Supreme Court of India
Sri Nripati Ghoshal, First ... vs Premavati Kapur (Dead)By Lrs. & ... on 23 July, 1996
Equivalent citations: 1996 SCALE (5)549
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
SRI NRIPATI GHOSHAL, FIRST LANDACQUISITION COLLECTOR & ORS.

Vs.

RESPONDENT:
PREMAVATI KAPUR (DEAD)BY LRS. & ORS. ETC.

DATE OF JUDGMENT: 23/07/1996

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

CITATION:
1996 SCALE (5)549

ACT:

HEADNOTE:

JUDGMENT:

THE 23RD DAY OF JULY,1996 Present:

Hon'ble Mr.Justice K.Ramaswamy Hon'ble Mr.Justice G.B.Pattanaik S.Muralidhar, Rathin Das, Advs. for appellent in C.A.No.

Preveen Swarup, Adv.(Ms.A.Subhashini, Adv.(NP), for Union of India in C.A.No.3790/92 A.K.Ganguli, Sr.Adv., Parag P.Tripathi Rana Mukherjee, Ms. Sumita Mukherjee, Indeevar Goodwill, Abha R. Sharma, Advs. with him for the Respondents.

O R D E R The following Order of the Court was delivered: Sri Nripati Ghoshal First Land Acquisition Collector a Ors. etc. V.

Premavati Kapur (Dead) by LRs. & Ors. etc. WITH CIVIL APPEAL NO.3790 OF 1992 Delay condoned.

Substitution allowed.

These appeals by special leave arise from the order of the Division Bench of the Calcutta High Court dated July 31, 1990 made in Appeal from Original Order No. T.3734/86.

The undisputed facts are that the premises bearing No.7, Chappel Road, Hastings, Calcutta was requisitioned on November 29, 1971 under section 3(1) of the West Bengal Premises Requisition and Control (Temporary Provision Act, 1947 (for short, 'the Bengal Act') due to Bangladesh war. The Indian Navy had taken possession thereof and has remained in possession of the said premises. Subsequently, it would appear, the respondents had filed Matter No.1295/79 in the Calcutta High Court questioning the legality of the requisition. It would appear that proceedings were initiated as early as in 1975 for acquisition as the property and the correspondence between various Departments was going on. Notification under Section 4 (1) of the Land Acquisition Act, 1894 (1 of 1984) (for short, the 'Act') was published on November 26, 1981. Enquiry under Section 5-A was conducted. Thereafter, declaration under Section 6 was published on November 25, 1982. The writ petition pending in the High Court came up for hearing. A learned single judge by his order dated April 8, 1983 had held that though there was no public purpose for requisition under the Bengal Act, since the acquisition was initiated under the Act four months' time was granted for completing the award enquiry and to pass the award; in case of default, he directed the appellants to hand over possession of the premises to the respondents. In the meanwhile, the acquisition proceedings were completed by making award on September 21, 1983. Notice under Section 12 was issued to the respondents on September 23, 1983. Thus the acquisition under the Act had become final. An oral application came to be made before the learned Judge for extension of time on July 22, 1983 since the time was to expire on August 8, 1983. But the learned Judge declined to extend the time by his order dated August 2, 1983. Since the possession was not delivered, the respondent had filed another writ petition in the High Court which the learned single Judge had dismissed on November 12, 1986. On appeal, in the impugned order the Division Bench set aside the order of the learned single Judge and issued mandamus as indicated in the order. The primary findings recorded by the Division Bench were that there was no public purpose and that the acquisition was on public purpose and that the acquisition was mala fide.

The question, therefore, is: whether the two findings recorded by the Division Bench are correct in law? Shri Ganguli, learned senior counsel for the respondents, sought to support the findings of the Division Bench on the ground that there are no bona fides on the part of the appellants in pursuing the matter. In fact, when the respondent had pointed out in the High Court that there was no public purpose in requisitioning the property, they came forward with the acquisition under the Act; when the learned single Judge had directed the appellants to have the award enquiry completed and the award made within four months, the same were not done within the prescribed time. In spite of initiation of contempt proceedings, the possession was not delivered. These circumstances could be considered to show that the acquisition was mala fide and that, therefore, in the light of the above background, the High Court was right in reaching the conclusion. We find no force in the contentions.

It is seen that the acquisition proceedings under the Act were initiated no doubt after the first writ petition was filed challenging the requisition under the West Bengal Act. But the notification under Section 4(1) and the declaration published under Section 6 of the Act became final before the learned single Judge had passed the order on April 8, 1983. Thereby the public purpose, namely, defence purposes, got crystalized before the judgment was rendered by the learned single Judge. The learned single Judge accepting the legal position, quite rightly, had given time to complete the award enquiry and to pass the award. Unfortunately, due to lethargy on the part of authorities to have the funds made available, award could not be made for non-depositing of the amount. The question, therefore, emerges: whether the acquisition is mala fide? So long as the public purpose subserves, the finding that the acquisition is mala fide is ex-facie unsustainable. No doubt there are laches on the part of the authorities, but so long as the acquisition proceedings were legal and the defence personnel remain in possession of the premises for the defence purpose, the acquisition is for public purpose. Therefore, it cannot be characterised to be mala fide. It is seen that by the time the second writ petition, which is the subject matter ultimately in this appeal, came to be filed, the acquisition had become final; the award had become final and the compensation was tendered. Under those circumstances, the High Court, without going into the validity in that behalf, was not right in setting aside the acquisition on the specious finding that it is mala fide. Therefore, the High Court has not properly consider that aspect in the correct perspective in deciding the matter.

Pursuant to the interim direction granted by this Court appellant have deposited rent at the rate of Rs 7500/- per month beginning from 1.1.92. Shri Ganguli has brought to our notice that the payments were not alleged to have been paid for the earlier period of requisition. It is also brought to our notice that the amount of compensation was not received by the respondents. Under these circumstances, it would be open to the Land Acquisition Collector to vary and, if found correct, to adjust the amounts, deposited as per the orders of the Court, towards the amount payable, if not already paid for the period of requisition. If there is any further amount due, that amount may also be directed to be paid to the respondents within a specified time. The amount deposited pursuant to orders of this court, if found excess, may be adjusted towards the amount payable as compensation for the acquired premises.

It is unfortunate that in spite of peremptory direction to pass award and on non-compliance of order to deliver possession of the building, no prompt action has been taken. The officers have not shown diligence required in this case. Even though the contempt proceedings were initiated for non-delivery of possession, yet no steps had been taken even to file appeal in this Court within the prescribed limitation. That would show apathy or absolute indifference on the part of the concerned officers in pursuing the proceedings. It would be obvious that since they do not have personal interest in the Governmental matters, they do not show the required dispatch. It is our sad experience that invariably, all cases of the Government, be that of Government of India or State Governments, except presently in the case of the Government of Punjab, are being filed with abnormal delay. It would, therefore, be high time that all the Governments should necessarily streamline the process of taking decision in time to file appeals. The lack of responsibility and indifference further gets compounded from the fact that though the writ petitioner (3rd respondent in this case) died on September 18, 1993 and notice was given by her counsel to the counsel for the Union on October 4, 1993, no steps were taken to bring the legal representatives on record till

August 19, 1994. In August 1994 the application for substitution came to be filed but without any explanation. These facts do indicate the absolute lack of diligence and apathy or indifference in pursuing the matters on behalf of the Union of India.

It is unfortunate that we have come across that even the State Governments adopt the same indifferent attitude in pursuing the public causes in filing the appeals in this Court as well as in the High Courts and the courts below. It is high time for the Government of India through the Cabinet Secretary to constitute a legal cell centralising all the cases to decide whether appeals should be filed and if so have them filed in time or with utmost dispatch. The officers responsible should be made accountable for the delay. Same process is equally required to be adopted in case of appeals to be filed in this Court or in the High Courts by the respective State Governments and/or the Union of India.

The Registry is directed to communicate this order to the Cabinet Secretary and also to all the Chief Secretaries of the State Governments; so also to the Attorney General of India and the Advocates General of the concerned States so that appropriate measures could be taken in this behalf.

The appeals are accordingly allowed, but, in the circumstances without costs.