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WEST BENGAL HOUSING BOARD

v.

BHAWAN LAL MUNDHRA AND ORS.

JULY 9, 1997

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[K. RAMASWAMY AND D.P. WADHWA, JJ.]

Land Acquisition :

West Bengal Land (Requisition and Acquisition) Act, 1948—Sections 3 & 4—West Bengal (Requisition and Acquisition) Rules—Rule 3—Requisition of land—Notice found to have been duly served by means of affixation as required under Section 3(2) read with Rule 3(d) before taking over possession—Held, Notice was properly served.

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Land Acquisition Act, 1894—Section 4—Public purpose—Requisition of land for the purpose of construction of houses for weaker sections of society or for construction of approach road in the housing project, provision for market place, doctor's clinic, drainage etc.—Held, cannot be said that the land was not requisitioned and subsequently acquired for the public purpose.

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Appellant State wanted to acquire lands belonging to the respondents for which notice requiring the lands were served by the process server by means of affixation. Subsequently the land was acquired by the State, but the order was quashed by the High Court on the ground that there was no proper service of notice. However, status quo was maintained. As per the order of the High Court, fresh notice was served on the respondents which was again challenged before the High Court on three grounds, namely, (i) that no notice was served prior to taking over possession of the land; (ii) that there was total non-application of mind on the part of the Collector in issuing the requisitioning notice and (iii) that the purpose was not a public purpose. The Single Judge of the High Court allowed the Writ Petition of the respondents. It was confirmed by the Division Bench. Allowing the appeal, this Court

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HELD : 1. This Court is unable to concur with the view taken by the High Court that notice had not been properly served or that there was no application of mind on the part of the Collector in requisitioning the land or that the purpose for which the requisition was made was not a public

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purpose. Construction of approach road in the housing project, provision for market complex, doctor's clinic, drainage etc., form part of the housing project and cannot be considered in isolation. That is the public purpose for which the land in question had been requisitioned, a purpose which is a public purpose. [182-G-H; 183-A-B] A

West Bengal Housing Board etc. v. *Brijendra Prasad Gupta & Ors.*, **[1997] Suppl. 2 SCR, decided on July 9, 1997, referred to.** B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4388 of 1997

From the Judgment and Order dated 7.6.96 of the Calcutta High Court in F.M.A.T. No. 1507 of 1994. C

V.R. Reddy, Additional Solicitor General, D.P. Gupta, T.C. Ray, Dr. Shankar Ghose, N.K. Poddar, Rajesh Srivastava, Ujjwal Banerjee, P. Basu, H.K. Puri, M.C. Dhingra, Ms. Laxmi Arvind, Sanjay Bansal, G.K. Bansal, Arvind Kumar, Ms. Radha Rangaswamy and Ms. Zoya Hadke for the appearing parties. D

The Judgment of the Court was delivered by

D.P. WADHWA, J. Special leave granted. E

This appeal is directed against the judgment dated June 7, 1996 of a Division Bench of the Calcutta High Court, which Judgment was passed in appeal against the judgment dated April 18, 1994 of the learned Single Judge allowing the writ petition of the first respondent. This was however the second round of litigation between the parties. F

The first respondent who was the petitioner sought quashing of the earlier order dated December 21, 1981 passed by the Collector and Additional District Magistrate, Hooghly under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (for short the Act) requisitioning 0.63 acres of land of the petitioner bearing plot No. 1790, Mouza Monoharpur, J.L. No. 98 in the district of Hooghly. In terms of this order the possession of the land was taken over on January 7, 1982. As a matter of fact the order of requisition pertained to 21.41 acres of land of various plot numbers which included the plot of the petitioner. The report of the process server shows that the notice requisitioning the land was served by G H

A means of affixation with seal and the signatures of witnesses, by going to the places mentioned in the order requisitioning the land. The petitioner filed the writ petition in the Calcutta High Court challenging the order of requisition dated December 21, 1981 on the ground that possession of the land was taken over without the service of the order on him which was the mandatory requirement of law. By judgment dated February 23, 1983, the B learned Judge of the High Court disposed of the writ petition with the following order :

> "In this writ petition one of the grievances of the writ petitioner is that though he is the owner of the plot in question, the respondents C are trying to take possession of those lands in purported exercise of their powers under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 without serving him with a notice of requisition or acquisition. In controverting the above contention of the petitioner the respondents assert that the notice has duly been served upon the recorded owner and as the D petitioner was not the recorded owner he was not served with any notice. It, however, appears that by a registered deal dated November 9, 1965 the petitioner purchased the plot in question from the recorded owner and as such the petitioner is entitled to a statutory notice under the Act. In such circumstances I direct the respon- E dents to serve a copy of the notice of requisition upon the petitioner and thereafter proceed in accordance with law. Let status quo in respect of the plot in question be maintained till such service of notice. Let it be recorded that I have not decided any of the other points raised by the parties in support of their F respective contentions. Let it also be recorded that such service of notice will not ipso facto give any right to the petitioner to claim any compensation if the land is subsequently acquired."

Since the court directed maintenance of status quo possession of the land remained with the State.

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The order of requisitioning was again served on the petitioner by the order dated February 23, 1983 and said to have been received by the petitioner on March 24, 1983. On April 5, 1983 the petitioner again filed another writ petition (C.R. No. 3210 (W) of 1983) in the Calcutta High H Court challenging the order of requisition on three grounds, namely that

(i) no notice was served prior to taking over the possession of the land in question, (ii) that there was a total non application of mind on the part of the Collector in issuing the requisitioning notice and (iii) the purpose for which the requisition was made was not a public purpose. This writ petition was disposed of by the judgment dated April 18, 1994 of the learned Single Judge, as noted above, holding that no notice was served on the petitioner before taking over the possession of the land in question and that there was no application of mind on the part of the Collector in issuing the order requisitioning the land and that the purpose for which the requisition was made was not a public purpose.

In the meanwhile, however, by gazette notification dated June 6, 1985 published on June 12, 1985 in the Calcutta gazette extraordinary issued under Section 4 of the Act the State Government acquired all the lands including that of the petitioner which was subject matter of requisition. The appellant West Bengal Housing Board filed an appeal before the Division Bench of the Calcutta High Court against the judgment dated April 18, 1994 of the learned Single Judge. This appeal was dismissed by the impugned judgment dated June 7, 1996 on the limited ground that the order requisitioning the land was not served upon the petitioner before taking over the possession which was mandatory required under Section 3 of the Act. It would appear the Division Bench did not consider other two grounds on which writ petition had been allowed by the learned Single Judge.

We may at this stage set out the relevant provisions of law and the operative portion of the orders requisitioning and then acquiring the land.

Section 3 of the Act reads as under :

> "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 areas excluded by the State Government by a notification in this behalf, by the construction or re-construction or dwelling places in such areas (or for

A 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:

B Provided that no land used for 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 C 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 D 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 E 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

F (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."

G Section 4 of the Act reads as under :

"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 preferred to in sub-section (1) of H 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."

Rule 3 of the West Bengal Land (Requisition & Acquisition) Rules, 1948 deals with manner of service of orders and is as under :

"3. Manner of Service of Orders - An order under sub-section (1) of section 3 shall be served 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,

(a) by delivering or tendering a copy thereof, endorsed either by the person authorised by the Act to make the order or by the Collector, to the person on whom the order is to be served or his agent, or

(b) by fixing a copy thereof on the outer door of some conspicuous part of the house in which the person on whom the order is to be served ordinarily resides or carries on business or personally works for gain, or

(c) by sending the same to the person on whom the order is to be served by registered post with acknowledgement due, or

(d) by fixing a copy thereof in some conspicuous part of the land to which the order relates and also in some conspicuous place of the office of the Collector."

Extract of order under Section 3 of the Act :

"Whereas in my opinion it is necessary for the purpose of maintaining supplies and services essential to the life of the community/providing proper facilities for transport/communication/ir-

A rigation/drainage viz. for implementation of the housing project at Monoharpur to requisition the land(s) described in the schedule below/overleaf.

And whereas State Government has by notification No. 20500 L A dated 3.12.63 published in the Calcutta Gazette Part I of the B 26th December, 1963, at page 2578 authorised me to exercise the power conferred by sub-section (1A) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948).

C Now therefore, in exercise of the power conferred by sub-section (1A) of Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 West Bengal Act II of 1948 read with the authority so vested in me as aforesaid, I do hereby requisition the land's mentioned in the schedule below overleaf and make the following further order namely :

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(1) that possession of the land will be taken on 7.1.82 at 1 p.m. and

(2) that the owner/occupier/tenant of the said land shall furnish me such information relating to said land as will be necessary from E time to time."

Extract from the gazette notification under Section 4 of the Act :

"HOOGHLY No. 3528 L.A. (II) 4H-I/81 - 6th June, 1985 - Whereas 8.2216 hectares (20.34 acres), more or less, of land situate F in the village of Monoharpur, described below, have been requisitioned under sub-section (1) of Section 3 of the West Bengal (Requisition and Acquisition) Act, 1948, by the person authorised under Section 3(1A) of the said Act for the public purpose of creating better living condition in urban or rural areas by construction and reconstruction of dwelling places in such area or for G purpose connected therewith and incidental thereto, viz. for implementation of housing project;

Now, therefore, notice is hereby given that in pursuance of section 4 of the said Act the Governor acquires such land being H required for a public purpose as aforesaid.

This notice is given under the provisions of sub- section (1A) of Section 4 of the West Bengal Land (Requisition and Acquisition) Act. 1948 (West Bengal Act II of 1948), to all whom it may concern.

A plan of the land may be inspected in the office of the Collector, Hooghly."

It would appear that neither the State Government nor the Collector and Additional District Magistrate, Hooghly appeared before the High Court. The writ petition was defended by the appellant West Bengal Housing Board and on this ground, a presumption was sought to be raised that there was no application of mind by the parties in requisitioning the land and that notice had not been properly served in accordance with Rule 3 before taking over possession of the land.

West Bengal Housing Board has been constituted under the West Bengal Housing Board Act, 1972. It is a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name and shall be competent to acquire and hold property both movable and immovable, enter into contract and do all things necessary for the purposes of the Act. This Housing Board Act provides as to how the Housing Board is to be constituted, prescribes power and duties of the Housing Board and appointment of all its staff including the Housing Commissioner etc. Under Section 17 of the Housing Board Act, the Housing Board exercises powers, subject to the provisions of that Act. It may incur expenditure and undertake works for the framing and execution of such housing schemes as it may consider necessary and such housing schemes may include housing schemes in relation to lands and buildings vested in or in the possession of the State Government. The State Government may also entrust the Housing Board the framing and execution of any housing scheme, whether provided for by the Act or not, and the Housing Board shall thereupon undertake the framing and execution of such schemes and on such terms and conditions the State Government may think fit to impose. Section 18 of the Housing Board Act provides matters to be taken into consideration for the housing schemes. Under Section 29 of the Housing Board Act, the State Government may transfer to the Housing Board on such terms and conditions as may be prescribed such assets and liabilities of the State Government and thereupon these stand vested and

A transferred to the Housing Board. It is not necessary for us to state the various provisions of the Housing Board Act except to say that the Housing Board it is a statutory body with the Minister incharge of the housing department of the State Government as the Chairman of the Housing Board.

B It is not disputed that the land in question was transferred to the Housing Board, the appellant herein, by the State Government for execution and completion of the housing scheme known as "Dankuni", in Mouza Monoharpur in the State of West Bengal. The Housing Board contested the writ petition. It submitted that it was possessed of all the C records of the State Government as well as of the Collector and Additional District Magistrate, Hooghly which were produced in court during the course of hearing. In this view of the matter the appearance of the State Government or the Collector-cum-Additional District Magistrate, Hooghly, need not have been insisted upon and no adverse presumption D could have been raised. Be that as it may when the present special leave petition was filed liberty was granted to State Government to file its counter. In pursuant to that an affidavit was filed by the Land Acquisition Officer under the Collector, Hooghly. This affidavit has been filed on the basis of the official record. It has been mentioned that on January 4, 1982 E the order requisitioning the land was duly served under Section 3(2) of the Act upon all the owners/occupiers of the land as per the Records of Right available with the Collector by affixing a copy thereof on the conspicuous part of the land and the Collector's office in terms of Rule 3(d) of the Rules. It is stated, it was only after due service of notice under Section 3(2) of the Act read with Rule 3(d) of the Rules that possession of the land was F taken. It has also been stated that it was wrongly alleged on the part of the petitioner that neither the State nor the Collector filed any affidavit before the High Court and that Mr. Tapas Kumar Chakraborty, Collector, Hooghly duly swore an affidavit on October 23, 1993 on behalf of the State Government and Collector, Hooghly. The affidavit of the Land Acquisition G Officer further states as under :

1. The appeal was filed by the West Bengal Housing Board as it was the principal aggrieved party as by that time a part of the housing project had been completed and the land was required for the purpose of provid- H ing the residents with an approach road to the nearby national highway.

2. The land was essentially required for the purpose of setting up a market complex and for providing an access road to more than 5000 residents of the Dankuni Housing Project. In fact, the only road leading to the national highway passes through this plot of land. This is an existing road and people are using this only road since the inception of the project. If the road is now closed, the project will be a land-locked one and the residents will have no access to and from the project.

3. Providing housing facilities in order to create better living conditions for the people is a public purpose of great importance and there was sufficient material before the requisitioning authority to form an opinion under the Act. The requisition was done by the Collector on behalf of the State Government and all the necessary papers were available with the court. West Bengal Housing Board did not construct "Dankuni" Housing Project with the motive of making higher profit. By constructing the said project in a predominantly rural area, housing board was only fulfilling its obligation under the Act towards creating better living conditions for the people.

The Dankuni Project has not yet been fully completed. Only the residential flats have been constructed. The approach road and the market complex have to be provided to satisfy the essential requirements of more than 5000 residents of the housing complex.

A further look at Dankuni Housing Project may also be relevant. It is stated that "Dankuni" is about 30 kms. away from the city of Calcutta and is well connected with road and railway with the city of Calcutta. It is within the purview of both urban and rural areas. The West Bengal Housing Board took up the implementation of housing project in the urban and rural areas of the State of West Bengal and the Housing Board intended to implement housing complex in Dankuni at Mauza Monoharpur by constructing about 1100 dwelling units for weaker section of the community including a market complex, doctor's clinic, road, drainage etc. to cater to the needs of about 6000 inhabitants living in the project. The State Government granted approval to the Dankuni housing project and accordingly it was decided to acquire land measuring 21.41 acres including the land subject matter of these proceedings. It is further submitted that from 1983 to 1994 during the pendency of the writ petition in the High Court construction work started in phases. These was different categories of flats

A viz., Higher Income Group (Upper), High Income Group (Lower), Middle Income Group and the lower income group. Flats which are earnmarked for the income group of below Rs. 72,00 per annum cost Rs. 20,000 each flat; flats earmarked for the income group of Rs. 7200 to Rs. 18,000 per annum cost Rs. 60,000 flats for the income group of Rs. 18,000 and above B per annum cost Rs. 93,000 and flats for the income group of Rs. 30,000 per annum to cost Rs. 1,80,000. Wide publicity had been given inviting applications from public for allotment of flats and it is stated that 1000 flats had already constructed and possession taken over by the allottees who are living there.

C When the learned single Judge decided the first writ petition he had directed maintenance of status quo till service of notice requisitioning the land. Thereafter notice requisitioning the land was served upon the petitioner. Nothing further was to be done as far as the State authorities were concerned as the possession of the land had earlier been taken though D the learned Judge had directed serving a copy of the notice of the requisitioning order upon the petitioner and thereafter to proceed in accordance with law. As a matter of fact what we find is that service of the notice for requisition of the land had already been earlier served on the petitioner as required under Section 3(2) of the Act read with Rule 3(d) of the Rules. This land was subsequently acquired under Section 4 of the Act. From the E record it could not be said that the land was not requisitioned and subsequently acquired for any public purpose. Public purpose of construction of houses for weaker section is very much there. We fail to see if in the context of construction of houses for weaker sections of society it can be said that public purpose stand frustrated. Further, the Housing Board F is not always enjoined to construct houses for a particular section of society. It is a matter of common knowledge that there is an acute shortage of houses and to meet that end the Housing Boards in States have been constituted.

G We have examined impugned order requisitioning the land and also the gazette notification acquiring the land and we are unable to concur with the view taken by the High Court that notice had not been properly served or that there was no application of mind on the part of the Collector in requisitioning the land or that the purpose for which the requisition was made was not a public purpose. Construction of approach road in the H housing project, provision for market complex, doctor's clinic. drainage etc.

form part of the housing project and cannot be considered in isolation. That is the public purpose for which the land in question had been requisitioned, a purpose which is a public purpose. We may also usefully refer to the judgment delivered by us today in batch of appeals arising out of SLP (C) Nos. 12914/96 etc. etc. entitled *West Bengal Housing Board Etc.* v. *Brijendra Prasad Gupta & Ors. Etc.*

The appeal is accordingly allowed, the judgments of the learned single judge and that of the Division Bench in appeal are set aside and the writ petition filed by the first respondent is dismissed. There will be no order as to costs.

R.K.S. Appeal allowed.