

10.03.2022
Item No. 11
Court No.6.
S. De

Through Video Conference

**M.A.T. 410 of 2021
I.A. No. CAN 1 of 2021**

**Krishnapada Maity.
Vs
The Special Land Acquisition Officer & Ors.**

Mr. R.N. Dutta,
Mr. Manoranjan Jana,
...for the appellant.
Mr. Lalit Mohan Mahata, Sr. Govt. Advocate,
Mr. Prasanta Behari Mahata,
...for the State.

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

Admittedly, a notice under Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 was issued by the State to the writ petitioners in respect of the land in question owned by them. After the requisition, the land was, however, not acquired in terms of Section 4(1a) of the said Act. The provisions of Sections 9(3A) or 9(3B) of the Land Acquisition Act 1894 were also not invoked.

The writ petitioners on an earlier occasion approached this Court by filing a writ petition being W.P. 29673 (W) of 2008 which was disposed of by a learned Single Judge with the following directions:-

“The writ petition is disposed of by directing the State respondents to forthwith return the land of the petitioner and in any case within two months from the date of communication of this order. The Land Acquisition Collector shall make an award of rent compensation. The compensation shall be computed as per market rate prevailing at various points of time, from the date of requisition and till date on release, on a two yearly basis. If the land cannot be returned the same shall be acquired as per the provisions of the Land Acquisition Act, 1894 at the current market value by issuance of notification under Section 9A of the Land Acquisition Act, 1894 and the petitioner shall be entitled to rent compensation as directed above from the date of requisition till the date of notification for acquisition under the provisions of Land Acquisition Act, 1894. The award of compensation shall positively be made within six months from the date communication of this order, after giving the petitioner an opportunity of hearing and/or representation.”

An application for contempt was taken out by the writ petitioners alleging violation of the said order.

The contempt proceeding was dropped after considering the affidavit-of-compliance filed by the relevant District Magistrate and Collector. It was disclosed in the affidavit that a writ of possession had been issued returning the land in question to the appellant. The learned Single Judge also recorded the submission of the State that the writ petitioners did not take the possession of the land in question though he was so offered. In the said proceeding a direction was issued to hand over the writ of possession to the learned advocate appearing on behalf of the writ petitioners. The rent compensation for requisition was directed to be computed and disbursed as directed earlier.

By filing this present writ petition, the writ petitioners have prayed, *inter alia*, for the following reliefs:-

- a) *“Pass an appropriate order, Direction and/or Writ in the nature of Mandamus, commanding the Respondent authorities concerned, more specifically, the Respondent nos. 1, 2 and 3 to hand over the Account Payee Cheque to the petitioners before this Hon’ble Court, containing the total amount of compensation for the land 13.10 acres, at the present marketable rate along with additional compensation for the period 1988 to the date of*

actual payment depriving to earn any income arising out of not allowing the petitioner to use their said land and thereby using the same by the Government Authorities for business purpose, while it is impossible to the Government Authorities to hand over to the physical possession and occupation of the said land with usable status as nature and character, free from all encumbrances;

- b) Pass an appropriate Order, Direction and/or Writ in the nature of Mandamus, directing the Respondent No.1 to hand over the copy of "Statement of Account" with regard to calculation of the total amount of compensation and interest payable thereof itemwise, with particular hands with legible and understandable position, without any hidden affair, sufficiently before issuance and handing over the Account payee Cheques to the petitioners before the Hon'ble Court.*
- c) Pass an appropriate Order, Direction and/or Writ in the nature of Prohibition, prohibiting the Respondent Authorities from delaying any further, paying the legitimate amount of compensation to the petitioners in terms of prayers (a) and (b).*

d) Pass appropriate Order, Direction and/or Writ in the nature of Certiorari, directing the Respondents, to certify the records of the case before the Hon'ble Court regarding payment of legitimate amount of compensation to the petitioners, for the acquisition of their said land and to pay the suitable amount of compensation - forthwith so that conscionable justice may be administered;"

The learned Single Judge by the order impugned in this appeal disposed of the writ petition, again giving a direction upon the writ petitioners to forthwith collect the rent compensation which was offered by the State in terms of the order dated March 22, 2011. The writ petitioners were granted liberty to take possession of the land if they so desired. The State was directed to issue a fresh notice within six weeks to the writ petitioners offering the land as per the earlier direction passed by this Court.

Challenging the order impugned, writ petitioner no.2/appellant submits that since possession of the land has not been delivered, the appellant is entitled to rent compensation as per present market value. It has further been contended that the land, as on date, is not free from all encumbrances. At the instance of some private persons a construction has been raised

and a pond has also been dug for pisciculture. The writ petitioners are not in a position to take possession of the land under such circumstances.

Learned advocate for the appellant has also relied on an unreported judgment passed in FMA 2442 of 2004 of this Court in support of his submission.

The State submits that it is willing to hand over peaceful possession of the land within two months from date after making it free from all encumbrances.

We find no substance in the argument of the appellant that he is entitled to get rent compensation as per the present market value.

It appears from the affidavit-in-opposition filed on behalf of the State that though an attempt was made to pay the rent compensation as directed by this Court to the writ petitioners, they declined to accept the same.

The State has issued cheques on account of rent compensation to the writ petitioners which are appearing at pages 140, 141 and 142 of the paper book. The calculation in support of such amount has also been detailed at page 144 of the paper book.

We are of the opinion that the judgment rendered in FMA 2442 of 2004 is not applicable in this case. In the said case, a direction was passed for consideration of invocation of Sections 9(3A) and 9(3B) so as to acquire the land in terms of Land Acquisition

Act 1894. In this present case the intention of the State was never to acquire the land in question. In fact, the State was always willing to return the land to the writ petitioners. In such fact scenario there was no scope for invocation of Sections 9(3A) and 9(3B) of the Land Acquisition Act 1894.

In the above facts and circumstances, we dispose of the appeal directing the State to deliver possession of the land in question to the writ petitioners, within two months, free from all encumbrances, and also to pay the rent compensation as directed by the learned Single Judge within one month. If the appellant has any objection with regard to the computation, he will be at liberty to make a representation before the relevant Land Acquisition Collector. If such representation is made, the Collector shall dispose of the same by a reasoned decision in accordance with law within a period of four weeks after giving an opportunity of hearing to all the concerned parties.

After the judgment is dictated, it has been submitted before us by the learned advocate appearing for the appellant that the appellant will take possession of the land in question and accept compensation without prejudice to his rights and contentions.

M.A.T. 410 of 2021 is, accordingly, disposed of along with the connected application being I.A. No. CAN 1 of 2021.

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.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)