

45. 11.05.2022
Ct. No.6
Tanmoy

M.A.T. 574 of 2022

**State of West Bengal & Ors.
-Versus-
Utpal Mondal & Ors.**

**With
IA No: C.A.N. 1 of 2022**

Mr. Susovan Sengupta, Adv.,
Mr. Subir Pal, Adv.

...for the appellants/State.

Mr. Amit Kr. Pan, Adv.,
Mrs. Tanusri Santra, Adv.

...for the writ petitioners/respondents.

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

The writ petitioners approached the learned Single Judge with the following prayers:

- “(a) *A writ in Mandamus commanding the respondents either to determine and pay compensation in question to the petitioners alongwith the proforma-respondents herein according to their respective shares in respect of the said land in terms of the relevant provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Act 30 of 2013), or to return back the possession of the said land in favour of the petitioners and the pro-forma respondent Nos. 7 to 9, forthwith;*
- (b) *A writ in Mandamus commanding the respondents to pay the rental compensation to the petitioners along with the proforma-respondents herein according to their respective shares in respect of the said land from the date of taken over possession till 31st March, 1995;*

- (c) *A writ in Mandamus commanding the respondents to pay compensation in question to the petitioners alongwith the proforma-respondents herein according to their respective shares in respect of the said land on account of damages and/or occupational charges from 1st April 1997 till the date of initiation of a fresh proceeding under Act-30 of 2013;*
- (d) *A writ in the nature of Certiorari calling upon the respondents to produce and/or caused to be produced relating to the case before this Hon'ble Court to do conscionable justice to your petitioners, upon perusing the same;*
- (e) *Rule NISI in terms of prayers (a), (b) (c) and (d) above;*
- (f) *An order directing the respondents to pay compensation in question on account of damages and/or occupational charges from 1st April 1997 till 31st August, 2021, pending disposal of this application;*
- (g) *An order directing the respondents to determine and pay the rental compensation to the petitioners alongwith the proforma-respondents herein, from the date of taken over possession till 31st March, 1997;*
- (h) *Ad-interim order directing the respondents in terms of prayers (f) and (g) above;*
- (i) *Costs and incidentals to this application may be paid by the respondents;*
- (j) *Such other and/or further order/orders be passed as to this Hon'ble Court may seem fit and proper."*

The writ petition was allowed by the learned Single Judge by the impugned order dated February 24, 2022.

We quote the operative part of the order:

"In view of the above, the writ petition is disposed of directing the third respondent to initiate proposal for direct purchase of the land from the petitioners and send it to the second respondent within one month from date. The second respondent shall deal with the said proposal and take the same to its logical conclusion within a period of three months from the date of receipt thereof after giving reasonable opportunity of hearing to all the interested parties including the petitioners, in accordance with law."

The factual aspects of the case have been disclosed by the State itself by its affidavit affirmed on October 8, 2021, filed before the learned Single Judge. To appreciate the factual matrix of the case we feel it necessary to quote the relevant part of the said affidavit:

- “... 7. That, from the records provided by the BL&LRO it transpires that the names of the Writ Petitioners are not found recorded in any of the suit plots excepting 0.64 acre in respect of Plot No. 355 and 0.09 acre in respect of plot no. 405 of mouza Maheswarpur respectively are recorded in favour of Amarendra Nath Mondal as described as predecessor-in-interest of the Writ Petitioners.
8. That, it appears from the Possession Certificate, Notification under section 4 and Declaration under section 6 of the Act I of 1894, along with report from BL&LRO Budge Budge-II

<i>Plots of Mouza Mahes warpur J L No. 55 P.S. Nodakh ali</i>	<i>Total area in acre</i>	<i>Area in acre recorded in favour of the Writ Petitioners</i>	<i>Area taken over possession in acre</i>	<i>Portion of the plot taken possession</i>
361	0.07	0.00	0.015	Eastern
355	1.60	0.64*	0.72	Middle
356	0.60	0.00	0.01	North West
358	0.16	0.00	0.08	Western
404	0.11	0.00	0.063	Eastern
405	0.98	0.09*	0.005	North West

Recorded in favour of Amarendra Nath Mondal

9. That, it is to be mentioned here that in this instant matter a Land Acquisition case No LA-II/29 of 89-90 which was initiated under Act-II of 1948 at the behest of Superintending Engineer State Highway Planning Circle for requisition and acquisition of land in Mouza :- Bowali, J.L.

No-54, Mouza Maheswarpur, J.L. No-55 and mouza :- Kalinagar, J.L. No-56, all P.S. Budge Budge, Dist South 24-Parganas for construction of Road from Bowali to Putkhali. Accordingly an area measuring more or less 7.327 acre of land was requisitioned u/s 3(1) of the Act by the order of the District Magistrate & Collector, South 24-Parganas Alipore dt. 28.03.1991. Vacant possession of 7.277 acres of land was taken and delivered to the Requiring Body i.e., PWD (Roads) on 04.04.1991. Possession of an area measuring 0.05 acre of land could not be taken due to the existence of residential structures. The instant case was subsequently revived under Act-I as per provision of sec 9(3A) of the Amendment Act 1997 on 03.09.1998 but no action could be taken to complete the proceedings within the stipulated period of time and hence the case was again lapsed. Again as per memorandum no. 2834-LA(II)/3M-35/96 (pt-II) dated Calcutta 01.12.99 of the Land & Land Reforms Depart. Govt of West Bengal a fresh off-shoot LA case under Act-I was started vide LA case no-LA-4/37 of 97-98. Subsequent Notification u/s 4(1) under Act-I was prepared and published in the Calcutta Gazette on 23.11.2000 vide no South 24pgs P101N/LA-4/3 of 97-98 dated 23rd Nov' 2000. Declaration u/s 6 of Act-I of 1894 was published in the Calcutta Gazette vide no South 24-Parganas No :- 64D-LA-4/37 of 1997-98/PWD (Roads) dated 11th December 2001. But due to non placement of fund by the Requiring Body inspite of repeated communication the case could not be proceeded further. The photocopy of the Possession Certificate is annexed hereto as Annexure "R-2".

10. That, it can be stated here that excepting two plots namely 355 and 405 the claims of the Writ Petitioners for compensation are not at all maintainable. Again for these two plots it is not possible to decide the portion owned by the Predecessor-in-interest of the present Writ Petitioners affected by the acquisition proceeding Land Acquisition case No LA-II/29 of 89-90 as the Petitioners are the co sharers and they are the owners of the every inch of land as there is not any partition by meets and bounds.
11. It is also to be stated here that in absence of any Rule framed the acquisition of land under the new Act of 2013 (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013) it is not possible to pay compensation in the provision of Act

of 2013 in West Bengal at present and instead of, an alternative method the State Government adopted a Policy of Direct Purchase vide Notification No. 756-LP/1A-03/14(Pt-II) dated, 25.02.2016. ...”

The State admits the fact that after the revival of the acquisition proceeding by issuance of a fresh notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the “said Act”), on November 23, 2000, which was followed by a notification under Section 6 of the said Act on December 11, 2001, no further steps, much less passing of an award under Section 11 of the said Act, were taken by the State due to non-placement of fund by the requiring body.

We have no hesitation in our mind that the proceedings lapsed in view of Section 11(A) of the said Act.

The State, in its affidavit, also admitted that though the facts of this case attract the provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, since no Rule had been framed following the said Act, the State decided to adhere to the policy of direct purchase in terms of Notification No.756-LP/IA-03/14(Pt-II) dated February 25, 2016.

It appears that the learned Judge, in view of the stand disclosed by the State in its affidavit, passed the directions as quoted above.

We do not see any reason to interfere with the order of the learned Single Judge. The order was passed on the basis of the concession and the disclosure made by the State in its affidavit before the learned Single Judge. We do not see any infirmity in the said order.

We, however, find that the State in its affidavit disputed the title of some of the petitioners with regard to the lands in question, which was also noted by the learned Single Judge in the order impugned.

We have already noted that the learned Single Judge did not pass any specific order for paying compensation to the writ petitioners.

The writ petition was disposed of, directing the third respondent in the writ petition to initiate direct purchase from the petitioners and send it to the second respondent within one month from date. The second respondent in the writ petition was directed to deal with the proposal and take the same to its logical conclusion within a period of three months after giving reasonable opportunity to all interested parties including the petitioners in accordance with law.

We only clarify that the appellants, while undertaking such exercise, shall examine the entitlement of the writ petitioners on the basis of their rights, title, and interest in the land, which was sought to be acquired by the relevant acquisition proceedings and in the event if it is found that the petitioners are entitled to

compensation, the State shall purchase the land from the petitioners in terms of the policy of direct purchase as disclosed in its affidavit.

The appeal being M.A.T. 574 of 2022 and the connected application being IA No: C.A.N. 1 of 2022 are disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)