

PETITIONER:
THE NAIHATI MUNICIPALITY AND ORS

Vs.

RESPONDENT:
CHINMOYEE MUKHERJEE AND ORS

DATE OF JUDGMENT: 06/08/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (7) 359 1996 SCALE (6)1

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the judgment of the Division Bench of the Calcutta High Court dated July 26, 1979 made in C.R. No.2030 (W) of 1978. The admitted facts are that a resolution was passed by the appellant-municipality for rehabilitation of the hawkers by acquiring the land in question. By that date the municipality did not have sufficient funds to meet the acquisition costs. As a consequence, the hawkers union was requested to contribute the fund to meet acquisition costs. In furtherance thereof, the hawkers union deposited with the municipality a sum of Rs.3,90,000/- for the acquisition of the land. The said amount was credited to the funds of the municipality. Thereafter a reference made to the Government requesting to acquire the land. In furtherance thereof, the Government issued notification under Section 4(1) of the land Acquisition Act 1874 (1 of 1894) (for short the Act') on August 1, 1974 and acquired the plots of land bearing Nos. 412 to 426, 497, 2400 to 2407 admeasuring about 4.717 hectares of the land in the village Kantalpara, P.S. Nahati Municipality. Declaration under Section 6 came to be published on November 9, 1976. Both the notification and the declaration came to be challenged in the writ petition.

The High Court concluded in its judgment that though there was initial resolution passed by the municipality to acquire the land there was no final resolution directing the Commissioner to spend the money from the fund of the municipality. The hawkers themselves deposited the money with the municipal Corporation. The Government imposed a condition that the said amount should be used only for the purpose of acquisition of land for rehabilitation of the hawkers. The appropriate provisions contained in the Municipality Act have not been complied with. Under those circumstances, there is no public purpose indeed for acquiring the land. Accordingly, the declaration under Section 6 came to be quashed. Thus this appeal by special

leave.

We have been taken through the reasoning of the learned Judges and have also heard contentions of the learned counsel for the parties. We are of the view that High Court was not right in its approach in dealing with the matter. The rehabilitation of the hawkers by acquiring the land is indisputably of the public purpose; otherwise it would be a perpetual nuisance to the residents of the municipal area if hawkers were permitted to hawk the goods on public pavement obstructing the traffic flow in the city. Therefore it can, by no stretch of imagination, be considered that it is not a public purpose. The question then is: whether the part or whole of the compensation would come from the funds of the local authority? The second proviso to sub-section (1) of Section 6 deals with that according to which no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company or wholly or partly out of public revenues or some funds controlled or managed by a local authority. Indisputably municipality is a local authority and its funds are controlled or managed by the municipality. In view of the fact that at the relevant point of time the municipality did not have necessary funds to meet the cost of acquisition, they had requested hawkers' union to contribute the money for the acquisition. Consequentially, Rs. 3,90,000/- came to be handed over to the Municipal Commissioner who had deposited the same into the funds of the municipality. Thereby, the amount had formed and fused into integral part of the municipal funds. It is true that the Government had put restriction that the said money would be used only for the public purpose. It would be obvious that since municipality did not have the required funds, the Government had imposed a condition that the money contributed by the hawkers should be used only for the purpose of cost of the acquisition apprehending that the same may be directed to other purpose. The meat of the matter is that after the deposit by the hawkers, they have no right to withdraw the said amount which formed part of the funds of the municipality. The High Court, therefore, was not right in holding that the amount has not become part of the funds managed or controlled by the local authority within the meaning of second proviso of sub-section (1) of Section 6.

The appeal is accordingly allowed. The order of the High Court is set aside. The Writ Petition stands dismissed. No costs.