

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WA No.131 of 2023

Sri Debabrata Nayak, son of late Hemanta Kumar Nayak, resident of Pabiacherra Bazar, P.O. & P.S.- Kumarghat, Pin-799264, District- Unakoti.

..... Appellant(s)

V E R S U S

1. The State of Tripura represented by the Secretary, Department of Revenue, Government of Tripura, New Capital Complex, Agartala, 799010, District- West Tripura.
2. The District Magistrate & Collector, Kailashahar, District-Unakoti, Tripura, Pin-799282.
3. The Sub-Divisional Magistrate, Kumarghat, District-Unakoti, Tripura, Pin-799264.
4. The Tehesildar, Kumarghat Tehesil, Kumarghat, District-Unakoti, Tripura, Pin-799264.
5. The General Manager, N.F. Railway, Maligaon, Guwahati, Assam.
6. The Deputy Chief Engineer(Construction), N.F. Railway, Badharghat, Agartala, Tripura.

..... Respondent(s)

For Appellant(s) : Mr. R.G. Chakraborty, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Dy.S.G.I,
Mr. K. De, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE BISWAJIT PALIT

Date of hearing and delivery of Judgment and Order : 12th December, 2024.

Whether Fit for Reporting : NO

JUDGMENT & ORDER (ORAL)

Heard Mr. R.G. Chakraborty, learned counsel appearing for the appellant and also heard Mr. Bidyut Majumder, learned Deputy S.G.I. appearing for the N.F. Railway and Mr. K. De, learned Additional Government Advocate appearing for the respondents-State.

[2] The learned Writ Court refused to interfere in the writ petition which was preferred for the following reliefs:

“(i) ISSUE RULE NISI calling upon the Respondents and each of them to show cause as to why a writ in the nature of mandamus and/or direction/directions and/or order/orders in the like nature shall not be issued compelling and directing the respondent Nos. 1 to 4 and each of them and/or all the respondents and each of them to issue necessary information to the Petitioner regarding acquisition of his land;

(ii) ISSUE RULE NISI calling upon the Respondents and each of them to show cause as to why a writ in the nature of mandamus and/or direction/directions and/or order/orders in the like nature shall not be issued compelling and directing the respondents Nos.1 to 4 and each of them and/or all the respondents and each of them to allow the petitioner to know the status of his jote land under possession of the railways and his letter dated 27.06.2023 for appropriate response thereto;

(iii) ISSUE RULE NISI calling upon the Respondents and each of them to show cause as to why a writ in the nature of Mandamus and/or direction/directions and/or order/orders in the like nature shall not be issued compelling and directing the respondent nos. 1 to 4 and each of them and/or all the respondents and each of them to produce all relevant papers before this Hon'ble High Court enabling this Hon'ble Court to adjudicate the matter regarding possession of N.F Railways on the jote property of the petitioner;

(iv) ISSUE RULE NISI calling upon the Respondents and each of them to show cause as to why a writ in the nature of Mandamus and/or direction/ directions and/or order /orders in the like nature shall not be issued compelling and directing the respondent and each of them and/or all the respondents and each of them to acquire the portion of land under the possession of the Indian Railways and/or to acquire the whole landed property of the petitioner adjacent thereto within Khatian No. 847 and to pay appropriate compensation for the acquired lands in both the cases.

(v) After hearing the parties be pleased to make the Rules absolute;

(vi) And be pleased to pass further order/orders, direction/directions as this Hon'ble High Court considered deemed fit and proper.”

[3] Being aggrieved, the writ petitioner is in appeal before us.

[4] The writ petition was preferred after 42 years of the acquisition made under the Land Acquisition Act, 1894 for the purposes of the railways. As per the statements made at paragraph 3 of the rejoinder affidavit of the writ petitioner itself, the acquisition was made on 24.02.1981 and the award was published on 09.03.1981. 42 years thereafter the writ petitioner

approached the Writ Court in WP(C) No.92 of 2023 for relief claiming himself to be the land owner. The writ petition was disposed of to enable the petitioner to pursue his representation before the respondent-authorities. Thereafter, certain letters were issued by the Sr. Divisional Engineer, Northeast Frontier Railway, Lumding on 04.04.2023 and by the Land Acquisition Collector, Unakoti, Kailashahar addressed to General Manager, Northeast Frontier Railway on 16th June, 2023 asking him to find out the relevant records of the land. Thereafter, the instant writ petition was preferred bearing WP(C) No.549 of 2023 for the above reliefs.

[5] Learned Writ Court refused to interfere in the matter with an observation that the issue is with regard to the disputed question of fact involving the acquisition of the land and whether the respondent paid compensation or willing to pay or not.

[6] Mr. R.G. Chakraborty, learned counsel for the appellant has submitted that the State-respondents in their counter affidavit have also accepted that the land in respect of the R.S. Plot No.3894, 3895 & 3896 of Mouja Pabiacherra under Khatian No.847 measuring 01.11 acres were purchased by the father of the petitioner through three sale deeds of the year 1979, 1980 & 1981. It is submitted that no notice was issued in favour of the petitioner's father in respect of acquisition of the land since the land was shown as khas land in the record of rights. Petitioner was asked to produce certain documents by the DM & Collector, Unakoti District on 26.03.2024 such as (a) R.O.R of jote land (b) current Khatian (c) copies of order under Section 11(3) revenue case (d) sale deeds executed by Prafulla Kumar Das

and (e) Any other documents on C.S Plot No.2168, 2116 and 2182 of Mouja Pabiacherra to support his claim. Petitioner appeared on 26.03.2024 and submitted only two copies of sale deeds and requested time for submission of other documents asked for.

[7] It is submitted that petitioner's father died about three years back. Petitioner has come to know of the possession of Railways only through Sri Pandit Sarkar who was in the possession of plot No.3896/P. Thereafter, he approached the respondent-authorities. However, the learned Writ Court has refused to interfere in the matter.

[8] The Respondents-State has filed a counter affidavit. It is their categorical assertion that on scrutiny of available records, the suit land measuring 1.11 acres under Plot Nos.2168, 2182 was khas land recorded in Government Khatian No.1011 and old plot No.2116 as Forest Department which were acquired for construction of metre-gauge railway line from Dharmanagar to Kumarghat vide declaration dated 24.02.1981 of the Revenue Department, Government of Tripura published in Tripura Gazette on 09.03.1981. During acquisition of the land for construction of metre-gauge railway line from between the aforesaid two stations the two plots in question were recorded as khas land vide draft Khatian No.1011 under Pabiacherra Mouja and one plot recorded as Forest Department land for which no notice was issued to the petitioner or his father. It is submitted that the acquisition was done in the year 1981 while revisional survey operation was started from the year 1982 and the record of rights were finally published in 1989. The matter was further enquired through a team of

officials like DCM, Kumarghat Revenue Circle who submitted a report as per which the final published Revisional Khatian No.847 of Mouja Pabiacherra shows CS Plot Nos.2168, 2116 and 2182 which are R.S Plot Nos.3896 3895 and 3894 recorded in Column No.19 as Rayati in favour of Hemanta Kumar Nayek son of Joy Narayan Nayek of Kumarghat. These lands are under possession of Railway Department by way of constructing rail track and other construction. Rest 0.12 acres from R.S. Plot No.3896/P is under possession of Sri Pandit Sarkar by way of constructing bamboo fencing.

[9] The Deputy Director, Land Records & Settlement, Government of Tripura furnished copy of draft Khatian and copy of mutation application of Sri Hemanta Kumar Nayek filled in Form No.21 but the copy of the order passed in Case No.232/1981 under Section 11(3) could not be furnished as it was not traceable even after thorough search. Thereafter, the office of DM & Collector, Unakoti District issued a notice to the petitioner on 26.03.2024 to appear with all copies of orders, documents. He only submitted two sale deeds of the year 1980 and 1981 and stated that no other document is available on this issue.

[10] Based on these averments, learned counsel for the State submits that the acquisition of the suit land was done in the year 1981 and Railway is currently utilizing the land. Consequent upon revision of record of rights the possession of Railway authorities is shown. The ROR entry No.847 held by petitioner shows the entire land measuring 1.11 acres under the possession of Railway Authorities. Therefore, it is quite surprising as to how the land

was mutated either in favour of Hemanta Kumar Nayek or in favour of the petitioner without having any possession over the land which is the key factor in order to get mutation of land. It is also astonishing that after lapse of 42 years the petitioner has come forward with a demand to make payment of compensation claiming the suit land as his settled land. Based on these averments, learned counsel for the State submits that such a claim is wholly barred by delay and laches. Moreover, the acquisition proceedings of the year 1981 based upon the entries made in the old draft record of rights showing it as khas land and that of Forest land cannot be questioned at this length of time to seek compensation by the petitioner. It is further submitted that even if the record of rights was corrected in the year 1989 the remarks column shows Railway as the possessor but father of the petitioner or petitioner never objected to such entries nor made any inquiry. Since the acquisition has become final in view of the prescription of law and the notification issued under the Land Acquisition Act 1894, this Court in exercise of writ jurisdiction should refrain from interfering in the matter at the behest of the writ petitioner whose claim is grossly barred by unexplained delay and laches.

[11] Mr. Bidyut Majumder, Learned Deputy S.G.I appearing for the respondents-Railway has also made submission to the same effect.

[12] Mr. R.G. Chakraborty, learned counsel for the appellant in reply has placed reliance upon the case of *Sukh Dutt Ratra and another versus State of Himachal Pradesh and others*, reported in (2022) 7 SCC 508 in Civil Appeal No.2773 of 2022 dated 06.04.2022 particularly

paragraphs 16, 17 & 18 and submitted that the Apex Court has held that the constitutional right under Article 300-A cannot be defeated merely on the ground of delay and laches of the land owner when his private property being expropriated. The facts of the case show that that the appellant Sukh Dutt Ratra and Bhagat Ram claimed to be owners of land situated at Mauzal Sarol Basach, Tehsil Pachhad, District Sirmaour, Himachal Pradesh. They alleged that the respondents-State utilized the subject land and adjoining lands for the construction of the Narag Fagla Road in 1972-73 but no land acquisition proceedings were initiated nor compensation given to the appellants or owners of the adjoining land. The facts of the said case further reveal that it was only after the judgment of the Himachal Pradesh High Court that land acquisition proceedings were initiated under the Act of 1894 vide notification dated 16.10.2001. Thereafter, similarly situated land owners filed writ petitions before the High Court which was allowed by the High Court with the direction to acquire lands of the writ petitioners under the Act with consequential benefits. Subsequently, other similarly situated owners also received the benefit of these directions.

[13] This led the appellants to file a writ petition before the High Court in 2011 seeking compensation for the subject land or initiation of acquisition proceedings under the Act. The High Court relying upon a Full Bench decision held that the matter involved disputed questions of law and fact for determination on the starting point of limitation which could not be adjudicated in writ proceedings. It was accordingly disposed of with liberty to file a civil suit in accordance with law. Aggrieved thereby the appellants

had approached the Apex Court through these appeals. The instant decision, evidently makes it clear that acquisition proceedings were initiated only pursuant to the directions of the High Court since 2001 at the behest of adjoining land owners who were granted compensation. The writ petitioner alleged that their land has been taken by the State in 1972, 1973 without any acquisition. Their writ petitions were dismissed on ground of delay and laches and apparently they had approached the Court after 38 years in 2011.

[14] The facts of the present case are distinguishable since in the present case the acquisition proceedings were concluded in the year March, 1981 itself for the purposes of Railway construction. At that point of time, the record of rights in the old C.S Plot showed these two Plots No.3894 and 3895 as khas land and Plot No.3896 at Mouja Pabiacherra as Forest Department land. The record of rights were revised in the year 1989 when apparently the name of the father of the present petitioner was entered 8 years after the acquisition was complete but it still showed the land to be in possession of the Railways. Even though the land was shown in the possession of the Railways, the father of the petitioner or the present petitioner did not raise their claim in respect of such possession of the railways or acquisition in the name of railways for 42 years till they approached this Court in the year 2023 for the first time. It is therefore, evident that the present case is not one where the State has expropriated the private property of the petitioner without any acquisition proceedings. The acquisition proceedings concluded in the year 1981 were based upon the record of rights where the name of the father of the petitioner was not reflected even if he might have purchased the said land by way of sale deeds

of 1979, 1980 & 1981. Acquisition proceedings of 1981 therefore could not be faulted on those counts since notifications are issued on the basis of the revenue records and the record of rights maintained by the State.

[15] In the wake of these background facts and circumstances, it is also apparent that even after notice issued by the DM & Collector, Unakoti on 26.03.2024 the petitioner could only produce two sale deeds and none of the other documents. The writ petitioner has not been able to overcome the gross and inordinate delay in approaching the Writ Court for redressal of his grievances in respect of the acquisition completed in the year 1981 itself. As such, the decision relied upon by learned counsel for the petitioner in the case of *Sukh Dutt Ratra* (supra) would not come to his aid.

[16] For the above reasons, we are of the considered view that the writ petition being barred by gross delay and laches was fit to be dismissed on those counts itself. We therefore, refuse to interfere in the impugned order.

Accordingly, the instant writ appeal is dismissed.

Pending application(s), if any, also stands disposed of.

(BISWAJIT PALIT) J

(APARESH KUMAR SINGH) CJ

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