

25.11.2022
Item No.13.
Court No.6.
AB

F.M.A. 3494 of 2013

**Gobinda Baitalik
Vs
The State of West Bengal & Others**

Mr. Kamalesh Bhattacharya,
Mr. S. P. Pahari,
Mr. A. Pradhan,
Mr. T. K. Mahapatrafor the Appellant.

Mr. Soumitra Bandopadhyay,
Mr. Priyabrata Batabyalfor the State.

The appellant's writ petition was dismissed by the learned Single Judge by the impugned order dated July 16, 2013, solely on the ground of delay and laches.

The appellant says that his homestead land measuring 14 decimals i.e., more than 0.03 acre, was acquired by the State Government at the instance of the Haldia Development Authority. The appellant relies on a Circular dated April 20, 1993, issued by the Land and Land Reforms Department, Government of West Bengal, delineating the policy of the State Government to allot 0.06 acre plot of land to persons who have lost land measuring more than 0.03 acre by reason of the acquisition in question.

The appellant relied on the said Circular before the learned Single Judge. While agreeing that indeed, there is such a decision of the Government, the learned Judge dismissed the writ petition observing

that “delay in approaching this Court by the petitioner without any explanation, in my view, stands in the way of entertaining this writ petition before this Court.” Being aggrieved, the writ petitioner is before us.

Mr. Bandopadhyay, learned Advocate representing the State disputes that the Government Circular dated April 20, 1993 applies in the present case.

We have heard learned Counsel for the parties. It is true that there was delay on the part of the appellant in approaching the learned Single Judge. However, as Mr. Bhattacharya, learned Advocate appearing for the appellant says, the appellant is a cultivator and with very little education. We can also not lose sight of the fact that our State professes to be a welfare State. Property of a citizen cannot be taken by the Government without compensating that person adequately. It is true that the Writ Court is a Court of Equity and delay defeats equity. However, in the facts and circumstances of this case, we deem it appropriate to permit the appellant to approach the appropriate Authority in the Administration with his grievance.

Accordingly, we set aside the order under appeal and dispose of the appeal by granting liberty to the appellant to make a comprehensive representation before the respondent no.5 (the Additional District Magistrate, Haldia at Basudebpur) within a period of

four weeks from date. If such a representation is made within the time period indicated above, the respondent no.5 shall consider the same and take a reasoned decision thereon in accordance with law, after giving an opportunity of hearing to the appellant or his authorized representation, within a period of three months from the date of receipt of a copy of this order. The decision so taken shall be communicated to the appellant within a week from the date of the decision.

We have not gone into the merits of the appellant's claim. However, we hope and trust that if the respondent no.5 finds that there is merit in the appellant's claim on the basis of the Government Circular No.1208-LA (II) Dated April 20, 1993, the Administration shall deal with the appellant's case sympathetically.

F.M.A. No.3494 of 2013 is, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)

