

20.04.2022
rc/ct.no.10
Item No.343

WPA No. 12893 of 2017
With
CAN No. 1 of 2021
Basanti Dhara & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Udayan Ray ...for the petitioners

Mr. Chandi Charan De
Mr. R.C.Guchait ...for the State

Re : CAN No. 1 of 2021

The original copy of the application is not with the record. Learned counsel appearing for the applicant/petitioner produces a photocopy of the application which is treated as the original copy of the application till the original copy of the application is traced out. Let the said photocopy of the application be taken on record.

In this application the petitioners pray for substitution in place of petitioner no. 5 who expired on February 28, 2020.

Upon consideration of the submission made on behalf of the parties the application being CAN No. 1 of 2021 is allowed.

The applicant being Tara Rani Dhara, wife of deceased petitioner be substituted as petitioner no. 5a in the writ petition.

Accordingly, the application being CAN No. 1 of 2021 is disposed of.

Re : WPA No. 12893 of 2017

On the prayer of the petitioners liberty is granted to them to implead the Collector, Land Acquisition, Howrah as respondent no. 7 in the writ petition. The cause title of the writ petition be amended accordingly.

The petitioners are directed to serve copy of the writ petition along with annexures thereto upon the respondent no. 7 in course of this day.

It is submitted on behalf of the parties that exchange of affidavits is not required in the matter.

The petitioners have prayed for parity with the co-owners of the property in question who have been granted enhanced compensation by the respondents in terms of the order passed in C.O.No. 15853(W) of 1995.

The petitioners are recorded co-owners of the plot in question which was requisitioned by the Government for construction of godown for storage of foodgrains under Food and Supplies Department. Possession of the plot was taken on April 12, 1945 and notification was published in the Calcutta Gazette on March 13, 1980. The land was acquired vide LA Case No. 1(ActVIII) of 1979-80. Being aggrieved by the amount of compensation assessed by the Collector Land Acquisition, Howrah, the petitioners filed a petition for enhancement of compensation which was sent to the Tribunal which by an order dated 15.09.1989,

allowed the prayer of the petitioners and granted compensation @20% per cottah along with 30% solatium thereon and 9% per annum on the enhanced compensation. Further interest @15% from the date of compensation till payment of the amount was also awarded by the Tribunal. Pursuant to the said order several representations were made by the petitioners which fell on deaf ears. Some of the claimants being the co-owners of the plots in question moved an application under Article 226 of the Constitution India before this Court for realisation of their dues and by an order dated August 03, 1992 in C.O.No. 10559(W) of 1992, a coordinate Bench of this Court directed the authority to dispose of the claim of the co-owners within 12 weeks from the date of communication of the order. Pursuant to such order, part payment was made to the said claimants/co-owners by the Collector, Land Acquisition, Howrah who abstained from making payment of the interest @12% per annum on the enhanced compensation. Some of the co-owners subsequently filed another writ petition before this Court and by an order dated November 16, 1995 in C.O.No.15853(W) of 1995, a co-ordinate Bench of this Court directed disposal of the matter and payment, if admissible, within a month from the date of communication of the order. Due to non-compliance of the said order a contempt application was filed against the respondents during pendency of which the State of West

Bengal preferred an appeal against the judgment and order passed in the LA Case along with an application under Section 5 of the Limitation Act praying for condonation of delay in preferring the appeal. The application for condonation of delay was rejected by the Hon'ble Division Bench of this Court by an order dated August 25, 2006 in CAN No. 3095 of 2006. Thereafter the said co-owners were granted the enhanced compensation in terms of the direction of this Court in CO No. 15853(W) of 1995.

Learned counsel for the petitioners submits that as the interest of the petitioners are covered by the said judgment in view of the fact that the LA case being LA Case No. 1(ActVIII) of 1979-80 is with regard to the plot of the petitioners as well, the petitioners are also entitled to payment of enhanced compensation in compliance with the order of this Court passed in CO No. 15853(W) of 1995. The petitioners submitted a representation in this regard before the concerned authority on February 19, 2016 which is yet to be disposed of. The petitioners pray for a direction upon the authority to consider and dispose of the said representation at the earliest and disburse the enhanced compensation in their favour within a stipulated time frame.

Having considered the submissions made by the learned counsels appearing on behalf of the parties, this Court is of the view that as the petitioners stand on the same footing as the other co-owners of the property in

question who were granted enhanced compensation in terms of the order passed in CO No. 15853(W) of 1995, the petitioners are also entitled to the same benefit.

Accordingly the writ petition is disposed of directing the respondent no. 7 to consider and dispose of the application submitted by the petitioners dated February 19, 2016 within two months from the date of communication of this order after affording reasonable opportunity of hearing to all the interested parties including the petitioners, in accordance with law.

The decision taken by the authority shall be communicated to the petitioners within a week thereof.

With the above observations and directions this writ petition being WPA No. 12893 of 2017 is disposed of.

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

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)