

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble **Justice Arijit Banerjee**

And

The Hon'ble **Justice Kausik Chanda**

F.M.A. No. 166 of 2018

With

I.A. No. C.A.N. 2 of 2021

With

I.A. No. C.A.N. 3 of 2022

THE BOARD OF COUNCILOR SAINTHIA MUNICIPALITY AND ANOTHER

-VERSUS-

SUNDAR DEVI ANCHALIA AND OTHERS

For the appellants : Mr. Partha Sarathi Bhattacharyya, Sr. Adv.,
Mr. Ashis Kumar Chowdhury, Adv.,
Mr. Avijit Kar, Adv.

For the writ petitioners/
Respondent nos.1 & 3. : Mr. Atish Ghosh, Adv.,
Ms. Antara Dey, Adv.

For the State : Mr. Md. T.M. Siddiqui, Adv.

For the applicant : Mr. Arif Ali, Adv.,
(I.A. No. C.A.N.3 of 2022) Mr. Md. Faizan Yakub, Adv.

Hearing concluded on : 09.08.2023

Judgment on : 15.12.2023

Kausik Chanda, J.:-

This appeal, at the instance of the Sainthia Municipality, Birbhum, is directed against a judgment and order dated July 17, 2017, rendered by a learned Single Judge of this Court.

2. The writ petitioners claimed before the learned Single Judge that 20 decimals of land appertaining to Plot No.5062, J.L. No.95 of Mouza-Sainthia under Sainthia Police Station, Birbhum was requisitioned by the State by initiating L.A. Case No.2 of 1986-87 under the provisions of West Bengal Land (Requisition and Acquisition) Act, 1948 (in short, the Act of 1948). Following the said Act of 1948, the possession of the land was taken over and transferred to Sainthia Municipality. The writ petitioners argued that the proceeding initiated under the provisions of Act of 1948 was not converted into a proceeding under the Land Acquisition Act, 1894 (in short, Act of 1894) and, therefore, the requisition proceeding had lapsed. The relevant land was neither released from requisition nor any rent compensation was paid.

3. The learned Single Judge, by the order impugned, held that the relevant land of the writ petitioners was requisitioned by the State under the Act of 1948 and the requisition proceeding lapsed without making payment of rent compensation to the petitioners. Admittedly, the relevant land is still in the possession of the Sainthia Municipality. The learned Judge observed that, having already taken possession, and having handed it over to the Municipality, it is incumbent upon the State to initiate fresh land acquisition proceedings under the provision of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, Act of 2013), for payment of compensation to the petitioners.

4. The writ petition was disposed of with a direction upon the State to commence the land acquisition proceedings under the Act of 2013 and to compensate them under the said provision of law within a period of six months from the date of communication of the order. The State was, further, directed to make payment of rent compensation to the petitioners in accordance with law.

5. The appellant/Municipality contends that on October 25, 1989, the Collector, Birbhum issued a Form requisitioning the relevant land under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948, and the Chairman of the Municipality deposited a sum of Rs.80,555/- with the Treasury. Subsequently, following a letter from the Special Land Acquisition Officer, Birbhum dated November 9, 1989, possession was taken by the Municipality and a certificate of possession was issued on November 16, 1989, for construction of a children's park. The Municipality argues that the writ petition, filed after a lapse of 20 years, is not maintainable, especially given the absence of any explanation for the delay.

6. It has been argued by the Municipality that Section 24 (2) of the Act of 2013 does not give rise to any new cause of action to question the legality of a concluded proceeding of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013 i.e. January 1, 2014. It

does not receive stale and time-barred claims and does not re-open concluded proceedings, nor allows land owners to question the legality of the mode of taking possession to re-open proceedings or mode of deposition of compensation in the Treasury. It has been submitted that the learned Single Judge has failed to appreciate that the appellant/Municipality had deposited the admissible amount as directed by the Land Acquisition Department before taking over possession of the land. It has been submitted that the provisions of Act of 1948 came into force on March 11, 1948 and remained in force till March 31, 1997. All actions taken under the Act of 1948 stood concluded till 31st March 1997. There is no indication in Section 24 of the Act of 2013 to deal with the cases initiated under the provisions of the Act of 1948. The provisions of Section 24 of the Act of 2013 are only applicable in the cases where the land acquisition proceeding was initiated under the Act of 1894.

7. The Municipality admits that it constructed a community hall on the land in the year 2002 and it is still in the possession of the said land.

8. In support of the appeal, it has been submitted by the State that the writ petitioners filed W.P. No.3733(W) of 2006 seeking a direction upon the Municipality to quit and vacate the relevant land and not to carry out any construction activities. The said writ petition was dismissed for default. Thereafter, this present writ petition was filed seeking quashing of the requisition under the Act of 1948. Therefore, the prayer of the writ petitioners is barred by the principle of constructive *res judicata*.

9. Furthermore, the State contended that the writ petitioners themselves having conceded the absence of a valid acquisition, no compensation under Section 24 of the Act of 2013 can be paid. The State suggests that, at best, a civil suit is maintainable for removal of encroachment.

10. The State argued that no pleading was made in the writ petition to initiate proceedings in terms of Act of 2013 and, therefore, the learned Judge ought not to have travelled beyond the pleadings. Possession of the land was handed over to the Municipality much before filing of the writ petition. Since possession of the land has been taken, though no compensation has been paid, it cannot be said that the land acquisition proceedings have lapsed. The State maintained that the writ petitioners cannot ask for return of the land; at most they, they can claim compensation under the Act of 1894 or under Act of 1948.

11. Before the merits of the case is delved into, it is important to take note of the report filed before the learned Single Judge by the State. The relevant part of the said report is quoted below:

“3. I state that after receiving a proposal from the Dy. Secretary, Local Government and Urban Development vide No. 854/1/C-60 MIL-19/87 dated 05.08.1988 and No.420/C-6/MIL. 19/87 dated 03.05.1989 and the Chairman, Sainthia Municipality vide his No. 284/SM/88 dated 17.02.1988 for construction of Children Park in Plot No. 3049/4176 (Sabek) i.e. 5062 (Hal) of L.R. Khatian No. 6827 of Mouza - Sainthia, J.L. No. 95 under P.S. Sainthia, District - Birbhum, an L.A. Proceedings vide L. A. Case No. 2 of 1996-97 was started under the West Bengal Land (Requisition & Acquisition) Act - 1948 (Act-II of 1948) for Acquisition of an area 0.20 acre of

land for the said purpose and requisition order for the said land was duly passed and possession of the said land was taken over and delivered to the Requiring Body on 16.11.1989 and in consequence the Requiring Body has utilized the land in question accordingly.

4. Subsequently, the Act-II of 1948 i.e. West Bengal Land (Requisition & Acquisition) Act, 1948 was repealed and the said L. A. Proceeding was required to be converted under provision of Land Acquisition Act, 1894 (Act-I of 1894). However, the Right to Fair Compensation (Transparency in Land Acquisition, Rehabilitation & Resettlement) Act, 2013, came into force and the proceeding under Act 1 of 1894 have also been repealed and as such the proceeding under Act 1 of 1894 could not be completed.

...

7. The land in question has been utilised by the Requiring Body and the Requiring Body is in possession of the same. The Requiring Body has been requested vide Memo No. 396/LA dated 28.04.2017 to pay Rent Compensation to the petitioners. I crave leave to produce a copy of the said letter at the time of hearing, if necessary."

12. It is, therefore, clear that requisition order in terms of Section 3 (1) of Act of 1948 had been published on October 25, 1989 and possession of the land was taken on November 16, 1989. No notice, however, in the present case under Section 4(1) of the Act of 1948 was issued. Though the Municipality claims that requisition compensation and ad-hoc advance on account of payment towards compensation was deposited with the Land Acquisition Collector, nothing has been brought on record to demonstrate that the

petitioners were ever paid any amount towards rent compensation or otherwise. No notice under Section 9(3A) of the Act of 1894 as amended by the Land Acquisition (West Bengal Amendment) Act, 1997, was issued and no award was published. There cannot be any doubt that said proceeding initiated under the Act of 1948 was never converted into a proceeding under the Act of 1894.

13. In the above facts, Section 24 of the Act of 2013 has no manner of application in this case. The said provision applies only to a proceeding initiated under the Act of 1894 and no other proceedings.

14. Although Section 24 of the 2013 Act may not be applicable to the facts of this case, the fact remains that the Municipality has constructed a community hall on the land in question and is in possession of the said land. The order of requisition stands lapsed by reason of the natural death of the Act of 1948 under which the requisition order was issued. Strictly speaking, the Municipality is in illegal possession of the land in question. No rent compensation has been paid to the writ petitioners. No proceeding for acquisition of the land has been initiated by the State. Right to property, although may not be a Fundamental Right since 1978, it is still a valuable Constitutional Right of a citizen under Article 300A of the Constitution. It has even been now recognised as a Human Right. The State or the requiring authority cannot retain possession of a land belonging to a citizen without acquiring it following due process of law. Presently, the only law of the land governing acquisition of land is the Act of 2013. The State must initiate

proceedings under the Act of 2013 to determine the compensation payable to the writ petitioners. Rent compensation is also payable to the writ petitioners as directed by the learned Single Judge. The State and/or the Municipality having utilised the land of the writ petitioners, they are bound to compensate the writ petitioners for the value of the land. Otherwise, it will amount to expropriation of a citizen's property which is not permissible under the law of the land.

15. In the aforesaid facts, I do not see any reason to interfere with the order impugned whereby the learned Single Judge directed to initiate fresh proceedings under the Act of 2013 and to pay compensation under the said Act with a further direction to make rent compensation to the petitioner in accordance with law.

16. It must be acknowledged that there has been a substantial delay in approaching this Court by the petitioners. I am, however, of the view that right to property is a valuable constitution right flowing from Article 300A of the Constitution of India and delay or any other technical issues as raised by the appellant/Municipality and the State in this appeal should not thwart the claim for compensation.

17. In the case reported at **(2020) 2 SCC 569 (*Vidya Devi v. State of Himachal Pradesh*)** the Supreme Court directed payment of compensation in favour of the appellant therein, who filed a writ petition before the Himachal Pradesh High Court in the year 2010 for payment of compensation for the land,

possession of which was taken by the State in the year 1967. It was held, *inter alia*, as follows:

“12.8. The contention of the State that the appellant or her predecessors had “orally” consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the appellant of her property by the State.

...

12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it. [P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152 : 1975 SCC (L&S) 22]

...

13. In the present case, the appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the

appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 11 and 142 of the Constitution, and direct the State to pay compensation to the appellant.”

18. The same view has been reiterated by the Supreme Court in a recent judgment reported at **(2022) 7 SCC 508 (*Sukh Dutt Ratra v. State of Himachal Pradesh*)**.

19. In that case the Supreme Court directed to pay compensation to the appellants who filed the writ petition after 38 years against the State. In that case, the Supreme Court was also approached after about six years after the order passed by the Himachal Pradesh High Court in the year 2013. Negating the contention advanced on behalf of the State of Himachal Pradesh as to the delay and laches the Supreme Court held as follows:

“**16.** Given the important protection extended to an individual vis-a-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains - can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

17. When seen holistically, it is apparent that the State's actions, or lack thereof, have in fact compounded the injustice meted out to the appellants and compelled them to approach this court, albeit belatedly. The initiation of acquisition proceedings initially in the 1990s occurred only at the behest of the High Court. Even after such judicial intervention, the State continued to only extend the benefit of the court's directions to those who specifically approached the courts. The State's lackadaisical conduct is discernible from this action of initiating acquisition proceedings selectively, only in respect to the lands of 12 those writ petitioners who had approached the court in earlier proceedings, and not other land owners, pursuant to the orders dated 23.04.2007 (in CWP No. 1192/2004) and 20.12.2013 (in CWP No. 1356/2010) respectively. In this manner, at every stage, the State sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

18. There is a welter of precedents on delay and laches which conclude either way - as contended by both sides in the present dispute - however, the specific factual matrix compels this court to weigh in favour of the appellant-land owners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a 'limitation' to doing justice. This court in a much earlier case - Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, held:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted

in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

20. Accordingly, F.M.A. No.166 of 2018 is dismissed and the applications being I.A. No. C.A.N. 2 of 2021 and I.A. No. C.A.N. 3 of 2022 are disposed of.

21. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Arijit Banerjee, J.)

(Kausik Chanda, J.)

Later

After the judgment is delivered in open Court, Mr. Partha Sarathi Bhattacharyya, learned senior advocate, representing the Municipality prays for stay of operation of the judgment and order. Such prayer is considered and rejected.

(Arijit Banerjee, J.)

(Kausik Chanda, J.)