

07.02.2022
S/L No.5
KS/sn

[Assigned]
(Via Video Conference)
W.P.A. 7315 of 2021
With
IA No. CAN 1 of 2022

**Reliance Projects and Property Management Services
Limited**

-Vs.-

**District Magistrate and Collector, Nadia, Land
Acquisition Section (N.H.A.I.) & Ors.**

Mr. Mainak Bose
Mr. Sarbajit Mukherjee
Mr. Sourav Roy
.....For the Petitioner
Mr. Jaharlal De
Mr. Supratim Dhar
.....For the State
Mr. Shamit Sanyal
Ms. Manika Roy
.....For the N.H.A.I.

The writ petition has been filed for an order setting aside the decision of the respondent no.2 dated February 5, 2021 as also the report of the Block Land & Land Reforms Officer dated January 21, 2021 and for other consequential reliefs.

The case of the writ petitioner is that the competent authority, National Highway Authority of India, Nadia, passed the order dated February 5, 2021 contrary to the directions of this Court dated December 30, 2019 and also December 24, 2020. That the respondents have wrongly arrived at the conclusion that a part of the premises with structures measuring about 330.20 sq.ft., enjoyed by the petitioner was within the land acquired by the highway authorities.

The project involves widening of NH34, which is a public project of grave importance and for the benefit of the public at large.

The petitioner is the purchaser of some floors of a four storeyed building situated at Mouza – Pumlia pertaining to R.S., L.R. Khatian No.1383, L.R. Dag No.271 within Holding No.7802 under Tatla – 2 Gram Panchayat. The said floors were purchased by the writ petitioner pursuant to a Deed of Conveyance executed by one, Debashis Chakraborty dated February 5, 2015. It is the contention of the petitioner that the highway authorities went to the premises with their men and agents and tried to demolish a portion of the property purchased by the petitioner from the said, Debashis Chakraborty.

Aggrieved, the petitioner moved a writ petition before this Court which was registered as W.P. No.24357 (W) of 2019. The writ petition was disposed of by an order dated December 30, 2019, inter alia, with a direction upon the Additional District Magistrate (Land Acquisition), Nadia, the respondent no.2, to dispose of the representation of the petitioner dated December 24, 2019 upon giving an opportunity of hearing to all concerned, including the respondent no.5 therein. Debashis Chakraborty, the vendor of the petitioner was the respondent no.5.

The order passed by this Court is quoted hereunder for convenience:-

“Having considered the rival contentions of the parties, this is a case involving disputed questions of facts and identification of the land which was acquired and which was left unacquired, cannot be decided by this Court under Article 226 of the Constitution of India. In my view, justice will be subserved if the Respondent No.2 i.e. the Additional District Magistrate (Land Acquisition), Nadia” is directed to dispose of the representation of the petitioner dated December 24, 2019 upon giving an opportunity of hearing to all concerned including the Respondent No.5.

If it is required that the identity of land should be demarcated with the help of the Office of the Block Land and Land Reforms Officer concerned such inspection and measurement of land and survey thereof should be held in the presence of all parties. Report of such survey/inspection should be supplied to all parties and, thereafter, a reasoned decision should be taken and communicated to the parties. The entire exercise should be completed within a period of one month from the date of communication of this order. Till such decision is taken status-quo will be maintained with regard to the said plot.

It is submitted that already a date was fixed for giving an opportunity of hearing to the petitioner, but the petitioner did not avail of the same. However, in view of the order passed herein, the concerned Respondent No.2 will fix another date and all parties will comply with this order as specified hereinabove.

Accordingly, W.P. 24357 (W) of 2019 stands disposed of.”

Pursuant to the order of this Court, the competent authority under the National Highways Act passed an order directing eviction of the standing structure

belonging to the petitioner, on the ground that the same stood on the acquired land.

There is no dispute that 3 decimals out of 7 decimals of land was acquired by the Highway Authorities and upon the remaining 4 decimals, the said Debashis Chakraborty had constructed a building. Some floors out of the said construction was sold to the petitioner. When the authorities came upon the property with their men and agents to take measurements etc. the petitioner made a representation before the respondent nos.1, 2 and 4 requesting the authorities not to disturb and/or demolish the structures belonging to the petitioner.

The petitioner claims title by purchase over the said floors and submits that the construction was outside the acquired area. The state respondents and the highway authorities deny the submissions of the petitioner and categorically claim that part of the construction of Debashis Chakraborty which now allegedly belongs to the petitioner, measuring about 330.20 square feet is situated on the acquired portion. The entire compensation was paid to Debasish Chakraborty, upon such acquisition.

The acquisition took place in 2010 and it is the specific contention of the respondents that the property was purchased by the petitioner after such acquisition, publication of the award and payment of compensation, sometime in 2015. As such, the petitioner as the post

acquisition transferee did not have any right over the area of 330.20 square feet.

In the first round of litigation, the Court was of the view that the disputes with regard to demarcation and identification of the acquired and unacquired land belonging to highway authorities and Debashis Chakraborty, the vendor of the petitioner respectively, could not be gone into by a Writ Court.

The matter was relegated to the authorities for a hearing on the objection of the petitioner. The Court was of the view that the complaint raised by the petitioner should be disposed of by the authorities upon giving the petitioner an opportunity to substantiate its claim over the alleged land. As the petitioner came upon such property much later, the Court was of the view that the authorities must give a chance to the petitioner to make their submissions in this behalf. The court directed that for such purpose inspection may be held and measurement may be taken.

The authorities passed an order on November 11, 2020 which was challenged once again. It was urged that the order was cryptic and did not record the nature of the encroachment. A sketch map was annexed to the said order with necessary measurements, but the same was disputed. W.P.A. No.9435 of 2020 was registered.

A Coordinate Bench of this Hon'ble Court set aside the order passed by the authority dated 11th November, 2020,

inter alia, holding that the matter should be reconsidered and the order of eviction was set aside. For convenience the relevant portion of the said order is set out hereunder:

“On query of Court, it is learnt that no copy of the report is available with the National Highways Authority. It is submitted that the District Magistrate concerned might furnish a copy of such report.

However, it was categorically recorded by the competent authority in its order dated November 04, 2020 that such report of measurement was kept on record in the proceeding before the competent authority. As such, it is not understood as to why the competent authority is shying away from producing the same. That apart, in the event the report was not with the competent authority, the entire validity of the impugned order dated November 11, 2020 loses force, since the authority could then be presumed to have passed order without looking into the report at all.

Thus, the impugned order was bad in all.

In such circumstances, W.P.A. No.9435 of 2020 is allowed, thereby setting aside the order of eviction dated November 11, 2020 passed by the competent authority under the National Highways Act, 1956 [Additional District Magistrate (LA), Nadia] and directing the competent authority, being the respondent no.2, to reconsider the matter upon hearing both sides and considering all relevant materials, including the report-in-question, and to decide the matter, within one month from date.

The competent authority is further directed to clearly furnish reasons in its order, in accordance with law, as to how it arrives at its conclusion.”

The reason why the order was set aside by this Court was because the same did not disclose whether the

findings therein were based on any report prepared upon measurement and demarcation.

Pursuant to the above order passed by the Court, the respondent no.2 passed the impugned order which is the subject matter of challenge in this writ petition. On the first day, it was submitted by the learned advocate for the writ petitioner that the highway authorities did not undertake the exercise as directed by this Court on two occasions and had passed the impugned order without making the necessary demarcation, as directed. The writ petition was admitted and further directions were given.

It is submitted by Mr. Bose, learned advocate for the petitioner that the records would reveal that the Block Land & Land Reforms Officer on an earlier occasion had written a letter to the Branch Manager, United Bank of India, Chakdaha Branch dated September 4, 2018 that a four storeyed building on plot no.271 was over 4 decimals. The said communication was made based on a report prepared by the Amin who, according to Mr. Bose, was technically qualified to take such measurements. Further reliance has been placed on the sanction granted by the concerned municipality permitting the construction by Debasish Chakraborty sometime in 2013 i.e. after the acquisition was complete and the earlier building standing upon the acquired portion had been demolished. The record of rights have been placed in order to show that Debashis Chakraborty had retained 4 decimals of land out

of the 7 decimals of land. It is the petitioner's specific case that the order impugned suffers from factual errors and has been passed in complete violation of the earlier orders of this Court. Measurements were not taken and necessary demarcation was not made.

Mr. Dey, learned Senior Government advocate has filed documents which are also part of the writ petition in order to show that the authorities have twice undertaken the exercise of demarcation and pursuant to the second inspection, survey and demarcation held on January 21, 2021 in presence of the Block Land & Land Reforms Officer, the Amin of the L.A. Department of the District, L.A. Section, the petitioner and Debashis Chakraborty, the aforementioned Plot No.271 was measured by comparison of the same with the Mouza Map and the L.A. Maps etc. A sketch map was prepared by the officials present during the demarcation and it has been specifically found that the structure of the petitioner measuring about to 330.20 square feet was on the acquired land and there was an encroachment. The said encroachment was delineated by a sketch map prepared by the technical persons involved in such inspection.

According to Mr. Bose, neither was the un-acquired portion measured nor was the entire Plot No.271 measured and demarcated, although directed by this Court. That the decision arrived at by the authorities

based on the sketch map deserves to be set aside in view of procedural defects in the inspection.

The state respondents and the highway authorities have submitted that on the self-same cause of action the petitioner as also Debasish Chakraborty filed respective writ petitions. The writ petition filed by Debasish Chakraborty being W.P.A. 10416 of 2020 was withdrawn without any liberty to file a fresh.

That Debasish Chakraborty was paid the compensation for the entire portion of land belonging to him, which had been acquired, including the aforementioned portion now claimed by the petitioners.

This Court is of the opinion that the writ court sitting in judicial review can only look into the decision making process. Administrative action is subject to scrutiny by the court, only if there are procedural defects in the decision making process.

The contentions of the petitioner time and again has been that the highway authorities and the state respondents have tried to disturb the possession of the petitioner in respect of a portion of the building which did not fall within the land acquired by the authorities.

This Court, on two occasions, having taken note of the petitioner's submissions thought it fit to permit the petitioner to canvas all points before the authority as a

last resort, before the construction of the national highway over the area in question was completed.

The right of a bona fide purchaser for value to agitate its grievance before the authority was preserved by the Court and an opportunity was given to the petitioner to agitate all points before the authority with a further direction that if the authority thought it fit, inspection and measurements may be made in order to ascertain whether the structures of the petitioner fell within the acquired portion or within the un-acquired portion. The authorities time and again asked the petitioner's vendor to remove the structure, but as the petitioner was the post acquisition transferee and a part of the area purchased by the petitioner was alleged to be on the acquired portion, such opportunity was given.

On both the occasions, the measurements were taken upon inspection and ultimately it was found that 330.20 sq. ft. of the petitioner's premises was on the land acquired by the authorities.

Accordingly, the order impugned was passed with the following observations and directions:-

“In view of the papers placed before me and on consultation of all records as well as the written objection filed by the Reliance Projects and Property Management Services Limited today it is observed scrupulously that practically there lies the encroachment of the acquired area to the effect of 330.20 Sq.ft. [0.76 dec.] over the permanent structure determined after re-verification of the plot on 21/01/2021 in

presence of all the parties. The main dispute arose when the awardee Sri Debashis Chakraborty even after receiving due compensation from the authorities for land and structures deliberately refused to remove/demolish the encroached area of the structure over the plot No. 271 of mouza Pumlia, J.L No. 14, P.S. Chakdah, Dist Nadia initiated under L.A. Case No. 70A/N.H./Chak/10-11.

Considered all aspects in view on exigency of development work for widening of N.H. 34 and all materials on record and it is ORDERED that written objection filed today by the Reliance Projects and Property Management Services Limited and all other submissions filed in this connection stand rejected. As there is no justified ground to wait and to defer the project work on the concerned subject plot under acquisition, the awardee Sri Debashis Chakraborty is directed to remove/demolish the permanent structure of an area of about 330.20 Sq.ft. (0.76 dec.) which is an encroachment over the acquired land of 0.0301 acre under plot No. 271 and in default to evict the standing structure area which is involved in acquisition of the land with structure under full settlement of value of compensation.

The case disposed of in compliance with the solemn order dated 24/12/2020 passed by the Hon'ble High Court at Calcutta in the matter. W.P. A. No. 9435 of 2020.

All concerned may be informed accordingly.”

Going by the contention of Mr. Bose, the authority would have to adjudicate the dispute like a civil court. This court directed the authorities to dispose of the representation of the petitioner and while doing so they were given an opportunity to measure and demarcate the land in the presence of the petitioner. A report has been prepared. Such exercise was undertaken on the

basis of available records and measurements by the Amin of the Revenue Office, other officials, and by comparing the same with the L.A. Maps.

The writ court cannot go beyond the second sketch map and the report. The order passed by the authorities was based on the reports and documents. The court had directed inspection and demarcation in order to enable the authority to ascertain whether the premises of the petitioner fell within the acquired area. On two occasions, the inspection was made and measurements were taken. The authorities have reiterated their contentions. The acquisition was not challenged. Admittedly, the compensation was paid. The vendor of the petitioners was repeatedly asked to remove the structures standing on the acquired portion. Debasish Chakraborty, the vendor of the petitioner withdrew the writ petition filed by him on the self same cause of action. Debasish Chakraborty has also not challenged the impugned order.

On the date when the writ petition was admitted, this Court was of the opinion that the authorities should satisfy the Court how the demarcation was made.

Today, the records have been placed and reliance has been placed on those documents which are already a part of the writ petition, *inter alia*, to show that

measurements and comparison of the mouza map and the acquisition map had shown that structures measuring 330.20 sq. ft. was over the acquired land. Such structure has been claimed by the petitioner to be its exclusive property. This becomes a dispute with regard to title, possession, encroachment, boundary etc. If a cloud has been cast on the title of the petitioner, the remedy of the petitioner would be before a civil court.

Thus, the writ court is not the competent court of law to decide such disputes. The jurisdiction of the High Court under Article 226 is an extraordinary jurisdiction vested not for the purpose of declaring private rights of the parties, but for the purpose of ensuring that the law of the land is obeyed and that the various tribunals and public authorities are kept within the limits of their jurisdiction. The remedy provided under Art. 226 is a remedy 'against the violation of the rights of a citizen by the State or statutory authority. In other words, it is a remedy in public law.

The Court has to satisfy itself that the authorities proceeded in accordance with law and in compliance with the directions of this Court. The authorities were present for inspection with the Amin and the Block Land & Land Reforms Officer. The documents, mouza map and acquisition map were compared with the land. The Amin measured the land and this Court cannot go

further into the method of measurement that was used by the authorities in this case. These are matters to be decided on evidence, local investigation etc., for which, there is a separate forum and a complete code.

The appropriate remedy for settlement of disputes relating to the property rights would be by way of a suit and the remedy under Article 226 of the Constitution shall not be available, except where violation of some statutory duty on the part of the statutory authority is alleged. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes for which remedies, under the general civil law are available. It is not intended to replace the ordinary remedies by way of suit or application available to the aggrieved party. In the event any encroachment is alleged, this court cannot conduct a regular enquiry and receive evidence with regard to the disputed questions of fact.

In *Mohammed Hanif vs. The State of Assam* [1969 (2) SCC 782] a three Judges Bench of the Hon'ble Apex Court, explaining the general principles governing writ jurisdiction under Article 226, held that this jurisdiction is an extraordinary in nature and not meant for declaring the private rights of the parties.

In the case of *Mohan Pandey & another vs. Usha Rani Rajgaria & others* reported in (1992) 4 SCC 61, the Hon'ble Apex Court held that a regular suit is the appropriate remedy for deciding property disputes

between private persons and remedy under Article 226 is not available to decide such disputes unless there is violation of some statutory duty on the part of a statutory authority.

P.R. Murlidharan & others vs. Swami Dharmananda Theertha Padar & others [(2006) 4 SCC 501], the Hon'ble Apex Court held that it would be an abuse of the process to approach a writ court in connection with dispute on questions of title and the civil court is the appropriate forum.

Reference in this connection may be made to the Constitution Bench judgment of the Supreme Court in the case of Thansingh v. Superintendent of Taxes reported in AIR 1964 SC 1419. The relevant portion on this point is quoted below:-

“The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by a statute. Ordinarily the Court will not entertain a petition for a writ under Art.226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal to correct errors of fact and does not by assuming jurisdiction under Art.226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Art.226 of the Constitution the machinery created under the

statue to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

This Court finds that the authority has arrived at a conclusion that part of the petitioner’s premises falls on the acquired portion. The petitioner thus is an unauthorized occupant, in the opinion of the authorities. Now, based on such finding, Section 26 and 27 of the Control of National Highways (Land & Traffic) Act, 2002 must be put into motion. The petitioner cannot be evicted straight away. The said sections make provisions for removal of unauthorized occupants and recovery of costs.

The project cannot be stalled forever. In view of the amendment of the Specific Relief Act and as the petitioner has not been able to satisfy the Court that there are any further grounds for judicial review in this case, the order passed by the authority is not interfered with on the factual findings. The authority proceeded against Debasish Chakraborty who had withdrawn the writ petition filed by him.

The second report which is at page 105 to 106 of the IA No. CAN 1 of 2022 specifically delineates the encroached portion. Thus, the Writ Court cannot probe further into the issue. The National Highway Authorities are at liberty to proceed in accordance with law by applying the provisions of Section 26 and 27 of the said

Act. Eviction cannot be effected unless the proceedings in terms of the said sections are initiated against the petitioner. The order impugned is modified to the above extent.

The petitioner's third attempt to stall an important project of the highway authorities which is of national importance, cannot be permitted.

This writ petition and the connected application are disposed of.

There will be, however, no order as to costs.

Later:-

Mr. Bose, learned advocate for the petitioner prays for stay of operation of the order. Such prayer stands considered and rejected.

All parties are directed to act on the basis of server copy of this order.

(Shampa Sarkar, J.)