

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Appellate Side)

F.M.A 1793 of 2018
With
IA No. C.A.N. 2 of 2017
(Old C.A.N 11091 of 2017)

The State of West Bengal & ors.

Vs.

Prime Tradecom Pvt. Ltd. & Ors.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Kausik Chanda

For the Appellants/State	: Mrs. Chama Mookherjee, Adv. Ms. Sucharita Roy, Adv.
For the Respondents	: Mr. Abhrajit Mitra, Ld. Sr. Adv. Ms. Rajshree Kajaria, Adv. Mr. Satadeep Bhattacharyya, Adv.
Heard On	: 02.03.2022, 09.03.2022, 23.03.2022, 24.03.2022
CAV On	: 24.03.2022
Judgment On	: 30.03.2022

Arijit Banerjee, J.:

1. This is an appeal against a judgment and order dated July 14, 2017, whereby W.P. No. 8538 (W) of 2015 was disposed of by directing the First

Land Acquisition Collector, Kolkata, to assess the compensation for the concerned acquisition afresh under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short the '2013 Act') within a period of 8 weeks from the date of communication of the order.

2. The brief facts of the case are that proceedings were initiated under the Land Acquisition Act, 1894 (in short 'LA Act'), at the instance of the Kolkata Metro Rail Authorities (requiring body), for acquiring Premises no. 156B Manicktala Main Road, Kolkata - 700054. The purpose of acquisition was to utilise the land for setting up an electric sub-station. Notification under Section 4 of the LA Act was issued on July 8, 2009. Declaration under Section 6 of the LA Act was made on December 11, 2009.

3. The said acquisition proceedings were challenged by one Anant Shri Sukhramji Trust and its trustees who were the owners of Premises no. 156B Manicktala Main Road, Kolkata- 700 084, by filing W.P. No. 175 of 2010. In the course of hearing of the writ petition, 8 private limited companies which were obviously under the control and management of the writ petitioners, filed an application being G.A. No. 1989 of 2010 for being added as party respondents in the writ petition. The said companies offered Premises no. 157A Manicktala Main Road, Kolkata, for acquisition in the place and stead of Premises no. 156B. The learned Single Judge added the said companies as party respondents. The Metro Rail Authorities and CESC limited inspected Premises no. 157A and were satisfied that the same was suitable for an electric sub-station to be set up thereat. The learned Single Judge, by

an order dated November 29, 2010, disposed of the writ petition by inter alia, observing as follows:-

(i) The alternate land being premises no. 157A Manicktala Main Road, has been inspected both by the Kolkata Metro Railway Authorities and the CESC Authorities and has been approved by both the said authorities.

(ii) The Kolkata Metro Railway Authorities and the CESC Authorities have no objection if Plot no. 157A Manicktala Main Road, which is adjacent to plot no. 156B Manicktala Main Road, is offered as an alternate plot for setting up a receiving sub-station of CESC.

(iii) The Land Acquisition Collector shall take necessary steps for acquisition of Premises no. 157A Manicktala Main Road immediately and shall withdraw the notification dated July 8, 2009, and the declaration dated December 11, 2009, in respect of Premises no. 156B Manicktala Main Road.

(iv) The added respondents shall satisfy the respondent authorities of their title to the alternate plot before the plot in respect of which acquisition proceedings have already been initiated, is released.

(v) It is recorded that the writ petitioners and the added respondents have no objection to the respondent authorities taking immediate possession of the alternate plot, i.e., Premises no. 157A

Manicktala Main Road, and to immediately commence work of installation of the electric sub-station thereat.

(vi) In the event it is found that the added respondents do not have clear title to the alternate plot, the order shall stand vacated.

(vii) The acquisition proceedings shall be completed as expeditiously as possible.

(viii) *Status quo* in respect of plot no. 156B shall be maintained till possession of the alternate plot is made over to the respondent authorities.

(ix) Subject to the added respondents having clear title over Premises no. 157A Manicktala Main Road, the respondent authorities shall take over possession thereof from the writ petitioners and/or added respondents within 30 working days from the date of communication of the order.

(x) The order is passed at the suggestion of the parties to the writ application including the added respondents.

4. There were certain inadvertent errors in the said order which were corrected by a subsequent order dated January 14, 2011. However, the substance of the order remained the same as summarised above.

5. As per the direction of the learned Single Judge, proceedings were initiated by the LA Collector for acquiring Premises No. 157A under the

provisions of the LA Act. Section 4 notification was issued on January 31, 2012. Section 6 declaration was made on April 12, 2013.

6. Notice under Section 9 of the LA Act was served on the owners of the property under acquisition being the said companies on January 30, 2014. It appears that the said companies responded to such notice and attended a couple of hearings before the LA Collector. However, on June 18, 2014, the said companies made a representation to the LA Collector for assessment of the compensation payable to them, in terms of the provisions of the 2013 Act which had come into force on January 1, 2014. Alleging that the Collector was sitting on such representation without considering the same, the owners of the property approached this Court by filing W.P. No. 4937 (W) of 2015. The said writ petition was disposed of by an order dated February 24, 2015, the operative portion whereof reads as follows:-

“In such view of it, there is no point in keeping the writ petition pending in this Court and the same is disposed of by directing the 1st Land Acquisition Collector, Kolkata i.e. the respondent no. 3 herein, to consider and dispose of the representation of the petitioners dated June 18, 2014 which has been annexed to the writ petition as ‘Annexure P-13’ positively within a period of four weeks from the date of communication of this order according to the law applicable to the facts of the present case. The respondent no. 3 shall also verify the stand of the petitioners whether any award had at all been declared in this case and he shall also

communicate his decision to the petitioners within a week after it is taken.”

7. Pursuant to such order, the Collector gave a hearing to the owners and passed an order on March 19, 2015, which was communicated to the owners on March 30, 2015, rejecting the claim of the owners for assessment of compensation under the provisions of the 2013 Act. The operative portion of the Collector’s order reads as follows:-

“It is obvious that acquisition of 157A, Manicktala Main Road was initiated consequent to the alternative proposal of the writ petitioners and consideration of the same by the Hon’ble High Court in its order dated 14.01.2011 and the said acquisition proceeding could not be concluded within 31.12.2013. But the said process of LA is going on and completed up to Section 10 of the Act I of 1894. The delay made herein is absolutely due to the petitioners alternative proposal and pendency of the Writ before the Hon’ble High Court, Calcutta. The earlier plot for acquisition i.e. 156B, Manicktala Main Road was withdrawn from acquisition vide Gazette notification dated 12.06.2014 under Section 48 of LA Act – I of 1894.

In the above context, the claim of the Writ Petitioner in respect of 157A, Manicktala Main Road demanding higher compensation as per new Act of 2013 is not at all justified of ethical because the said plot was proposed for acquisition exchanging the earlier plot

for acquisition i.e. 156B, Manicktala Main Road only as per proposal of the Writ Petitioners themselves. The delay made herein is absolutely due to the petitioners alternative proposal and pendency of the Writ Petition before the Hon'ble High Court, Calcutta. Their representation dated 18.06.2014 is therefore, considered and rejected.”

8. The aforesaid order of the Collector was challenged by the owners of the property under acquisition being the said private limited companies by filing W.P. No. 8538 (W) of 2015 which was disposed of by the order dated July 14, 2017, which is the subject matter of challenge in this appeal. The learned Single Judge set aside the Collector's order dated March 19, 2015, and as indicated above, directed the Collector to assess compensation under the provisions of the 2013 Act.

9. Appearing for the State of West Bengal, Mrs. Mukherjee, learned Advocate, submitted that an estimated Award was prepared and communicated to the owners of the property on August 11, 2014. Thereafter a final Award was made on April 13, 2015. She submitted that Section 25 of the 2013 Act prescribed a period of 12 months from the date of publication of the declaration under Section 19 of the 2013 Act for publication of the Award. In the present case, the 12 months should be taken to be running from January 1, 2014, when the 2013 Act came into force. The estimated Award was prepared within such time period. Publication of the final Award got delayed because of the initiation of legal proceedings by the owners of the property. There were no laches or lack of diligence on the part of the

State. The owners of the property being responsible for the delayed publication of the Award and the Writ Court being a Court of equity, the owners should not be permitted to take advantage of their own wrong.

10. In support of her submission that the compensation payable to the owners of the property under acquisition has to be assessed under the provisions of the LA Act, and not in terms of the provisions of the 2013 Act, Mrs Mukherjee relied on a decision of the Hon'ble Supreme Court in the case of ***Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation development Corporation v. Mahesh & Ors. reported at (2022) 2 SCC 772***. I shall revert back to this decision later in this judgment.

11. Mrs. Mukherjee further submitted that the owners of the property have accepted the Award published by the Collector as would be evident from the fact that they have applied under Section 18 of the LA Act before the Collector for reference of the matter to the concerned Civil Court for enhancement of the compensation amount. Hence, the owners cannot now turn around and claim compensation under the provisions of the 2013 Act.

12. Appearing for the respondents, Mr Abhrajit Mitra, learned Senior Counsel, submitted that the order under appeal is unexceptionable. The acquisition process was started under the LA Act by issuing Section 4 notification on January 31, 2012. As on January 1, 2014, when the 2013 came into force, no Award under Section 11 of the LA Act had been made. Accordingly, as per Section 24(1)(a) of the 2013 Act, all the provisions of the

2013 Act relating to determination of compensation shall apply. There is no error in the order of the learned Single Judge.

13. Mr. Mitra further submitted that the reference case filed by the respondents herein before the Collector on May 27, 2015, was without prejudice to their rights and contention in W.P. No. 8538(W) of 2015 which was pending before the learned Single Judge. He said that the respondents herein filed such reference case by way of abundant caution before the time period prescribed therefor in Section 18(2) of the LA Act ran out.

14. I have given my anxious consideration to the rival contentions of the parties.

15. It is not in dispute that Premises no. 157A Manicktala Main Road has been acquired by the State. It is not of much relevance any further that initially Premises no. 156B was sought to be acquired. The parties agreed that the acquisition should shift from Premises no. 156B to Premises no. 157A and the former plot should be released from acquisition, which has since been done. It also cannot be in dispute that the respondents, who are the owners of the acquired property, are entitled to receive compensation for acquisition of the property. The only question is, how is such compensation to be assessed? The State says that the compensation should be as per the provisions of the LA Act and in fact an Award has been made under Section 11 of the LA Act, by the Collector. The respondents contend that assessment of compensation should be in accordance with the provisions of the 2013

Act. I have already noted the arguments advanced by the respective parties in support of their respective contentions.

16. Section 24 of the 2013 Act, in so far as the same is material for the present purpose, reads as follows:-

“(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894);-

(a) Where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) Where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.”

17. Admittedly, the acquisition proceedings in the present case were initiated under the LA Act by issuance of notification under Section 4 of that Act on January 31, 2012. The 2013 Act came into effect on January 1, 2014. It is not in dispute that as on that date no Award under Section 11 of the LA Act had been made by the Collector. It would inevitably follow that all provisions of the 2013 Act relating to determination of compensation shall apply in the present case.

18. Learned Advocate for the State/Appellant relied on the recent Supreme Court decision in the case of ***Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation (supra)***. With great respect, that decision does not help the appellant in any manner whatsoever. The question that fell for determination in that case as noted in paragraph 1 of the reported Judgment, was:-

“Whether the two-year period specified under Section 11-A of the Land Acquisition Act, 1894 (“the 1894 Act” for short) will apply even after the repeal of the 1894 Act, or the twelve-month period specified in Section 25 of the 2013 Act will apply for the awards made under clause (a) of Section 24 (1) of the 2013 Act?”

19. The question was answered in Paragraph 31 of the reported judgment which reads as follows:-

“31. Consequently, we hold that in cases covered by clause (a) to Section 24(1) of the 2013 Act, the limitation period for passing/making of an award under Section 25 of the 2013 Act would commence from 1-1-2014, that is, the date when the 2013 Act came into force. Awards passed under Clause (a) to Section 24(1) would be valid if made within twelve months from 1-1-2014. This dictum is subject to the caveat stated in paras 20 to 23 (supra) that a declaration which has lapsed in terms of Section 11-A of the 1894 Act before or on 31-12-13 would not get revived.”

20. Paragraphs 13, 14, 18 and 19 of the said judgment are also very relevant and are hence reproduced hereunder:-

“13. Sub-Section (1) to Section 24 of the 2013 Act is a non obstante clause. It confers the provision with an overriding status over other provisions. Accordingly, in terms of Section 24(1) of the 2013 Act, Section 114 of the 2013 Act as well as Section 6 of the General Clauses Act will not apply to the extent hindered by Section 24 (1) of the 2013 Act. The reason is that Section 114 of the 2013 Act, while accepting the applicability of Section 6 of the General Clauses Act, makes its application subject to “save as otherwise provided” in the 2013 Act. Further, Section 6 of the General Clauses Act itself states that the general savings will not apply when the legislative intent is contrary.

14. Section 24(1) deals with two specific situations where the land acquisition proceedings were initiated before the repeal of the 1894 Act, namely: (i) where an award has been made, and (ii) where an award has not been made. As per Clause (b) to Section 24(1) where an award under Section 11 of the 1894 Act has been made, the proceedings would continue under the repealed 1894 Act, notwithstanding its repeal. In such cases, the 2013 Act will not apply. Clause (b) to Section 24 (1) is not applicable in the case at hand as it is admitted that no award was made on or before 31-12-2013.

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18. In para 295 of *Indore Development Authority*, the Constitution Bench held that the 2013 Act operates prospectively. Further, Section 114 of the 2013 Act effects a repeal but with certain savings, in accordance with Section 24. Thus, the acquisition proceedings are preserved under the 1894 Act till the stage of making of the award. Where an award is not made, the provisions relating to determination of compensation under the 2013 Act would apply; where the award is made, proceedings would continue under the provisions of the 1894 Act as if the said Act has not been repealed. Our interpretation of Section 24(1) of the 2013 Act respectfully follows this precedent.

19. Clearly, Section 11-A of the 1894 Act and Section 25 of the 2013 Act prescribe two different periods of limitation with adverse consequences, as on failure to make the award the acquisition proceedings lapse. The choice is between Section 11-A of the 1894 Act and Section 25 of the 2013 Act. Absence of precise words or express declaration would not inhibit us from interpreting and exercising the right choice, keeping in view the language as also the object and purpose of Clause (a) to Section 24(1) of the 2013 Act. In other words, we have to give effect and meaning to the underlying intention of Parliament in the words “all the provisions relating to determination of compensation” under the 2013 Act.”

21. Thus, there is no doubt at all that Section 24(1) of the 2013 Act as interpreted by the Hon'ble Supreme Court, mandates that in the case of acquisition of land initiated under the LA Act, if no Award has been made by the Collector Under Section 11 of that Act, prior to the 2013 Act coming into force, determination of compensation will be in terms of the provisions of the 2013 Act.

22. The State argued that the delay in publication of the Award by the Collector is attributable to the conduct of the respondents. By challenging the acquisition proceedings initiated in respect of Premises No. 156B Manicktala Main Road and later again by challenging the Collector's order holding that compensation was to be determined in terms of the LA Act, the respondents delayed the process of finalisation and making of the Award. There was no delay or laches on the part of the State.

23. With great respect, this argument is wholly unacceptable. Premises no. 157A was substituted as subject matter of acquisition in the place and stead of Premises no. 156B by agreement of the parties. The State cannot complain of it now. Further, the initial challenge by the respondents by filing W.P. no. 175 of 2010 culminated in the judgment and order dated November 29, 2010 (certain inadvertent errors in the order were corrected by an order dated January 14, 2011 which did not alter or touch the substance of the parent order). The said order was passed at the suggestion of the parties. The order directed that the acquisition proceedings shall be completed as expeditiously as possible. However, Section 4 notification was not issued until January 31, 2012, i.e. about 14 months after the court's order. It took

the State another 14 months or more to make the declaration under Section 6 of the LA Act which was made on April 12, 2013. This definitely does not indicate that the State moved diligently or with any sense of urgency, to complete the acquisition proceedings on an early date. I am of the view that the respondents were in no way responsible for the delay in making of the Award by the Collector.

24. The reliance placed by the State on Section 25 of the 2013 Act is misconceived. Section 25 merely prescribes the period within which an Award has to be made under the 2013 Act, which is 12 months from the date of publication of the declaration under Section 19 of that Act, failing which, the acquisition proceedings shall lapse. Of course, the appropriate Government has been given the power to extend the period of 12 months if in its opinion, circumstances exist justifying the same. Such decision to extend the time period has to be recorded in writing, has to be notified and uploaded on the website of the concerned authority. Section 25 of the 2013 Act has been interpreted by the Hon'ble Supreme Court in the case of ***Executive Engineer, Gosikhurd Project Ambadi, (Supra)*** to the effect that in cases covered by Section 24(1)(a) of the 2013 Act, the limitation period for making of an Award under Section 25 of the 2013 Act would commence from 1.1.2014. Awards passed under Section 24(1)(a) would be valid if made within 12 months from 1.1.2014.

25. The other argument of the State that the respondents accepted the final Award that was made on April 13, 2015, also does not impress me. The writ petition in which the order impugned in this appeal was passed was

filed on or about April 10, 2015, challenging the Collector's order dated March 19, 2015, rejecting the contention of the respondents herein that the provisions of the 2013 Act would apply for determination of the compensation payable to them. The unequivocal case of the respondents herein who were the writ petitioners was that the compensation should be assessed in terms of the relevant provisions of the 2013 Act. Immediately after filing of such writ petition, on April 13, 2015, the final Award was made by the Collector following the provisions of the LA Act. The respondents herein filed a reference case before the Collector on May 27, 2015 raising a dispute as regards the quantum of the Award. This they did without prejudice to their rights and contentions in the writ petition that was pending in the High Court as would appear from Paragraph 37 of the reference petition which has been brought on record by the State by way of a supplementary affidavit. Such an act was not unreasonable on the part of the respondents as the limitation period for filing such reference case prescribed under Section 18 of the LA Act was running out. The explanation furnished by the respondents in the course of hearing that the reference case was filed by way of abundant caution, in case their contention regarding applicability of the provisions of the 2013 Act for determining the compensation amount failed, is quite acceptable. It cannot be said that by filing the reference petition under Section 18 of the LA Act, in the facts and circumstances of the case, the respondents accepted the Collector's Award made under Section 11 of the LA Act.

26. It was also contended on behalf of the State that notice under Section 9 of the LA Act was served on the respondents who attended the hearing before the Collector pursuant to such notice. Even if the respondents did respond to the Section 9 notice by presenting themselves before the Collector, that *per se* cannot be construed to be an act of waiver of their claim that the compensation in the present case requires to be determined in terms of the provisions of the 2013 Act. An Act of waiver is required to be clear and unequivocal and cannot be lightly inferred.

27. I am conscious of the fact that the compensation determined in accordance with the provisions of the 2013 Act would be significantly higher than the final Award made by the Collector under Section 11 of the LA Act. This will impose some financial burden on the State. However, the concerned officers of the State could have avoided such predicament by moving with more speed. I have noticed in many cases that officers of the State holding very responsible positions, discharge their duties indifferently, perfunctorily, and lackadaisically, causing loss to the State Exchequer. It is high time that such indolent officers are taken to task by their superiors so that the other officers in the administration pull up their socks and discharge their duties diligently and sincerely.

28. I do not find any reason to interfere with the order under appeal which is hereby affirmed. The First Land Acquisition Collector is directed to assess and tender for payment the compensation payable to the respondents in terms of the provisions of the 2013 Act within a period of ten weeks from the date of communication of this order to him.

29. The appeal and the connected application are accordingly dismissed.
There will be no order as to costs.

30. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(ARIJIT BANERJEE, J.)

I agree.

(KAUSIK CHANDA, J.)