

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 5174 of 2017

**GAF Marketing Private Limited
Vs.
State of West Bengal & Others.**

For the Petitioners: Md. Shamim Ahmed, Adv.
Mr. Arka Maity, Adv.,

For the State: Mr. Sirsanya Bandyopadhyay, Adv.
Mr. Arka Kumar Nag, Adv.,

Heard on: 07.11.2022

Date : 14.11.2022

SUVRA GHOSH, J. :-

1. The petitioner claims to be the recorded owner of the plots in question and submits that the said plots were acquired by the State respondents along with several other plots in 2006 for setting up an industry in the name and style of 'Tata Small Car Project'. The petitioner received compensation for the land and structure from the respondents. The acquisition process was challenged in the Courts and by judgment and order passed by the Hon'ble Supreme Court on August 31, 2016 in Kedarnath Yadav v/s. State of West Bengal reported in AIR 2016 SC 4156, the entire acquisition proceeding was set aside and declared illegal and void. The Government of West Bengal was directed to conduct a survey and identify the mouzas of land acquired with

reference to lay out plans, other connected records, village maps and survey settlement records of the lands in question within 10 weeks from the date of receipt of the order and restore possession of the land to the land owners/cultivators within 12 weeks.

2. Learned counsel for the petitioner has submitted that upon learning that the structures in the acquired land would be demolished by the respondents before returning the land, the petitioner, by a letter dated 2nd September, 2016, requested the District Magistrate not to dismantle the structure of the multi purpose cold storage of the petitioner since the petitioner intended to resume operation therefrom. However, representations submitted by the petitioner before the authority in this regard were not heeded to and the structures in the plots in question were demolished by the authorities. Possession of the land has also not been handed over to the petitioner. The petitioner claims compensation equal to the existing market value of the demolished structure.
3. The petitioner has placed reliance on a judgment of a Coordinate Bench of this Court passed on 24th April, 2017 in W.P. 29621 (W) of 2016 and affirmed by an Hon'ble Division Bench of this Court on 11th October, 2018 in M.A.T. No. 1260 of 2017 wherein this Court has held that land includes structures standing thereon and directed the State respondents to deliver possession of the land and structure in favour of the petitioner therein within a stipulated time frame.

4. In refuting the contention of the petitioner, learned counsel for the respondents has referred to the report in the form of affidavit submitted on behalf of 3rd respondent and has submitted that a public notice was issued on 16th September, 2016 by the 3rd respondent stating, inter alia, that structures standing in the acquired plots of land shall be removed for completion of survey work in compliance with the direction of the Hon'ble Supreme Court. Due opportunity was granted to the petitioner to remove the structure on his own in order to facilitate implementation of the direction of the Hon'ble Supreme Court. Possession of the land could not be handed over to the petitioner as the petitioner did not turn up before the authority to take possession of the same, the plots in question being recorded in favour of the petitioner. Compensation in respect of the land as well as structures standing thereon was paid to the petitioner and the petitioner is not entitled to receive double compensation for the same.
5. It is not in dispute that the plots in question belonging to the petitioner were acquired by the State respondents sometime in 2006 and the said acquisition proceeding was declared illegal and void by the Hon'ble Supreme Court in the judgment in Kedarnath Yadav (supra). The relevant portion of the judgment is set out.

“123. The points formulated above have been answered by separate opinions. However we concur on the question of quashing the impugned acquisition proceedings and reliefs to be granted to the land owners/cultivators. The appeals are allowed, the common judgment and order dated 18.01.2008 passed in W.P. No. 23836 (W) of 2006 and connected

writ petitions by the High Court of Calcutta is set aside. The acquisition of land of the landowners/cultivators in the instant case is declared as illegal and void. Since the nature of the acquired lands has been changed in view of the acquisition, we direct the Survey Settlement Department of the State Government of West Bengal to conduct a survey and identify the mouzas of lands acquired with reference to lay out plans, other connected records, village maps and survey settlement records of the lands in question within 10 weeks from the date of receipt of the copy of this order, in order to identify the respective portions of land which needs to be returned to the respective landowners/cultivators. Let possession of the lands be restored to the landowners/cultivators within 12 weeks from the date of receipt of the copy of this judgment and order. The compensation which has already been paid to the land owners/cultivators shall not be recovered by the State Government as they have been deprived of the occupation and enjoyment of their lands for the last ten years. The landowners/cultivators who have not withdrawn the compensation are permitted to withdraw the same which is in deposit either with the Land Acquisition Collector or the Court.”

6. Admittedly the petitioner received compensation for the land and structures standing thereon. In the said judgment the Hon’ble Supreme Court directed the State Government to conduct a survey and identify the mouzas of land acquired with reference to lay out plans, other connected records, village maps and survey settlement records of the lands in question in order to identify the respective portions of land needed to be returned to the respective land owners/cultivators since the nature of the acquired land

changed in view of the acquisition. Possession of the land was directed to be restored and compensation already paid was not recoverable by the State Government as the land owners/cultivators were deprived of the occupation and enjoyment of their lands for the last ten years. The landowners/cultivators who did not withdraw the compensation were permitted to withdraw the same which was in deposit either with the Land Acquisition Collector or the Court. In other words, the Hon'ble Supreme Court has permitted the land owners to withdraw the compensation, if not already withdrawn and restrained the Government from asking refund of compensation already paid. Compensation, if any, payable by the State respondents for demolition of structures subsequent to the judgment has not been dealt with in the said judgment.

7. There is no quarrel regarding the proposition that land includes structures standing thereon. The report submitted by the respondents demonstrate that a notice was issued by the District Magistrate on 16th September, 2016 to the public at large requesting the land owners to remove/demolish the structures in the plots in question for the purpose of survey and measurement of the plots within three days from the date of notice failing which the structures would be demolished by the Government in order to comply with the direction of the Hon'ble Supreme Court. It is a fact that despite several applications made by the petitioner requesting the respondents to refrain from demolishing the structure/cold storage in the plots in question, the said structures were demolished by the respondents. The petitioner has admittedly received compensation for the plots in

question as well as the structures thereon in the acquisition proceedings and is entitled to retain the same in view of the direction of the Hon'ble Supreme Court. Therefore the petitioner is not entitled to claim further compensation from the State respondents for the structures irrespective of the fact that they were demolished subsequent to the judgment of the Supreme Court. Entitlement of double compensation for the same land and structure acquired by the Government is not enjoined in law and the petitioner having already received compensation for the same, cannot claim further compensation from the respondents.

8. The judgment of this Court referred to by the petitioner directs the District Magistrate to deliver possession of the land and structure standing thereon in favour of the petitioner since the structure was not demolished. The ratio in the said judgment can be distinguished from the fact situation of the present case wherein the structure has already been demolished.
9. In the said backdrop, the petitioner's prayer for payment of compensation qua the structures in the plots in question cannot be acceded to.
10. However, in view of the fact that the petitioner is entitled to possession of the plots in question in terms of the judgment of the Hon'ble Supreme Court, the District Magistrate, Hooghly, being the 3rd respondent herein is directed to deliver possession of the plots in question in favour of the petitioner with two months from the date of communication of this judgment.
11. The writ petition being W.P.A. 5174 of 2017 is disposed of accordingly.

12. There shall however be no order as to costs.
13. Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted
14. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)