Debayan Bera Mr. Sakti Prasad Chakrabarti	 advocates
For the State	: Mr. Anirban Roy Mr. Sk. Md. Galib Mr. Shehnaz Tareq Mina	 advocates
For the E.S.I. Corporation	: Mr. Tilak Mitra	 advocate
Reserved on	: 05.11.2024	
Judgment on	: 14.11.2024	

Hiranmay Bhattacharyya, J.:-

1. The petitioner has prayed for issuance of a writ of mandamus commanding the respondents to release 2.12 acres of land comprised in RS Dag nos. 185 and 187 within Mouza Garshyamnagar under Police Station Jagaddal, in the District of North 24 Parganas and for a direction upon the respondents to pay requisition compensation to the petitioner with effect from 30.05.1979 till the date of actual delivery of possession to the petitioner.
2. Petitioner claims to be the owner of the Bastu land comprised in RS Dag nos. 185, 187 and 728 within Mouza Garshyamnagar under Police Station

Jagaddal in the District of North 24 Parganas measuring about 17.60 acres. Government initiated a proceeding under the West Bengal Land (Requisition and Acquisition) Act, 1948 (Act II of 1948) being Case No. LA II/79 (N) of 1978-79 and an order dated 23rd May 1979 was passed for taking possession of the land measuring about 12.46 acres as mentioned in the schedule to the said order on 30.05.1979.

3. Petitioner claims that before passing of the order of acquisition, the petitioner was in possession of the aforesaid plots measuring about 12.46 acres. Petitioner states that the possession of the property as mentioned in the schedule of the order under Section 3(1) of Act II of 1948 was taken on 30.05.1979. The State of West Bengal published a notification under Section 4(1a) of Act II of 1948 which was published in the Calcutta Gazette for the purpose of acquiring 10.34 acres of land comprising RS plot no. 728 in full and RS plot nos. 185 and 187 in part.
4. The balance portion of land measuring about 2.12 acres comprised in RS Plot nos. 185 and 187 was not acquired by the Government and, according to the petitioner, the same is still under requisition. Since the Government neither took any steps to acquire the aforesaid land measuring about 2.12 acres nor released the same from requisition, the petitioner filed this writ petition.
5. Mr. Bera, learned Advocate appearing for the petitioner submitted that though the land measuring about 12.46 acres was requisitioned by the Government, only a portion of the same measuring about 10.34 acres have been acquired and the Government has not taken any steps either for acquiring the same or for releasing the same from requisition. By placing reliance upon Section 3, 4 and 6 of Act II of 1948, Mr. Bera contended that if the State Government decides not to acquire a portion of the land requisitioned under Section 3(1) of the said Act, the said property ought to have been released from requisition. He further submitted that at the time of passing the order of requisition the petitioner was in possession of the

entire 12.46 acres of land and the Government took possession of the entire portion of the land as mentioned in the schedule pursuant to an order passed under Section 3(1). He, therefore, submitted that the Government has to either acquire the balance land measuring about 2.12 acres or release the same from requisition. He concluded by submitting that the respondent authorities should be directed to pay requisition compensation to the petitioner with effect from 30.05.1979 i.e., date of taking possession of the lands in question till the date of delivery of possession of the lands to the petitioner upon releasing the same from requisition.

6. Mr. Galib, learned advocate appearing for the State seriously disputed the submissions made by Mr. Bera. He contended that prior to passing of the order of requisition under Section 3(1) of Act II of 1948 a preliminary inspection was conducted and it was found that there are squatters on the land measuring about 2.12 acres for which the State Government decided to acquire only 10.34 acres of land out of 12.46 acres of the said land. He further contended that out of 12.46 acres possession was taken only in respect of 10.34 acres of land and the possession of 10.34 acres of land was handed over to the Requiring Body. In support of such contention Mr. Galib placed reliance upon the Certificate of Possession of the property made over to the Requiring Body. Mr. Galib submitted that since possession of the land measuring about 2.12 acres was not taken over by the State, the question of releasing the same from requisition does not arise and consequently the claim of the petitioner for payment of requisition compensation in respect of the said property with effect from 30.05.1979 is liable to be rejected.
7. Mr. Galib placed reliance upon the decision of a co-ordinate Bench in the case of **Samarendra Nath Paul & Ors. vs. West Bengal Housing Board** reported at **(2000) 2 CHN 771** and a decision of the Hon'ble Supreme Court in the case of **Kolkata Metropolitan Development Authority vs.**

Pradip Kumar Ghosh and Others reported at ***(2018) 13 SCC 623*** in support of his contention that requisition is a sine qua non for issuance of a notification under Section 4(1a) of Act II of 1948.

8. Mr. Mitra learned advocate appearing for the Requiring Body contended that possession of only 10.34 acres of land was delivered to the requiring body. He further contended that the Requiring Body have also paid the requisite amount for acquisition of the land in question.
9. Heard the learned advocates for the parties and perused the materials placed.
10. Record reveals that a preliminary inspection was conducted at the time of requisition of the property in question. The purpose for which the lands were sought to be requisitioned was for setting up an ESI Hospital within Mouza Garshyamnagar under Police Station Jagaddal in the District of North 24 Parganas. From the Preliminary Inspection Report dated 23.05.1979 it is evident that the area of the land requisitioned is 12.46 acres. It further appears from the Inspection Report that there are squatters on a portion of the land measuring about 2.12 acres covering portion of plot nos. 185 and 187. The Inquiry Officer made a recommendation for consideration of the Special Land Acquisition Officer for issuance of requisition order excluding the area of 2.12 acres. The Special Land Acquisition Officer after considering the Preliminary Inspection Report observed that requisition order for 12.46 acres in Mouza Garshyamnagar under Police Station Jagaddal, District North 24 Pgs under Act II of 1948 may be issued. Thereafter, the order under Section 3(1) of Act II of 1948 dated 23.05.1979 was passed.
11. It is evident from the said order that the date of taking possession of the land was fixed on 30.05.1979 at 12 Noon. From the schedule of lands appended to the said order it is evident that the total area of land requisitioned in Plot nos. 185, 187 and 728 was 12.46 acres.

12. At this stage it would be relevant to take note of some of the provisions laid down in Act II of 1948 for which the same is extracted hereinafter.

"3. Power to requisition - (1) *If the State Government is of the opinion that it is necessary so to do for maintaining supplies and services essential to the life of the community or for increasing employment opportunities for the people by establishing commercial estates and industrial estates in different areas or for providing proper facilities for transport, communication, irrigation or drainage, or for the creation of better living conditions in rural or urban areas, not being an industrial or other area excluded by the State Government by a notification in this behalf, by the construction or reconstruction of dwelling places in such areas or for purposes connected therewith or incidental thereto, the State Government may, by order in writing, requisition any land and may make such further orders as appear to it to be necessary or expedient in connection with the-requisitioning:*

Provided that no land used for the purpose of religious worship or used by an educational or charitable institution shall be requisitioned under this section.

(1A) A Collector of a district, an Additional District Magistrate or the First Land Acquisition Collector, Calcutta when authorised by the State Government in this behalf, may exercise within his jurisdiction the powers conferred by sub-section (1).

(2) An order under sub-section (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in occupation of an occupier, not being the owner of the land, also on such occupier. (3) If any person fails to comply with an order made under sub-section (1). the Collector or any person authorised by him in writing in this behalf shall execute the order in such manner as he considers expedient and may, -

(a) if he is a Magistrate, enforce the delivery of possession of the land in respect of which the order has been made to himself, or

(b) if he is not a Magistrate, apply to a Magistrate or, in Calcutta as defined in clause (11) of section 5 of the Calcutta Municipal Act, 1951, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the delivery of possession of such land to him."

4. Acquisition of land.- (1) *Where any land has been requisitioned under section 3, the State Government may use or deal with such land for any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient.*

(1a) The State Government may acquire any land requisitioned under section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of section 3,

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

6. Release from requisition. - *(1) Where any land requisitioned under section 3 is not acquired and is to be released from requisition, the [State] Government may, after making such inquiry, if any, as it considers necessary, specify by order in writing the person who appears to it to be entitled to the possession of such land.*

(2) The delivery of possession of such land to the person specified in the order made under sub-section (1) shall be a full discharge of any liability of the [State] Government [for any claim for compensation or other claim in respect of such land for any period after the date of delivery] but shall not prejudice any right in respect of such land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

(3) Where the person [specified in the order made under subsection (1)] cannot be found or is not readily traceable or has no agent or other person empowered to accept delivery on his behalf, the [State] Government shall publish in the Official Gazette a notice declaring that such land is released from requisition and shall cause a copy thereof to be affixed on some conspicuous part of such land.

(4) When a notice referred to in sub-section (3) is published in the Official Gazette, the land specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person [specified in the order made under sub-section (1)]; and the [State] Government shall not be liable for any compensation or other claims in respect of such land for any period after the said date."

13. Section 3 empowers the State Government to requisition any land by an order in writing for the purpose mentioned therein or for purpose connected therewith or incidental thereto. Subsection 2 of Section 3 states that an order under subsection (1) shall be served in the prescribed manner on the owner of the land and where the order relates to land in

occupation of an occupier, not being owner of the land, also on the occupier.

14. When an order under Section 3(1) of Act II of 1948 is passed, the State Government is under an obligation to serve the said order upon the owner of the land and the occupier who is not the owner of the land. Subsection 3 of Section 3 provides for execution of the said order by way of enforcing the delivery of possession of the land in case any person fails to comply with an order made under Section 3(1).
15. Upon a reading of Section 3 of Act II of 1948 this Court is of the considered view that upon service of an order passed under Section 3(1) of the said Act, the person upon whom such order is served is obliged to comply with the said order by handing over possession of the property mentioned in the schedule of the said order on the date and time mentioned therein.
16. Subsection 3 of Section 3 uses the expression "shall". If any person fails to comply with an order made under Section 3(1), the statute mandates the Collector or any person authorised by him in writing to execute the order by enforcing the delivery of possession.
17. In the case on hand the total area of land requisitioned by an order passed under Section 3(1) of Act II of 1948 was 12.46 acres. In case any person fails to comply with the said order the statute mandates the Collector or any person authorised by him in writing to execute the said order and enforce the delivery of possession. It is too late in the day for the State to now take the stand that possession of land measuring about 2.12 acres was not taken.
18. Section 4 deals with acquisition of land. Subsection (1a) states that the State Government may acquire the land requisitioned under Section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in Subsection 1 of Section 3.

19. It is not in dispute that out of 12.46 acres of land requisitioned under Section 3, only a portion thereof measuring about 10.34 acres have been acquired. The balance portion measuring about 2.12 acres has not yet been acquired by the State Government. The said land is still under requisition.
20. Section 6 of Act II of 1948 provides for release from requisition. It states that where any land requisitioned under Section 3 is not acquired and is to be released from requisition, the State Government may after making such enquiry, if any, as it considers necessary, specify by order in writing the person who appears to it to be entitled to be in possession of such land. Subsection 2 of Section 6 states that the delivery of possession of such land to the persons specified in the order made under Subsection 1 shall be a full discharge of any liability of the State Government for not claiming for compensation or other claim in respect of such land for any period after the date of delivery but it shall not prejudice any right in respect of such land which any other person may be entitled to by due process of law to enforce against the person to whom possession of the land is so delivered.
21. Petitioner claims to be the owner of land measuring about 12.46 acres. An order under Section 3(1) of Act II of 1948 was passed in respect of 12.46 acres. Petitioner further claims that they were in possession of the aforesaid land at the time of passing the order under Section 3(1) of the said Act. The land owner was thus deprived of exercising his rights in respect of the said property upon issuance of the order passed under Section 3(1). However, a portion of the said property measuring about 10.34 acres was acquired by taking recourse to Section 4 of the said Act.
22. The property was requisitioned by passing an order. Release of the property or a portion thereof also has to be by an order in writing.
23. Acquisition of a portion of the requisitioned land does not automatically result in release of the balance portion of the requisitioned land from

requisition. No material has been placed by the respondent authorities to show that the balance land measuring about 2.12. acres have been released from requisition.

24. In ***Kolkata Metropolitan Development Authority*** (supra), the Hon'ble Supreme Court reiterated the well settled proposition that the requisition cannot continue for long and the property should be acquired, if necessary. It was further held that where the purpose of requisitioning the property is of a permanent character and where the Government has also the power and opportunity to acquire the property and if the Government chooses not to exercise the power to acquire the same, then by keeping the property under requisition might be an abuse of the power and colourable exercise of that power. It was further observed that the effect of prolonged requisition is that the landlord is deprived of his right and title to the property without being paid due compensation.
25. At the relevant point of time the Government had the power to requisition the property. The Government also had the power to acquire the same. The purpose for which the land was requisitioned under Section 3(1) of Act II of 1948 was for setting up an ESI Hospital and, therefore, the purpose was of a permanent character. In order to achieve the said object, the Government requisitioned the property in question but ultimately decided to acquire a portion thereof leaving a portion of land measuring about 2.12 acres outside the acquisition. Acquisition of a portion of the requisitioned land and keeping the balance land under requisition for an indefinite period amounts to gross abuse of the power and a colourable exercise of such power by the State respondents. It cannot be disputed that the interest of the land owner can be protected in a much better way if the property is acquired rather than keeping the same under requisition permanently.

26. Since a portion of the land requisitioned under Section 3(1) of Act II of 1948 is still under requisition, it is open to the State either to acquire the same or to release the said property from requisition.
27. It is for the State to decide as to whether the portion of land measuring about 2.12 acres should be acquired in accordance with law. In the event the State decides not to acquire the same, the said property cannot be allowed to be kept under requisition any further and the State should release the same from requisition and deliver possession of such land to the person who is entitled to the possession of such land. The State shall also be liable to pay requisition compensation in respect of the land measuring about 2.12 acres in accordance with law.
28. There is, however, no quarrel to the proposition of law laid down in ***Samarendra Nath Paul*** (supra) that an acquisition under Section 4(1a) of Act II of 1948 is permissible only upon requisition of the property made under Section 3 of the said Act. The said decision cannot come to the aid of the respondents as the issue involved in the case on hand did not fall for consideration in the said reported case.
29. In view of the reasons as aforesaid the writ petition stands disposed of with the following order and directions.
- (a) The Collector, 24 Parganas North being the 3rd respondent shall take a decision either to acquire the balance portion of the requisitioned land measuring about 2.12. acres or to release the same from requisition by passing a reasoned order which shall be communicated to the petitioner within a period of three weeks from the date of receipt of a server copy of this order.
- (b) In the event the State Government decides to release the said property from requisition, possession of such land should be delivered to the writ petitioner or the person entitled to possession of such land not later than

two weeks from the date of passing the reasoned order as indicated in paragraph (a) hereinbefore.

(c) Upon release of the said land from requisition, the Collector shall determine the compensation to be paid to the person interested in respect of the said land from the date of requisition till delivery of possession and payment should be made to such person within a period of six weeks from the date of passing the order for release of the said land from requisition.

(d) If the Collector decides to acquire the said land, appropriate steps in that regard should be initiated in accordance with law immediately after passing the order as indicated in paragraph (a) herein before and the entire proceeding shall be concluded and compensation be paid to the person interested in respect of the said land within a period of four months from the date of passing the order as indicated in paragraph (a) herein before.

30. There shall be, however, no order as to costs.

31. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita, Rinki)