

Writ Appeal

Present:

The Hon'ble Justice J. N. Patel, Chief Justice

And

The Hon'ble Justice Bhaskar Bhattacharya

Judgment on : 23.08.2010

F.M.A. No. 975 of 2007

CAN No. 7162 of 2010

THIKNIKATA, J.L. No. 74, KAWAKHALI, J.L. No. 75 & ANR.

Versus

State of West Bengal & Ors.

Points:

Land Acquisition- Whether land can be acquired by the State for development of new township under the LA Act, 1894 without adopting the procedure laid down under the Town Planning Act, 1979.- Town Planning Act, 1979- S.43

Facts:

Writ petitioners alleged that appellant/petitioner no.1 is an unregistered association and their members are the owners of plots of land which are proposed to be acquired by the respondent authorities and majority of them belonged to Schedule Castes. Without considering the objections raised by the writ petitioner association and its members respondents have proceeded to issue declaration under sub-section (2) of Section 6 of the LA Act, 1894. Learned single Judge found that petitioner no.1 has filed objection on September 8, 2004, i.e., after the expiry of the statutory period of 30 days and so also the second petitioner who filed her objection on December 20, 2004, therefore, they cannot be heard in the matter. The learned single Judge

held writ petition is not maintainable at the instance of the appellants/writ petitioner no. 1, an unregistered association, being not a juristic person. On merit also the learned single Judge dismissed the writ petition.

Held:

In view of the fact that learned single Judge has disposed of the writ petition on merits, the contention of the learned counsel for the appellants/writ petitioners as regards the locus standi of the appellants/writ petitioner no. 1 has no meaning.

Para 9

The contention, that acquisition of land for development of new township could not have been undertaken under the LA Act, 1894 (Act 1 of 1894) as the SJDA by issuing a public notice dated 16th December, 1992 has already notified the acquisition of land under Section 38 of the Town Planning Act, 1979 and, therefore, it ought to have adopted the procedure laid down under the Town Planning Act, 1979 instead of resorting to LA Act, 1894 (Act 1 of 1894). It has been specifically pointed out that failure on the part of respondents to acquire the land by resorting to the procedure provided under the Town Planning Act, 1979 would vitiate the whole acquisition proceedings, does not hold any ground to quash and set aside the acquisition proceedings. The proposed land came to be acquired for development of new township after seeking approval of the State Government and once such an approval has been granted, Section 43 of the Town Planning Act, 1979 provides that the land can be acquired under the LA Act, 1894 (Act 1 of 1894) merely because the Town Planning Act, 1979 provides a procedure for acquisition of land for the purpose of town planning scheme, does not preclude the State Government to grant approval to a local authority like the respondents to come up with the proposal to develop new township.

Paras 10 & 11.

Almost all the persons whose land has been acquired have accepted the award involved in LA proceedings being LA Case No. 13/4 of 2004-2005, & LA Case No. 14/4 of 2004-05, except for appellant/writ petitioner No. 2, Smt. Sushila Devi Ram. Learned counsel further submitted that SJDA is ready to allot her 2 kathas of developed plot of land in Mouza – Kawakhali and compensation amount as were done in case of other land losers. Not only the legal proceedings have been completed, but the Land Acquisition Collector, Darjeeling handed over the physical possession of acquired land to SJDA and, therefore, Court do not find any merit in the appeal. Para 12

Cases cited:

Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its assistant General Secretary on behalf of the Asson. Etc., vs. Union of India & Ors. [AIR 1981 Supreme Court 290]; Chairman, Indore Vikas Pradhikaran vs. M/s. Pure Industrial Cock & Chem. Ltd. & Ors. [2007 AIR SCW 4387] Purajhar & Kawakhali Mouza Raksha Committee & Anr. vs. State of West Bengal & Ors. [W.P. No. 24840(w) of 2005 dt. March 29, 2006]

For Appellants : Mr. Sandip Bhattacharya; Mr. Suman Basu; Mr. Abdul Basu

For Respondent No. 7 : Mr. P.S. Basu; Mr. S. Talukdar

For Respondent No. 4 : Mr. Alok Kr. Ghosh; Mr. Nilanjan Chatterjee

J. N. Patel, C.J. : The appellants/petitioners have preferred this appeal being aggrieved by the judgment and order dated 14.06.2006 passed by the learned single Judge in W. P. No. 13255 (w) of 2005 dismissing the petition.

2. The appellants/petitioner No. 1 is an association of persons who have challenged the Notification bearing No. 370/LA (SDJA) /13/4 /04-05 of dated 09/09/04 under Section (1) of Section 4 of the Land Acquisition Act, 1894 ('LA Act' for short) published in the Calcutta Gazette on 23.09.04 in respect of land in the Mouza (s) (1) THIKNIKATHA, J.L. No.74, (2) KAWAKHALI, J.L. No. 75, P.S. Siliguri Dist. Darjeeling, for acquisition of land for development of new township. It is the case of the appellants/writ petitioners that at the relevant time they were an unregistered association and that their members are the owners of plots of land which are proposed to be acquired by the respondent authorities and that majority of them belonged to Schedule Castes. According to them, some of the members of the appellants/petitioners are served with notice under sub-section (1) of Section 4 of the LA Act, 1894 (Act 1 of 1894) in respect of acquisition of land for the development of new township. But, most of the members have not been served with the said notice. It is contended by the appellants/writ petitioners that without considering the objections raised by the writ petitioner association and its members which is a statutory requirement under Section 5A of the LA Act, 1894 (Act 1 of 1894), respondents have proceeded to issue declaration under the purported Notification bearing No. 624/ LA (SJDA) / 13 /4 /04-05 of dated 24/12/2004 under sub-section (2) of Section 6 of the LA Act, 1894 (Act 1 of 1894) as published in the Calcutta Gazette on 30.12.2004 in respect of land in the Mouza (s) (1) THIKNIKATHA, J.L. No.74, (2) KAWAKHALI, J.L. No. 75, P.S. Siliguri Dist. Darjeeling. As the appellants/writ petitioners were aggrieved by the said notification, legal notice dated 10th May, 2005 was sent to the office of respondent no. 2 which was received on 3rd June, 2000. It is, therefore, contended that the

said acquisition proceeding has been initiated in violation of the mandatory provisions of law and, therefore, deserves to be quashed and set aside.

3. Affidavit-in-opposition came to be filed on behalf of the respondents. It is the case of the respondents that after the notices under Section 4(1) came to be published and served on the individual owner and that respondents had taken all possible attempts to serve individual notices to persons whose names and addresses are made available in the Records of Rights (R.O.R) and during local enquiry and that except for a few persons all most all the affected persons have been served with notice and the appellants/writ petitioner no.1 association as well as persons who are affected have filed their objection under Section 5A and, therefore, as per provisions of Section 54 of the LA Act, 1894 (Act 1 of 1894), an opportunity of hearing was given to the persons who have submitted objection against the acquisition of land within a period of 30 days from the date of publication of notification under Section 4 of the LA Act, 1894 (Act 1 of 1894). So far as the appellants/writ petitioner No. 1 Association is concerned, they have submitted their objection on 08.11.2004 and in addition to objection raised against the acquisition, demanded compensation at prevailing market price along with other statutory benefits. After completing the proceeding, the Land Acquisition Collector has proceeded with publication of declaration under Section 6 of the LA Act, 1894 (Act – 1 of 1894) being No. 624/LA dated 24.12.2004 which was published in the Kolkata Gazette on 30.12.2004 and in two dailies, viz., ‘The Hindustan Times’ and the Bengali daily ‘The Ganasakti’ on 17.09.2004. So, the substance of the said declaration was published in the notice board of local Panchayet and other offices for wide publicity. It is, therefore, contended that the acquisition proceedings were initiated after due compliance of the

statutory requirements and, therefore, there is no merit in the writ petition and should be dismissed.

4. After going through the materials on record Learned single Judge found that Naboday Enterprises has filed objection under Section 5A of the LA Act, 1894 (Act –I of 1894) on September 8, 2004, i.e., after the expiry of the statutory period of 30 days and so also the second petitioner who filed her objection on December 20, 2004, whereas, the appropriate authority published the declaration under Section 6 on December 30, 2004 and, therefore, they cannot be heard in the matter. Learned Single Judge also found that the appellants/writ petitioners have been questioning the steps taken by the authorities by filing a petition on July 6, 2005 which has resulted in passing of the interim order which was enforced till the petition came to be filed. The learned single Judge found that the appellants/writ petitioner no. 1 is an unregistered association being not a juristic person would not be a person aggrieved, and as such it would not be entitled to file a writ petition espousing the cause of the affected persons and, therefore, the petition was not maintainable at the instance of the first petitioner. On merit, it is found that the contention of the appellants/writ petitioners that unless provisions of the West Bengal Town and Country (Planning & Development) Act, 1979 (hereinafter referred to as the Town Planning Act, 1979) Sections 16, 61, 73, 74 and 137 are first complied with, the respondents are not entitled or empowered to initiate any acquisition proceedings under the LA Act, 1894 (Act –I of 1894) and as no development plan has been notified, the development authority is not empowered to take possession of the land by initiating proceeding under the LA Act, 1894 (Act– I of 1894) and found favour with the contention of the respondents that the State Government had decided to initiate the acquisition proceedings

for the professed public purpose of setting up a new township by engaging the development authority for the purpose, which is not questioned in this case. Acquisition of land under LA Act is within the domain of the State Government. Learned single Judge also found that only on the ground of delay in challenging the Section 4 Notification, it is sufficient to dismiss the writ petition. On examining that the State has complied with all the statutory requirements, learned single Judge found no merit in the contention of the appellants/writ petitioners and dismissed the writ petition.

5. Mr. Sandip Bhattacharya, learned counsel appearing for the appellants/writ petitioners, submitted that on the ground of maintainability of the petition by the appellants/writ petitioner no. 1 that at the relevant time it was an unregistered association, it had every right to agitate the grievances of its members most of whom belonged to Scheduled Caste and has placed reliance on the decision of the Supreme Court rendered in the case of *Akhil Bharatiya Soshit Karamchhari Sangh (Railway) represented by its assistant General Secretary on behalf of the Asson. Etc., vs. Union of India & Ors. [AIR 1981 Supreme Court 290]* and, therefore, the finding of the learned single Judge that the appellants/writ petitioner No. 1 had no locus standi to agitate grievances cannot be sustained. On merits it is contended that the subject 'land' came to be acquired by invoking the provisions of the LA Act, 1894 (Act 1 of 1894) could not have been acquired under the said LA Act, 1894 (Act 1 of 1894) for the reason that it is governed by the Town Planning Act, 1979. It is contended that once the authorities have decided to proceed under the Town Planning Act, 1979 as can be seen from the published notice dated 16th December, 1992 in the official gazette wherein proposed development plan prepared by the Siliguri Jalpaiguri Development Authority for control of Development and use of land of Siliguri urban area, Jalpaiguri

Urban Area and Naxalbari Urbanizing area came to be published and, therefore, the State having initiated steps under the Town Planning Act, 1979 which also enables the State to acquire land under Sections 36(2), 38(2) at planning stage and Sections 61(3), 70(3) at development scheme stage. It was further contended that these are deeming provisions similar to Sections 4 and 6 of the LA Act, 1894 (Act 1 of 1894). It is submitted that under the Town Planning Act, 1979, there are similar provisions like LA Act, 1894 (Act 1 of 1894) of taking possession and vesting powers under Section 66, 67 and 72 of the Town Planning Act, 1979 and, therefore, the State Government having initiated steps to notify a draft plan under the Town Planning Act, 1979 could not have resorted to with the provisions of LA Act, 1894 (Act 1 of 1894) for the proposed acquisition. In support of his contention learned counsel has cited the decision of the Supreme Court rendered in the case of *Chairman, Indore Vikas Pradhikaran vs. M/s. Pure Industrial Cock & Chem. Ltd. & Ors.* 2007 AIR SCW 437. It is, therefore, the contention of the learned counsel for the appellants/writ petitioners that the State having failed to initiate the legal proceedings under the Town Planning Act, 1979, the acquisition proceedings ought to have been quashed and set aside.

6. On the other hand, Mr. P.S. Basu, learned counsel for the respondent no. 7, submitted that the subject 'land' has been acquired by SJDA for developing new township in Kawakhali- Porojhar area considering the growing need for township and that there is no illegality committed by the respondents in initiating the draft process of acquisition by invoking the provisions of the LA Act, 1894 (Act 1 of 1894) and that the respondent authorities have complied with all the statutory requirements. It is submitted that there is no bar for the State to acquire the land by invoking the

provisions of LA Act, 1894 (Act 1 of 1894), i.e., so far as subject 'land' is concerned. It is also submitted that in the Outline Developed Plan (now termed as Land Use Development Control Plan after amendment of Act by West Bengal Act XXVI of 1994) wherein township near North Bengal Medical College has been included as future land use proposal, i.e., for the purpose of a township to accommodate 1,33,000 people extending over an area of 1500 acre near North Bengal Medical College is another future land use proposal. This has been indicated in Map no. 3 enclosed with the plan. It is, therefore, submitted that SJDA has prepared a plan which was approved by the Government of West Bengal included the proposed township in 1992 itself which is now being developed after acquiring the land. Therefore, the contention of the appellants/writ petitioners that the land has not been notified in the development plan and it ought to have been acquired under the Town Planning Act, 1979, is not correct. It is submitted that most of the persons who are affected by the land acquisition has accepted compensation and the benefit of rehabilitation. Therefore, the contention of appellants/writ petitioners that most of the members of the association who are Scheduled Castes have been displaced, is not correct. On the other hand, they have been rehabilitated. It is submitted that as the appellants/writ petitioners have not been able to point out any lacunae or default in the process for acquisition of the land, the writ petition was rightly dismissed by the learned single Judge. The appeal, thus, deserves to be dismissed.

7. Let us consider the first contention of the appellants/writ petitioners that M/s Naboday Enterprise though an unauthorised association has right to agitate and espouse the cause of its members who are affected by the acquisition. Learned counsel appearing for the appellants/writ petitioners has relied upon the decision in the case of *Akhil Bharatiya Soshit Karamchari*

Sangh (Railway) (supra) wherein the Supreme Court held while considering the objection to the locus standi of the appellants/writ petitioners as under :-
“63. A technical point is taken in the counter-affidavit that the 1st petitioner is an unrecognized association and that, therefore, the petition to that extent is not sustainable. It has to be overruled. Whether the petitioners belong to a recognized union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Act 32. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through ‘class actions’, ‘public interest litigation’, and ‘representative proceedings’. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of ‘cause of action’ and ‘person aggrieved’ and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney General has taken no objection to a nonrecognised association maintaining the writ petitions.”

8. Though the learned single Judge did express doubt about the locus standi of the appellants/writ petitioners while disposing of the petition on the basis of a decision of this Court in ***Purajhar & Kawakhali Mouza Raksha Committee & Anr. vs. State of West Bengal & Ors. [W.P. No. 24840(w) of 2005 dt. March 29, 2006]***, but distinguished the same by observing that the decision in ***Akhil***

Bharatiya Soshit Karamchhari Sangh (Railway) (supra) was given in a public interest litigation. However, His Lordship considered the matter on merits on the basis that second petitioner was one of the land owners and as

such, he was entitled to move the writ Court questioning the steps taken in the acquisition proceedings.

9. We may like to refer to the materials placed on record by the respondents in their affidavit-in-opposition filed by Sri D.T. Dukpa referring to the credential of the appellants/writ petitioners that some persons of the locality has formed M/s. Naboday Enterprise for their personal benefit. Naboday Enterprise was formed for development of market complex but instead of developing the land or constructing any market complex, they sold away a major portion of the land in its natural form to several individuals by dividing plots measuring 58 sq. ft. in exchange of huge amount of money and advised to run daily market over the same. This fact is not contradicted by the appellants/writ petitioner no. 1 which goes to show their bona fides in espousing the cause of the persons belonging to Scheduled Castes. In view of the fact that learned single Judge has disposed of the writ petition on merits, the contention of the learned counsel for the appellants/writ petitioners as regards the locus standi of the appellants/writ petitioner no. 1 has no meaning.

10. The second contention on behalf of the appellants/writ petitioners is that acquisition of land for development of new township could not have been undertaken under the LA Act, 1894 (Act 1 of 1894) as the SJDA by issuing a public notice dated 16th December, 1992 has already notified the acquisition of land under Section 38 of the Town Planning Act, 1979 and, therefore, it ought to have adopted the procedure laid down under the Town Planning Act, 1979 instead of resorting to LA Act, 1894 (Act 1 of 1894). It has been specifically pointed out that failure on the part of respondents to acquire the land by resorting to the procedure provided under the Town Planning Act, 1979 would vitiate the whole acquisition proceedings. It is

submitted that town planning scheme can be framed only when development plan is in existence as this was a draft development plan. No further step for implementing the same could have been taken by the respondents. Learned counsel in support of his contention has relied upon the decision of the Supreme Court rendered in the case of *Chairman, Indore Vikas Pradhikaran vs. M/s. Pure Industrial Cock & Chem. Ltd. & Ors.* [2007 AIR SCW 4387] wherein it has been held that “Development plan does not include draft development plan. A draft development plan which has not attained finality cannot be held to be determinative of the rights and obligations of the parties and, thus, it can never be implemented.”

11. This contention of the appellants/writ petitioners does not hold any ground to quash and set aside the acquisition proceedings. The proposed land came to be acquired for development of new township after seeking approval of the State Government and once such an approval has been granted, Section 43 of the Town Planning Act, 1979 provides that the land can be acquired under the LA Act, 1894 (Act 1 of 1894) merely because the Town Planning Act, 1979 provides a procedure for acquisition of land for the purpose of town planning scheme, does not preclude the State Government to grant approval to a local authority like the respondents to come up with the proposal to develop new township.

12. On going through the record we are satisfied that appropriate procedure has been followed in the matter of acquisition of land and there can be no doubt that as the land was acquired for development of new township it is needed for public purpose. We are informed by the learned counsel appearing for the respondents that almost all the persons whose land has been acquired have accepted the award involved in LA proceedings being LA Case No. 13/4 of 2004-2005, & LA Case No. 14/4 of 2004-05,

except for appellant/writ petitioner No. 2, Smt. Sushila Devi Ram. Learned counsel further submitted that SJDA is ready to allot her 2 kathas of developed plot of land in Mouza – Kawakhali and compensation amount as were done in case of other land losers. Not only the legal proceedings have been completed, but the Land Acquisition Collector, Darjeeling handed over the physical possession of acquired land to SJDA and, therefore, we do not find any merit in the appeal. The same is, thus, dismissed.

13. There will be no order as to costs.

(J. N. Patel, C.J.)

I agree.

(Bhaskar Bhattacharya, J.)

LATER ON

On the prayer of the learned counsel for the parties, let Photostat certified copy of this judgment, if applied for, be given to the learned counsel for the parties.

(J. N. Patel, C.J.)

(Bhaskar Bhattacharya, J.)

