

11.08.2022
Item Nos.5&6
Court No.6.
S. De

**M.A.T. 353 of 2022
I.A. No. CAN/1/2022**

**Pranab Chakraborty & Ors.
Vs
State of West Bengal & Ors.
With
M.A.T. 354 of 2022**

**Pranab Chakraborty & Ors.
Vs
Bharat Petroleum Corporation & Ors.**

Mr. Tapan Kr. Rakshit,
Mr. Surajit Roy,
...for the writ petitioners/appellants.
(in MAT 353 of 2022).
And
...for the respondent nos. 5 to
11/appellants.
(in MAT 354 of 2022).

Mr. Puspendu Chakraborty,
Mr. Debabrata Sen,
Mr. Amadipta Sengupta,
...for the respondent no.6.

Mr. Susovan Sengupta,
Mr. Subir Pal,
...for the State respondents.

By consent of the parties, the two appeals and
the connected application are taken up together for
hearing.

These two appeals have been preferred against
two orders, dated February 2, 2022 and February 16,
2022, passed in two writ petitions being W.P.A.
No.12926 of 2021 and W.P.A. No.15297 of 2021 which

were heard together by the learned Single Judge. Both the orders are under challenge in both the appeals.

The land of the writ petitioners/appellants was acquired. The requiring party was Bharat Petroleum Corporation Ltd. ("B.P.C.L.") The land of another person by the name of Sayeedul Islam who undisputedly is similarly circumstanced as the writ petitioners, was also acquired. Acquisition of the land of the writ petitioners and Sayeedul was by the same notification.

Being aggrieved by the compensation amount, Sayeedul made a reference under Section 8 of the 1948 Act. The compensation amount was enhanced by the Land Acquisition Tribunal.

Relying on such enhancement, the writ petitioners approached the Collector/District Magistrate under Section 28A of the L.A. Act of 1894. In the mean time, Bharat Petroleum Corporation Limited (in short B.P.C.L.), the requiring authority, challenged the enhancement of compensation in Sayeedul's case before a Division Bench of this Court in F.A. 102 of 2005. By an order dated September 15, 2005, the Division Bench stayed the operation of the execution case that had been initiated by Sayeedul for execution of the order enhancing his compensation, subject to B.P.C.L. depositing the entire decretal amount before the Registrar General of this Court.

Sayeedul was granted liberty to withdraw half of the deposited amount.

Coming back to the facts of the present case, not being aware of pendency of Sayeedul's case before the Division Bench of this Court, the Collector disposed of the application of the present writ petitioners by enhancing their compensation amount. That order of enhancement has been challenged by B.P.C.L. before the learned Single Judge in the present round of litigation by filing W.P.A. 15297 of 2021. The appellants herein filed W.P.A. 12926 of 2021 for implementation of the order of the Collector enhancing the amount of the compensation payable to them.

By the first impugned order dated February 2, 2022, the learned Judge noted that the present appellants and Sayeedul Islam were standing on the same footing. Hence, before the Collector's order that was passed enhancing the compensation payable to the writ petitioners is implemented, the decision in B.P.C.L.'s appeal in Sayeedul's case should be considered. The learned Judge placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Babua Ram & Ors. Vs. The State of U.P. & Anr.*** reported in ***(1995) 2 SCC 689***. The relevant portion of the said decision is quoted below :

*".....As soon as the award of
the civil court is carried in*

appeal, it becomes obligatory for the Collector to keep the application/applications for redetermination of compensation filed within limitation pending, awaiting decision by the appellate forum and to redetermine the compensation on the basis of the final judgment and decree. Normally the LAO would file the appeal against the enhanced compensation in a decree of either the civil court or the High Court and will know their pendency. In the case of appeal filed by the interested persons, the latter should inform the Collector/LAO of the pendency of appeal or otherwise comes to know of it should keep the applications for redetermination, received under Sub-Section (1) of Section 28-A within limitation pending, awaiting the decision by the appellate court. Before proceeding with the

determination, he should obtain an affidavit from the party making the application under Section 28-A that no appeal against the award made under Section 26 relied upon by him was filed or if had been filed was disposed of by the appellate court and to produce the certified copy of decree and judgment, if already disposed of.”

The learned judge directed both the writ petitions to go out of the list with liberty to mention.

The present appellants mentioned the matter before the learned Single Judge contending that the case of Babua Ram (Supra) stands over-ruled by a larger Bench of the Hon’ble Supreme Court in the case of ***Union of India and Anr. Vs. Pradeep Kumari & Ors.*** reported at ***AIR 1995 Supreme Court, Page 2259***. The learned Judge rejected such contention holding that the entire decision of Babua Ram (Supra) has not been over-ruled, only a particular point has been over-ruled. Accordingly, the order dated February 2, 2022, does not warrant any change. The learned Judge maintained the order dated February 2, 2022.

Being aggrieved, the appellants have come up in appeal against both the orders dated February 2, 2022 and February 16, 2022.

The appellants say that despite the Collector enhancing the amount of compensation payable to the writ petitioners in March 2020, till date the writ petitioners have not been able to enjoy the benefit of such order. The learned Single Judge has adjourned the writ petition of the appellants seeking implementation of the Collector's order for an indefinite period of time. Nobody can say when the appeal in the case of Sayeedul will be decided. B.P.C.L. should be directed to deposit the decretal amount in Court and the writ petitioners should be permitted to withdraw 50% of such amount as was done in Sayeedul's case.

We appreciate the anxiety of the appellants. However, we are unable to pass any such direction on B.P.C.L. in the present proceedings. In Sayeedul's case, B.P.C.L. had approached the Division Bench with an appeal and application for interim stay of the order of enhancement of compensation as well as execution of such order. As a pre-condition for stay of the execution proceedings, the Division Bench had directed B.P.C.L. to deposit the decretal amount in Court and in that background had allowed Sayeedul to withdraw 50% of that amount. The facts in our case

are not identical. B.P.C.L. is not before us with any appeal or prayer for any interim order. Had that been the case, we could have considered passing an order which was passed in favour of Sayeedul Islam.

We are unable to grant any relief to the appellants in these appeals.

The appeals being MAT 353 of 2022 and MAT 354 of 2022 are disposed of along with the application being I.A. No. CAN/1/2022.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Rai Chattopadhyay, J.)

(Arijit Banerjee, J.)