

CASE NO.:
Appeal (civil) 1913 of 2002

PETITIONER:
FIRST LAND ACQUISITION COLLECTOR & ORS.

Vs.

RESPONDENT:
NIRODHI PRAKASH GANGOLI & ANR.

DATE OF JUDGMENT: 07/03/2002

BENCH:
G.B. Pattanaik & Brijesh Kumar

JUDGMENT:

PATTANAIAK, J.

Leave granted.

The acquisition proceeding in respect of Premises No. 27/1 and 27/B on Dehi Serampore Road, Calcutta having been set aside by the Calcutta High Court, the Land Acquisition Collector is in appeal against the same. The premises in question had been requisitioned under the provisions of West Bengal Requisition and Control (Temporary Provision) Act, 1947, for accommodating students of Calcutta National Medical College, Calcutta by order dated 10th April, 1948. An acquisition proceeding in respect of the same premises was initiated by issuance of a notice under Section 4 of the Land Acquisition Act (hereinafter referred to as "The Act"), by Notification dated 17.12.1982. Declaration under Section 6 of the Act was issued on 13.12.1989. The acquisition proceedings related to both the premises, as aforesaid as well as a common passage. One K.K. Dugar and one AP Ganguly claiming right of way on the common passage assailed the aforesaid acquisition proceeding by filing a Writ Petition in the Calcutta High Court. The learned Single Judge of the Calcutta High Court quashed the Notification by order dated 3rd April, 1992. The said order was assailed by filing an appeal to the Division Bench, but the appeal itself being barred by time and the application for condonation not having been allowed the appeal stood dismissed.

Subsequently a fresh Notification was issued under Section 4 only in respect of the premises No. 27/1a and 27/1b excluding the common passage and notices were issued under Sections 9, 10 and 11 of the Act requiring interested persons to file application for compensation. Be it be stated, that the premises in question stood de-requisitioned by an order dated 2.7.1993. Writ Petition having been filed Challenging the notices issued under sections 9,10 and 11 was registered as Writ Petition No. 805 of 1994. The High Court quashed the notices issued under Sections 9,10 & 11 of the Act by Order dated 25.8.1994 and it was further directed

that the vacant possession of the disputed premises should be handed over within a period of six months. The aforesaid Writ Petition had been filed by the owner of the premises in question. Though time was extended by the Court for delivery of possession but it is alleged that no possession had been delivered to the owner. On 29.11.1994 a fresh Notification was issued under Sections 4(1) and 17(4) of the Act for the purpose of use of National Medical College. Declaration under Section 6 of the Act was issued on 30.8.1995. Public Notices of substance of the declaration was also given at the convenient places in the locality in two daily newspapers published on 10.9.95. Notices under Sections 9 and 10 of the Act were served upon the interested persons on 18.10.95 inviting claims by 2.11.95. The State Government sanctioned Rs.50,41,515/- for paying the compensation amount. The Land Acquisition Collector issued notices under Section 11 on 27.10.95 and the same was served upon the persons interested on 2.11.95. The aforesaid notice was assailed by filing a Writ Petition which was registered as Writ Petition No. 1900 of 1995 challenging the entire acquisition. The learned Single Judge of the Calcutta High Court disposed of the Writ Petition by judgment dated 14.10.1999 by holding that the Notification issued under Sections 4 and 6 as well as invocation of Section 17(1) and 17(4) dispensing with hearing under Section 5A of the Act is not assailable. It, however, directed that the appropriate authority should proceed afresh from the stage of issuance of Notification under Section 9 and the acquisition proceeding should be completed with utmost expedition. Pursuant to the aforesaid judgment of the learned Single Judge, Notification under Section 9 of the Act was issued again on 15.10.1999. But the owners assailed the legality of the order of the learned Single Judge by filing an appeal to the Division Bench. The Division Bench of the Calcutta High Court by judgment dated 17.5.2000 having allowed the appeal and having quashed the acquisition proceeding, the Special Land Acquisition Officer has approached this Court. The Division Bench while disposing of the Writ Appeal by the impugned judgment have been persuaded to interfere, substantially on the ground that since the earlier judgment and direction of the learned Single Judge of Calcutta High Court dated 25.8.1994 directing delivery of the possession to the owner has not been complied with, the acquisition is malafide and is not in accordance with law. The Division Bench in the impugned judgment came to hold that grave urgency and emergency being the pre-condition for invoking powers under sub-sections (1) and (4) of Section 17, and in the case in hand, no such urgency having been present, invocation of power under Section 17(4) gets vitiated and, therefore, the commencement of the acquisition proceeding must be held to be not in accordance with law. Having quashed the acquisition proceeding the Court further observed that it would be open to start a proceeding afresh in accordance with law.

Mr. Altaf Ahmad, learned Additional Solicitor General appearing for the appellant contended, that the purpose of acquisition being undoubtedly a public purpose, namely, for the use of National Medical College and the Competent Authority being of the opinion that the facts situation require invocation of urgency clause under Section 17 of the Act, the Court in exercise of its extraordinary jurisdiction could not have interfered with the aforesaid subjective satisfaction of the authority in the matter of urgency and, therefore, the order is vitiated. The learned Additional Solicitor General

further contended, that non-delivery of possession, pursuant to the earlier direction of the High Court, could not be a ground for quashing a valid Notification issued under Sections 4(1) & 17(4) of the Act. The High Court, therefore, committed serious error in interfering with the acquisition in question. According to the learned Additional Solicitor General the conclusion of the High Court that the acquisition is mala fide is based upon non-existence of any materials, and therefore, the same must be interfered with. In reply to the submission of the counsel appearing for the respondents to the effect that the object of invoking the urgency clause under Section 17 being to take immediate possession of the acquired land and in the case in hand that possession being with the Medical College ever since the premises stood requisitioned under the provisions of requisition under West Bengal Act of 1947, the very pre-condition of attracting Section 17 was non-existent, it is stated that the earlier possession was not the possession of a lawful owner and the Notification for acquisition having been quashed by the Court on two earlier occasions, the acquiring authority felt the necessity of urgent acquisition, and therefore the contention of the respondents' counsel is unsustainable.

Mr. Bhaskar Gupta, learned senior counsel appearing for one of the respondent and Mr. Ashok H. Desai, learned senior counsel, appearing for other respondents vehemently urged that in respect of a land which is under possession of the State Government or any other authority, the emergency power under Section 17 of the Act cannot be invoked inasmuch as the legislature have conferred power to take possession of the acquired land even without complying with the provision of Section 5A of the Act only in case of grave emergency where the acquisition cannot brook the delay of 30 days period which is contemplated for filing of Petition under Section 5A. This being the position and the Medical College being in possession of the premises right from 1948 the appropriate authorities could not have invoked the emergency provision under Section 17 of the Act. The counsel also further urged that the right conferred under Section 5A is a valuable right to the owner and the owner should not be deprived of the same unless there exists real emergency. It was further urged that the High Court was justified in taking into account the defiant attitude of the Government in not delivering possession notwithstanding the earlier orders of the Court directing possession to be delivered within a period of six months.

The question of urgency of an acquisition under Section 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Section 17 (1) and (4) of the Act, and issues Notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the concerned authorities. If an order invoking power under Section 17(4) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether

the order has been passed by non-application of mind. Any post Notification delay subsequent to the decision of the State Government dispensing with an enquiry under Section 5(A) by invoking powers under Section 17(1) of the Act would not invalidate the decision itself specially when no mala fides on the part of the government or its officers are alleged. Opinion of the State Government can be challenged in a Court of law if it could be shown that the State Government never applied its mind to the matter or that action of the State Government is mala fide. Though the satisfaction under Section 17(4) is a subjective one and is not open to challenge before a Court of law, except for the grounds already indicated, but the said satisfaction must be of the Appropriate Government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency even though cannot be conclusive but is entitled to great weight, as has been held by this Court in *Jage Ram and others vs. The State of Haryana and Others* AIR 1971 Supreme Court 1033. Even a mere allegation that power was exercised mala fide would not be enough and in support of such allegation specific materials should be placed before the Court. The burden of establishing mala fides is very heavy on the person who alleges it. Bearing in mind the aforesaid principles, if the circumstances of the case in hand are examined it would appear that the premises in question was required for the students of National Medical College, Calcutta and the Notification issued in December 1982 had been quashed by the Court and the subsequent Notification issued on 25.2.1994 also had been quashed by the Court. It is only thereafter the Notification was issued under Section 4(1) and 17(4) of the Act on 29.11.1994 which came up for consideration before the High Court. Apart from the fact that there had already been considerable delay in acquiring the premises in question on account of the intervention by Courts, the premises was badly needed for the occupation of the students of National Medical College, Calcutta. Thus, existence of urgency was writ large on the facts of the case and therefore, said exercise of power in the case in hand, cannot be interfered with by a Court of law on a conclusion that there did not exist any emergency. The conclusion of the Division Bench of Calcutta High Court, therefore, is unsustainable.

It is indeed difficult for us to uphold the conclusion of the Division Bench that acquisition is mala fide on the mere fact that physical possession had not been delivered pursuant to the earlier directions of a learned Single Judge of Calcutta High Court dated 25.8.94. When the Court is called upon to examine the question as to whether the acquisition is mala fide or not, what is necessary to be inquired into and found out is, whether the purpose for which the acquisition is going to be made, is a real purpose or a camouflage. By no stretch of imagination, exercise of power for acquisition can be held to be mala fide, so long as, the purpose of acquisition continues and as has already been stated, there existed emergency to acquire the premises in question. The premises which was under occupation of the students of the National Medical College, Calcutta, was obviously badly needed for the college and the appropriate authority having failed in their attempt earlier twice, the orders having been quashed by the High Court, had taken the third attempt of issuing notification under Sections 4(1) and 17(4) of the Act, such acquisition cannot be held to be mala fide and, therefore, the conclusion of the Division Bench in the impugned Judgment

that the acquisition is mala fide, must be set aside and we accordingly set aside the same.

The arguments advanced on behalf of the respondents that as the premises in question continued to be under possession of the Calcutta Medical College, invocation of special powers under Section 17 was vitiated and a valuable right of the land owners to file objections under Section 5A could not have been taken away. According to the counsel for the respondents, Section 5A of the Act, merely gives an opportunity to the land owner to object to the acquisition within 30 days from the date of publication of the notification under Section 4, the power under Section 17 dispensing with inquiry under Section 5A can, therefore, be invoked where there exists urgency to take immediate possession of the land, but where possession is with the acquiring authority, there cannot exist any urgency, and, therefore the exercise of that power is patently erroneous. In support of this contention, reliance was placed on the decision of this Court in Balwant Narayan Bhagde vs. M.D. Bhagwat and Ors., 1976(1) S.C.C. 700. We are unable to accept this contention since the same proceeds on a basic misconception about the possession of the premises. The premises in question had been requisitioned under the provisions of the Requisition Act and stood released from requisition by operation of Section 10B of the said Act, since 1993. Even though the premises stood occupied by the students of the medical college, but such occupation was neither as owner nor was lawful in the eye of law. To effectuate lawful possession and the purpose being undoubtedly a public purpose, the State Government had been attempting ever-since December, 1982 and each of its attempt had failed on account of Court's intervention. It is in this context, the legality of exercise of power under Section 17 of the notification dated 29.11.94 is required to be adjudicated upon. In our considered opinion, having regard to the facts and circumstances narrated above, the exercise of power under Section 17 by the State Government, cannot be held to be illegal or mala fide and consequently, the impugned Judgment of the Division Bench of Calcutta High Court cannot be sustained. The learned Judges of the High Court have been totally swayed away by the fact of non-implementation of the directions of Batabyal J, in his order dated 25.8.1994, but that by itself would not be a ground for annulling lawful exercise of power under the provisions of the Land Acquisition Act. We, therefore, set aside the impugned Judgment of the Division Bench of Calcutta High Court and hold that the acquisition in question is not vitiated on any ground. The acquisition proceeding, therefore, is held to be in accordance with law. The appeal is allowed. There will be no order as to costs.

.....J.
(G.B. PATTANAIAK)

.J.
(BRIJESH KUMAR)

March 07, 2002.