

23.11.2022
Item No. 36
Ct. No. 25
PG

W.P.A. 17176 of 2000
Panchanan Maiti & Anr.
Vs.
State of West Bengal & Ors.

Ms. Usha Maiti
Ms. Anita Khatri
Mr. Sakya Maiti.....for the petitioners

Mr. S.M. Hassan
Ms. Anupama Yasmin.....for the Haldia Municipality

Mr. Saikat Chatterjee...for the respondent nos. 4 to 7

The petitioners prayed for return of the land, which has been acquired under the provisions of Land Acquisition Act-I of 1894 on the ground that the same has not been utilised for the purpose for which it was acquired. Ms. Maiti, learned advocate appearing for the petitioners submits that the Hon'ble Supreme Court in the case of **Yusufbhai Noormohmed Nendoliya vs. State of Gujarat & Anr.** reported at **AIR 1991 SC 2153** held that if the land is not utilised after the same was acquired, it has to be returned to the original owners.

Ms. Maiti, learned advocate for the petitioners further relies upon a decision of the Hon'ble Supreme Court in the case of **Satyam Co-operative Housing Society Ltd. Vs. Calcutta Improvement Trust & Ors.** reported at **AIR 1989 SC**

263 in support of her contention if there is an inordinate delay in concluding the proceedings on the part of the acquisition authorities, the entire proceedings shall lapse.

Ms. Maiti further submits that till date the petitioners are still in possession of the land in question as well as the building constructed thereon and a direction be passed upon the State to return the said land in favour of the petitioners.

Heard the learned advocates for the parties and perused the materials placed. The petitioners have prayed for a writ of mandamus commanding the respondents not to disturb the peaceful possession of the petitioners in the dwelling house situated on the plots in question. Record reveals that pursuant to an order passed by this Court, the Special Land Acquisition Officer, Haldia Project, Basudevpur passed an order dated June 12, 2000. The said order records that the petitioners have received the compensation awarded to them without any protest or without filing any petition for a reference under section 18 of the said Act-I of 1894. It has been further recorded therein that the possession of the said land has been taken.

The fact of receipt of compensation is not disputed by the petitioners. However, Ms. Maiti, learned advocate for the petitioners submits that the

compensation received by the petitioners is meagre and since the possession of the plots have not been taken over and, therefore, cannot be said to have been utilised by the State for the purpose for which it was acquired, the same are to be returned to the petitioners.

On a query of the Court, Ms. Maiti could not place any provision under the relevant statute, which permits return of land, which has been acquired on the ground that the same has not been utilised.

After going through the records and the submissions of the learned advocates of the parties, this Court finds that upon publication of notification under section 4, the declaration under section 6, award was made under section 11 of Act I of 1894. It is also not disputed by the petitioners that notice under section 12(2) was served and compensation money was also received by them. From the certificate of possession annexed to the affidavit-in-opposition filed by the respondents it is evident that possession of the land has been taken over from the owners and handed over to the Requiring Body.

The petitioners, however, allege that such compensation money was meagre but the fact remains that they accepted the same without any protest. Petitioners also chose not to avail the recourses available under the relevant statute.

The petitioners allege that no notice was served for taking over possession and they claim that they are still in possession of the land. Act I of 1894 is silent as to the mode of taking possession. Merely because of the fact that the petitioners claim to be retaining possession, such possession, if any is unlawful and this Court cannot hold that the acquisition is vitiated thereby.

Therefore, in view of the provisions of section 16 of the Act-I of 1894, the property vests upon the Government free from all encumbrances. It is well settled that once the title of the property vested to the State, the property cannot be directed to be returned to the erstwhile owners.

The decision of the Hon'ble Supreme Court in the case of *Yusufbhai (supra)* deals with the interpretation of the explanation to section 11A of the Act-I of 1894. Since such issue is not germane for consideration in this writ petition, the same is of no assistance to the petitioners in the case on hand.

The decision of a coordinate Bench of this Court in the case in *Satyam Co-operative Housing Society Ltd. (supra)* is also not applicable to the facts of the case on hand as the coordinate Bench held that if no award is made within the period prescribed under section 11 or within a period of two years from the date of publication of the declaration, the entire

proceedings for the acquisition of the land shall lapse. In the said reported case after the acquisition proceeding was initiated in the year 1964, steps under section 9 and 10 of the Act I of 1894 was not taken till 1986. The said decision is distinguishable on facts.

On the ground of delay, the coordinate Bench observed that mere delay in filing a writ petition cannot be fatal when the challenge is as to the validity of the acquisition proceedings. The said decision is distinguishable on facts and thus the same has no manner of application to the case on hand.

The petitioners could not demonstrate before this Court that the award was not passed within the period specified in the relevant statute. For the aforesaid reason, this Court is of the considered view that the prayer of the petitioners for return of the land cannot be allowed. The writ petition lacks merit and the same is accordingly, dismissed.

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

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)

