

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 218 of 2022

With

CAN 1 of 2022

(Through Video Conference)

Reserved on: 01.03.2022

Pronounced on: 11.03.2022

Reliance Projects and Property Management Services Limited

...Appellant

-Vs-

District Magistrate and Collector, Nadia, Land Acquisition Section (NHAI) & Ors.

...Respondents

Present:-

Mr. Mainak Bose,
Mr. V.V.V. Sastry,
Mr. Tridib Bose,
Mr. Sourav Roy, Advocates

... for the appellant

Mr. Jahar Lal De,
Mr. Supratim Bhar, Advocates

... for the State

Mr. Shamit Sanyal,
Ms. Manika Roy, Advocates

... for the NHAI

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is at the instance of the writ petitioner challenging the order dated 07.02.2022 passed by the learned Single Judge in W.P.A. 7315 of 2021.

2. Appellant had approached the writ Court challenging the order dated 5th of February, 2021 passed by the respondent No. 2 and also seeking quashing of the report dated 21st of January, 2021 issued by the BL&LRO.

3. The brief facts are that the petitioner had purchased a part of a four storeyed building situated at Mouza – Pumlia pertaining to R.S., L.R. Khatian No. 1383, L.R. Dag No. 271 under Tatla – 2 Gram Panchayat from Debashis Chakraborty by conveyance executed on 5th of February, 2015 but prior to that sometime in the year 2010 out of the total area of 7 decimal of land, highway authority had already acquired 3 decimal of land. Since, the appellant had purchased the acquired area, therefore, proceedings were initiated. Original owner Debashis Chakraborty had filed the writ petition W.P.A. 10416 of 2020 which was withdrawn without any liberty to file a fresh petition. Debashis Chakraborty was paid compensation for the entire area acquired from him. The appellant had initially filed W.P. No. 24357 (W) of 2019 which was disposed of by order dated 30th of December, 2019 directing the Additional District Magistrate (Land Acquisition), Nadia to decide the representation of the appellant after giving opportunity of hearing to the concerned parties and to take a reasoned decision and also directing the parties to maintain status quo till the decision is taken. The competent authority thereafter had passed the order during that the disputed portion was acquired and, therefore, directing eviction of the appellant from that portion. The appellant had questioned the order dated 11th of November, 2020 passed by the competent authority by filing W.P.A. No. 9435 of 2020. The writ petition was allowed and order dated 11th of November, 2020 was set aside because the report of measurement could not be produced before the Court. The writ Court had again directed the competent authority to reconsider the matter after hearing both the sides

and to decide after considering all the relevant material by a reasoned order in accordance with law. The competent authority thereafter had passed the order which was subject matter of challenge in the writ petition. The competent authority found that the encroachment lies on the acquired area of 330.20 sq.ft. (0.76 decimal) by way of permanent structure. The said order also reveals that the identification of the encroached construction was done after verification of the plot on 21.01.2021 in the presence of all the parties. Accordingly, the direction was issued to remove/demolish the permanent structure on an area about 330.20 sq.ft. (0.76 decimal) which was an encroachment over the acquired land of 0.0301 acre under plot No. 271. This order was impugned in the writ petition and learned Single Judge by assigning detailed reasons has disposed of the petition.

4. Submission of the learned Counsel for the appellant is that while carrying out the measurement only the alleged acquired portion has been measured, but the unacquired portion has not been measured, therefore, correct position has not been ascertained. He has further submitted that the writ Court could have gone into the disputed questions of facts to ascertain that constructed area is on unacquired land and in this regard he has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Hari Krishna Mandir Trust vs. State of Maharashtra and Others, (2020) 9 SCC 356**.

5. Learned Counsel for the State has opposed the petition by submitting that the land in question was already acquired in the year 2010, due compensation was paid and in the verification of spot, construction in question has been found to be on the acquired land, therefore, the order of the learned Single Judge does not suffer from any error.

6. Learned Counsel for the NHA has also submitted that because of the present dispute the project has been held up and that the due measurement on the spot has been done by the competent authority and has referred to the alignment line in the map to show that the construction in question falls in the acquired area.

7. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that learned Single Judge has examined each and every aspect of the matter in detail. 3 decimal of land out of 7 decimal was acquired from the original owner Debashis Chakraborty and due compensation was paid to him in the year 2010. The writ petition filed by the original owner has also been dismissed as withdrawn without any liberty to file a fresh petition.

8. In the earlier two rounds of litigation requisite directions were issued to decide the petitioner's representation and also to do measurement in the presence of all the parties. In compliance thereof the measurement has been done by the competent authority and the encroached area falling in the acquired area has been ascertained. No error has been committed by the learned Single Judge in taking the view that the issue raised by the appellant questioning the report and the impugned order of the competent authority on the ground that the area purchased by him was not acquired, is a factual dispute which need not be gone into in the writ jurisdiction. So far as the reliance of the learned Counsel for the appellant in the case of **Hari Krishna Mandir Trust (supra)** is concerned, there is no dispute to the proposition that in appropriate case the High Court can entertain the petition under Article 226 involving disputed questions of facts but present is not one such case. It is also worth noting that on account of the repeated

rounds of litigation by the appellant, the project has been held up and public interest is adversely affected.

9. In the above circumstances, learned Single Judge has committed no error in refusing to set aside the order of the competent authority as well as the report. We find no illegality in the order of the learned Single Judge. The petition is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
11.03.2022

PA(SS)

(A.F.R. / N.A.F.R.)