

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

CRP No.26 of 2023

Agartala Municipal Corporation, represented by its Municipal Commissioner,
City Centre Complex, Paradise Chowhumani, P.O. Agartala, P.S. West
Agartala, District- West Tripura, Pin-799001.

..... Petitioner(s)

V E R S U S

1. Sri Samar Kumar Bhaumik, son of late Jamini Kumar Bhaumik, residence
of village Shymali Bazar, P.O. Kunjaban, P.S. New Capital Complex, District-
West Tripura, Pin-799006.

2. The Land Acquisition Collector, Agartala, West Tripura, Office of D.M. &
Collector, West Tripura, Agartala, P.O. Agartala, P.S. West Agartala, District-
West Tripura, Pin-799001.

.....Respondent(s)

For Petitioner(s) : Mr. Arijit Bhaumik, Advocate,
Mr. S. Dey, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

_O_R_D_E_R_

05/07/2023

The present petition under Article 227 of the Constitution of India by the judgment-debtor in Misc. LA No.21 of 2011 seeks to challenge the order dated 20.12.2022 passed by the learned Additional District Judge, Court No.2, West Tripura, Agartala in Case No. Ex(M) 01 of 2018. The operative part of the judgment passed by the reference Court of Land Acquisition Judge, Court No.3, West Tripura, Agartala is as under :

“In the result, the petition under Section 18 of the L.A. Act as referred by the L.A. Collector, West Tripura, Agartala is allowed. The referring-claimant is entitled to get a compensation for the acquired land @ Rs.2,50,000/- per kani for till class of land. The Compensation shall be added with 30% solatium under Section 23(2) of the L.A. Act and 12% under Section 23(i)(A) of the L.A. Act from the date of Notification under Section 4 of the said Act till the date of taken over possession or award whichever is earlier. The interest on the amount of compensation and solatium shall be @ 9% per annum from the date of possession till one year and @15% per annum from the date of expiry of one year till the date of payment of the enhanced amount of compensation. The amount already paid shall be adjusted against the compensation

awarded. Prepare award accordingly. The case is thus disposed of on contest.”

[2] During course of the execution proceedings, it appears that a dispute arose as to the actual date of possession. The land loser/ judgment-debtor claimed it to be 23.12.2007 but subsequently they claimed it to be from 13.01.2009. The judgment-debtor/petitioner filed a petition before the Executing Court on 19.02.2022 indicating the date of possession as 23.12.2010 and a calculation of the admissible compensation together with comprising the land value, solatium, 12% additional compensation, interest @ 9% with effect from 23.12.2010 and 15% interest with effect from 23.12.2011 till 30.03.2019 totaling Rs.1,03,33,690/-. The detailed information in regard to preparation of the decretal award prepared by the Land Acquisition Officer, West Tripura, Agartala and counter signed by the Land Acquisition Collector, West Tripura, Agartala were enclosed showing the aforesaid calculation. It appears that aggrieved by an order dated 13.06.2022 passed by the Executing Court, the judgment-debtor/petitioner herein approached this Court in CRP No.61 of 2022. By order dated 13.06.2022, the learned Executing Court on the objection of the award holder that the date of taking over of possession is 23.12.2007, and also considering the calculation submitted by the judgment-debtor based on the date of possession as per them i.e. 23.12.2010 found that the award holder was directed to vacate and deliver possession of acquired land before the evening of 13.01.2009. The learned advocate for the award holder had also added that they had vacated the land as per letter dated 23.12.2008. Having regard to the aforesaid findings recorded by the learned Executing Court, the

judgment-debtor/petitioner was directed to make payment of an amount of Rs.27,02,211/- as per the calculation submitted by the award holder. This was challenged in CRP No.61 of 2022 by the judgment-debtor/petitioner. After hearing learned counsel for the parties, the petition was disposed of by the following order :

“This is a petition filed under Article 227 of the Constitution of India challenging the order dated 13.06.2022 passed in EXE(M) 01 of 2018 by the learned L.A. Judge, West Tripura, Agartala, (Court No.2) whereby the learned L.A. Judge, directed the petitioner to make the payment of Rs.27,02,211/- by the next date which is fixed on 18.07.2022.

Heard learned counsels appearing for both parties.

The order dated 13.06.2022 is set aside and the matter is remanded back to the Court below. The Court below is directed to consider the possession certificate issued under Section 16 of the L.A. Act 1894 by the concerned authorities on 23.12.2010 and pass appropriate orders in accordance with law as expeditiously as possible. It is needless to observe that the claimant shall also be heard before passing the order.

With the above observation and direction, this instant revision petition is disposed of. Consequently, pending application(s), if any, also stands disposed of.”

[3] Evidently, the learned Executing Court was directed to consider the possession certificate issued under Section 16 of the L.A. Act 1894 by the concerned authorities on 23.12.2010 and pass appropriate orders in accordance with law as expeditiously as possible after hearing the claimant. The impugned order has been passed thereafter.

[4] Learned counsel for the petitioner submits that the Executing Court has on the instant occasion accepted that the possession was taken over on 23.12.2010. However, once again the parties have been directed to file fresh calculation sheet taking the date of handing over and taking over of possession of the acquired land as 23.12.2010. The operative part of the order dated 20.12.2022 reads as under :

“In view of the observation of the Hon’ble High Court the award-holder was allowed to file their say in writing. Accordingly, the award-holder has filed an additional written objection contending, inter alia, that the word “consider” in the direction given by the Hon’ble High Court is to be interpreted as the Apex Court in several decisions observed that to ‘consider’ means their should be active application of mind and further observed the term ‘consider’ postulates consideration of all the aspects and, therefore, it is manifested careful thinking or due application of mind regarding the necessity to obtain and examine the documents in question in sine quo non for the making of the order.

Learned Advocate for the JD-requiring department, however, contended that entire award has been satisfied and nothing remains to be paid to the award-holder.

On perusal of the order it appears the possession certificate was issued showing taking over of possession on 23.12.2010. But the award-holder was directed to vacate the possession on 13.01.2009 and accordingly, the award-holder stated to have vacated the possession on 13.01.2009 and thereby calculated the amount of compensation taking the date of handing over possession on 13.01.2009. In the above context, if we dual upon the direction so given by the Hon’ble High Court we left with no option but to hold that the possession was taken over on 23.12.2010.

In this view of the above, the parties are required to file fresh calculation sheet taking the date of handing over and taking over of possession of the acquired land as 23.12.2010.”

[5] Learned counsel for the petitioner, therefore, submits that if the payments had been made reckoning the date of taking over of possession as on 23.12.2010 and computation to that effect duly signed by the Land Acquisition Officer and Land Acquisition Collector, West Tripura, Agartala had been duly submitted by the judgment-debtor enclosed to the petition under Order XXI Rule 26 of the Code of Civil Procedure read with Section 151 of CPC on 19.02.2022, there is no occasion for the learned Executing Court to ask for a fresh computation. As a matter of fact, if the date of possession is now not in dispute as per the impugned order itself, the total amount payable under the award together with land value, solatium, interest etc. has already been paid to the tune of Rs.1,03,33,690/- by 03.07.2019. Learned Executing Court has been unnecessary insisting upon fresh

calculation for execution of the award when all the materials are before it and the date of taking over of possession is also not in dispute. Therefore, the petitioner had to approach this Court.

[6] This Court has taken note of the submission of learned counsel for the judgment-debtor/petitioner and referred to the award and the orders passed by the Executing Court earlier on 13.06.2022, the order dated 12.08.2022 passed by this Court in CRP No.61 of 2022 and the present impugned order. This Court has also taken note of the computation furnished by the decree holder which is part of the petition filed on 19.02.2022 before the Executing Court. It appears therefore that earlier the issue of effective date of taking over of possession came before this Court in CRP No.61 of 2022 when after hearing learned counsel for the parties the Coordinate Bench of this Court set aside the order dated 13.06.2022 and remanded the matter to the court below with a direction to consider the possession certificate issued under Section 16 of the LA Act, 1894 by the concerned authorities on 23.12.2010 and pass appropriate orders in accordance with law after hearing the claimant, as expeditiously as possible. Now the learned Executing Court also seems to have arrived at a conclusion that the effective date of possession is 23.12.2010 as evident from the impugned order extracted hereinabove. If that be so, the calculation submitted by the judgment-debtor and prepared by the Land Acquisition Officer and Land Acquisition Collector, West Tripura, Agartala dated 19.03.2021 enclosed to the petition dated 19.02.2022 filed by the judgment-debtor before the Executing Court ought to have been taken into consideration by the learned

Executing Court before asking for a fresh calculation sheet taking the date of handing over and taking over of possession of the acquired land as 23.12.2010 itself.

[7] Learned counsel for the petitioner submits that the Executing Court has been insisting upon fresh calculation pursuant to the impugned order and the next date is on 06.07.2023. The execution proceedings should be brought to an end once an award has been duly satisfied and there apparently does not appear to be any doubt about the effective date of taking over of possession of the acquired land i.e. 23.12.2010. He has also referred to the decision of the Apex Court in case of ***Rahul S Shah Versus Jitendra Kumar Gandhi and others*** reported in ***Civil Appeal No.1659-1660 of 2021*** dated 22.04.2021 and submitted that the Apex Court has directed the Executing Court to dispose of the execution proceedings within 6(six) months from the date of filing which may be extended only by recording reasons in writing for such delay. He submits that therefore the Executing Court may be directed to stick to the provisions of Order XXI of CPC regarding execution of decree/award and the ratio rendered by the Apex Court in case of ***Rahul S Shah*** (supra) by disposing of the execution petition as expeditiously as possible as it is pending since 2018.

[8] Having regard to the chronology of facts borne from record taken note above and the orders passed by the L.A. Court and the Executing Court on different occasions including the present one as also the order passed by this Court in CRP No.61 of 2022, this Court is of the view that the instant petition can be disposed of with a direction upon the Executing Court

to consider and take a decision on the issue of due execution of the award taking into account also the computation prepared under the signature of Land Acquisition Officer and Land Acquisition Collector, West Tripura, Agartala already submitted by the judgment-debtor dated 19.03.2021 reckoning the date of possession as 23.12.2010 and after hearing the parties on this issue. Let it be made clear that the Court has not expressed any opinion on the issue of satisfaction of the award by the judgment-debtor and observations if any made hereinabove are only intended to effectively ensure that the Executing Court takes a firm decision in a timeframe after hearing the parties and taking into account the materials already on record as regards the proper execution of the award in question.

[9] The instant petition is disposed of with the aforesaid observations. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH) CJ