

05.
22-12-2023
Kole.
(Ct. no.06)

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

**F.M.A. 285 of 2021
With I A CAN 1 of 2020
(Old CAN 2193 of 2020)**

**Pulin Halder & Others
Vs
The State of West Bengal & Others**

With

**M.A.T. 137 of 2020
With I A CAN 1 of 2020
(Old CAN 2058 of 2020)**

**Islam Sheikh & Others
Vs.
The State of West Bengal & Others**

Mr. Aviroop Bhattacharya, Adv.
Mr. Bishnu Prosad Singha Roy, Adv.
Mr. Tapash Kr. Bhattacharya, Adv.
... For the Appellants

Mr. Partha Pratim Roy, Adv.
Mr. Ayan Banerjee, Adv.
Mr. Suman Banerjee, Adv.
Ms. Debarsree Dhamali, Adv.
... For the State.

Mr. Amit Kumar Pan, Adv.
... For Amicus Curiae

Arijit Banerjee, J. :-

1. These two appeals involve similar facts and points of law and therefore were taken up together for hearing and disposal.

2. By two identical orders, both dated December 19, 2019, a learned Single Judge of this Court dismissed the writ petitions of the

present appellants, solely on the ground of delay and laches.

3. The undisputed facts of the case are that the appellants/writ petitioners were owners of land described in the writ petitions. For the purpose of construction of a Highway from Jiban Mondoler Hat to Dhaki under Diamond Harbour Police Station, a proceeding was initiated by the State Government under the West Bengal Land (Requisition and Acquisition) Act, 1948 (in short 'the 1948 Act'). The land acquisition Collector took over possession of the lands in question and possession was handed over to the requiring body. No specific date appears from the records before us as to when possession was taken over from the appellants.

4. The predecessors-in-interests of the appellants were served with notices under Section 5(3) of the 1948 Act wherefrom the appellants came to know that the concerned lands had been acquired upon publication of a notification under Section 4(1a) of the 1948 Act, in the Calcutta Gazette on May 21, 1981. No compensation was ever paid by the Land Acquisition Collector to the appellants. The appellants made representations to the Collector claiming compensation in terms of the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short the 2013 Act), but in vain.

5. The construction of the road was completed long ago. It is permanent in nature.

Therefore, the question of returning the land to the appellants does not arise.

6. The short case of the appellants is that even assuming that the land in question was acquired by publication of notification under Section 4(1a) of the 1948 Act in connection with two land acquisition cases, in 1980 and 1985, the Land Acquisition Collector was required to publish an Award within one year from the date of coming into force of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994. The Collector not having published any award within such period of time or even thereafter, the notices under Section 4(1a) of the 1948 Act lapsed. No action was taken by the Government under Section 9(3B) of the Land Acquisition Act, 1894 (in short 1894 Act) during life time of that Act. The 1894 Act stood repealed by the 2013 Act. Accordingly, the LA Collector is now obliged to initiate proceedings under the 2013 Act and pay compensation to the appellants in terms of the provisions of that Act.

7. As regards delay and laches, the appellants argued that although the right to property ceased to be a fundamental right in 1978, it remains a valuable constitutional right under Article 300A of the Constitution and has been recognized as a human right. Such a right cannot be defeated by the Government by arguing that a citizen has approached the Court of Law belatedly.

8. Learned Advocate for the State submitted that in an order dated July 1, 2022,

passed in the present proceedings, this Division Bench had observed that the appellants were dormant for almost 40 years and therefore cannot claim the advantage of the present enhanced market value of the land in question. The appellants cannot take advantage of their own laches.

9. Learned Advocate then submitted that Section 4(1a) of the 1948 Act is akin to Section 17 of the 1894 Act. Both are emergency provisions. Land acquired under those provisions immediately vests in the State Government. In such a case, the requirement of the Collector publishing an award within the period specified in Section 11A of the 1894 Act or Section 7A of the 1948 Act, as the case may be, is not attached. Relying on the decision in the case of ***Indore Development authority v. Manoharlal & Ors. reported at (2020) 8 SCC 129***, learned Advocate formulated the following points: -

- (i) In case of emergency acquisition of land, if possession is taken after making appropriate notification but award is not declared, the acquisition shall not lapse but higher compensation would follow as per 2013 Act.
- (ii) When possession of land is taken under emergency provision, the land vests absolutely to the Government and the provision of Section 11A of passing the award within two years were not attracted.
- (iii) It is only in cases where in a pending proceeding, for a period of 5 years the steps have not been taken for taking possession and

payment of compensation, there would be lapse under Section 24(2) of the 2013 Act.

(iv) In case of non-deposit of compensation for 5 years or more, compensation under the 2013 Act is to be paid on the date of notification for land acquisition.

10. In short, learned Advocate submitted that compensation is to be paid by the State Government to the appellants by taking the date of acquisition notification as the relevant date and then applying the formula for determination of compensation as provided in the 2013 Act along with solatium and applicable interest. It was also submitted that the appellants having approached the writ Court after more than 40 years from the date of acquisition, they are not entitled to current market value of the land. No person can be allowed to take advantage of his own wrong. The writ petition was rightly dismissed by the learned Single Judge on the ground of delay. If at all the present appeals are to be entertained and allowed, compensation should be directed to be paid by taking the date of the notification for acquisition as the base date and then determining the compensation in terms of the provision of the 2013 Act.

11. We have heard learned Counsel for the parties at length and also Mr. Amit Pan learned Amicus Curiae appointed by us.

12. The West Bengal Land (Requisition and Acquisition) Act, 1948, was a temporary Act. The life of the said Act of 1948 was extended from time to time and the last extension was made up

to March 31, 1997 by the West Bengal Land (Requisition and Acquisition) (Amendment) Act 1994, which was published in the Calcutta Gazette extraordinary on March 31, 1994. In other words, the Act of 1948 died a natural death on March 31, 1997. Further, by reason of the 1994 Amendment Act, Section 3 of the 1948 Act was omitted with effect from April 1, 1994. Consequently, with effect from that date power to requisition land under Section 3 of the 1948 Act was taken away.

13. The 1948 Act was again amended by the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1996, which was published in the Calcutta Gazette extraordinary on October 8, 1996, with retrospective effect from April 1, 1994. By Section 3 of the 1996 Amendment Act, Section 7A was inserted in the 1948 Act. Section 7A of the Act reads as follows:-

“7A. Award by Collector. :-

The Collector shall make an award under sub-section (2) of Section 7 within a period of three years from the date of publication of the notice in the Official Gazette under sub-section (1a) of section 4 (hereinafter referred to as the said notice), and if such award is not made within the period as aforesaid, the said notice shall lapse:

Provided that in a case where the said notice has been published more than two years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the award shall be

made within a period of one year from the date of commencement of that Act.

Explanation. In computing the period of three years or one year, as the case may be, under this section, the period during which any action or proceeding to be taken in pursuance of the said notice is stayed by an order of a Court having jurisdiction, shall be excluded.”

14. The effect of Section 7A was that if any notice under Section 4(1a) of the 1948 Act was issued before March 31, 1992, and the Collector failed to pass any award by March 31, 1995, the notice of acquisition would lapse. In respect of a notice issued after March 31, 1992, the Collector was obliged to pass an award within 3 years from the date of publication of the notice under Section 4(1a) of the 1948 Act, in default, the notification under Section 4(1a) would lapse.

15. To save the proceedings initiated under the 1948 Act from lapsing, the 1894 Act, in its application to the State of West Bengal, was amended by the Land Acquisition (West Bengal Amendment) Act, 1997. By section 3 of the 1997 Amendment Act, after sub-section 3 of Section 9 of the 1894 Act, two new sub sections namely (3A) and (3B) were inserted. These two sub-sections read as under:-

“(3-A) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession

whereof has already been taken on requisition under Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to in this section as the said Act), as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, and, in every such case, the provisions of sub-section (1) of Section 4, Section 5, Section 5-A, Section 6, Section 7 and Section 8 of this Act shall be deemed to have been complied with:

Provided that the date of notice under this sub-section shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that when the Collector has made an award under Section 11 in respect of any such land, such land shall, upon such award, vest absolutely in the Government, free from all encumbrances.

(3-B) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under Section 3 of the said Act, and notice for acquisition of such land has also been published under sub-section (1-a) of Section 4 of the said Act, and, in every such case, the provisions of Section 4, Section 5, Section 5-A, Section 6, Section 7, Section 8 and Section 16 of this Act shall be deemed to have been complied with:

Provided that the date of publication of notice under sub-section (1-a) of Section 4 of the said Act shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that in every such case, the Collector shall make an award under Section 11 in respect of such land only for the purpose of payment of due compensation to the persons interested in such land where such land has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances.”-W.B. Act 7 of 1997, S. 3 (w.e.f.2-5-1997).

16. In the facts of the present case, as appears from the records of the case, no award was passed by the Collector during life time of the 1948 Act. Hence, the notice or notices under Section 4(1a) of the 1948 Act which were, according to the State, published in 1980 and 1981, stood lapsed in view of Section 7A of the 1948 Act as no award was made within March 31, 1995. In this connection, one may refer to the decision of a Full Bench of this Court in the case of ***State of West Bengal v. Sabita Mandal reported at 2011(3) CHN (CAL) 555***. Paragraphs 15 to 20 of the Full Bench decision may be noted:-

“15. After hearing the learned counsel for the parties and after going through the aforesaid provisions of the two Statutes, we find that by virtue of THE WEST BENGAL LAND

(REQUISITION AND ACQUISITION) (AMENDMENT) ACT, 1996, which deemed to have come into force from April 1, 1994, a duty was cast upon the Collector to make an award under sub-Section (2) of Section 7 within a period of three years from the date of publication of the notice in the Official Gazette under sub-section (1a) of Section 4 and if such award is not made within the period as aforesaid, the said notice should lapse. It was further provided therein that in a case where the said notice had been published more than two years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the award should be made within a period of one year from the date of commencement of that Act, the date of commencement of that Act being March 31, 1994.

16. Thus, the effect of the aforesaid Amendment Act of 1996 was that if any notice under sub-section (1a) of Section 4 which had already been issued before March 31, 1992, and the Collector had failed to pass any award thereon by March 31, 1995, those notices would lapse; whereas in respect of the notices issued after March 31, 1992, the award must be passed within three years from the date of publication of the notice under sub-section (1a) of Section 4 with the further stipulation, that in default of passing of award within the time limit mentioned above, those notifications under sub-section (1a) of Section 4 issued would lapse.

17. It appears that with effect from April 1, 1997, THE LAND ACQUISITION

(WEST BENGAL AMENDMENT) ACT, 1997 came into operation and by virtue of that provision, in Section 9 of the principal Act, after sub-section (3), two subsections viz. (3A) and (3B) were inserted.

18. By virtue of sub-section (3A), the Collector was given a power to serve notice to the same effect as provided in sub-section 3 of the Section 9 of the Principal Act on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948, as re-enacted by the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, and, in every such case, the provisions of sub-section (1) of Section 4, Section 5, Section 5A, Section 6, Section 7 and Section 8 of the Act shall be deemed to have been complied with specific proviso that the date of notice under this sub-section shall be the date of reference for the purpose of determining the value of such land under this Act and that when the Collector has made an award under Section 11 in respect of any such land, such land shall, upon such award, vest absolutely in the Government free from all encumbrances. Similarly, Sub-section (3B) authorizes the Collector to serve notices to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under Section 3 of the said Act, and notice for

acquisition of such land has also been published under sub-section (1a) of Section 4 of the said Act, and, in every such case, the provisions of Section 4, Section 5, Section 5A, Section 6, Section 7, Section 8 and Section 16 of this Act shall be deemed to have been complied with further stipulation that the date of publication of notice under sub-section (1a) of Section 4 of the said Act shall be the date of reference for the purpose of determining the value of such land under this Act.

19. Thus, the effect of the LAND ACQUISITION (WEST BENGAL AMENDMENT) ACT, 1997 which came into operation on the midnight between March 31, 1997 and April 1, 1997 prevented all those notices under sub-section (1a) of Section 4 issued after April 1, 1994 from being lapsed by giving scope of revival by way of a notice under Sub-section (3B) of Section 9 of the said Act if award had not been passed within three years from the date of publication of such notice and which would otherwise lapse if the said Act of 1997 would not come into operation at the midnight of March 31, 1997.

20. However, in respect of those notices under sub-section (1a) of Section 4 which were issued prior to March 31, 1992 and in respect of which no award had been passed by March 31, 1995, those notices had already lapsed and by the Amendment Act 1997 of the Land Acquisition Act by the West Bengal Legislature, no provision has been made for revival of the lapsed notices which stood lapsed already on March 31, 1997 for non-compliance of the provision of

Amendment Act of 1996. By the Amendment Act of 1997 only those notices under subsection (1a) of Section 4 which would have lapsed on the midnight of March 31, 1997 or on subsequent dates, have been saved.”

17. With the natural death of the 1948 Act, the period of requisition came to an end with effect from April 1, 1997. The proceeding initiated under the 1948 Act also stood lapsed. The Collector had not served notice under Section 9 (3B) of the 1894 Act on the persons interested. With the repeal of the 1894 Act by the 2013 Act with effect from January 1, 2014, no further notice can be served under Section 9(3B) of the 1894 Act.

18. Therefore, the only way to compensate the appellants would be for the Collector to initiate fresh acquisition proceedings under the law of the land. This would necessarily mean that proceedings will have to be initiated under the 2013 Act since that is only the statute presently which is the law of the land pertaining to acquisition of land.

19. With great respect to learned Advocate for the State, the decision in **Indore Development Authority, (supra)**, has no relevance for the present case. That case did not concern Act II of 1948.

20. As regards the point of delay or laches on the part of the appellants, urged by learned Counsel for the State, I can do no better than to reproduce the observations of the Hon’ble Supreme Court in paragraphs 12.12, 12.13,

12.14 in the case of ***Vidya Devi v. The State of Himachal Pradesh and Ors. reported at (2020) 2 SCC 569.***

“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.

12.14. In Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors., (2013) 1 SCC 353: (2013) 1 SCC (Civ) 491, this Court while dealing with a similar fact situation, held as follows:

“11. There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of

similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, Under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode.”

21. In the case of **Sukh Dutt Ratra v. State of Himachal Pradesh reported at (2022) 7 SCC 508**, the Supreme Court directed payment of compensation to the appellants who had filed the writ petition after 38 years against the State. In that case, the Supreme Court was 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."

22. It may also be noted that in almost all the cases where the Hon'ble Supreme Court has

refused to entertain a land loser's legal action on the ground of delay or laches, were cases where the land loser challenged the acquisition proceedings after undue delay. This is obviously because such person, having permitted utilization of his land by not challenging the acquisition promptly, disentitled himself from challenging the legality of the acquisition proceedings. However, such a person's claim to compensation cannot be defeated by the State on the ground of delay.

23. In the facts of the present case, the State having deprived the writ petitioners of their property without following due process of law and without paying any compensation-which is really an act of expropriation-the State cannot be permitted to argue that the delay on the part of the writ petitioners in approaching the Court will cause imposition of greater financial burden on the State since in the mean time the 2013 Act has come into operation and holds the field. Had the State acted in accordance with law, it could have avoided the additional financial burden, if any, that may be foisted on it by reason of compensation being calculated in terms of the provisions of the 2013 Act. In this connection one may refer to the decision of a Coordinate Bench rendered on September 29, 2022 in ***MAT 464 of 2018 (The State of West Bengal & Ors. v. Dilip Ghosh & Ors.)***.

24. In view of the aforesaid, the present appeals are allowed. We direct the First Land Acquisition Collector / the Competent Authority to initiate proceedings for acquiring the land of the appellants under the provisions of the 2013

Act and complete such proceedings within 16 weeks from date and pay the compensation amount to the appellants within 4 weeks thereafter.

25. We record our grateful appreciation of the assistance rendered to us by Mr. Amit Pan, learned amicus curiae, in deciding the present appeals.

26. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)