

(Appellate Side)

MAT 71 of 2018

With

IA No: CAN/1/2018 (Old No: CAN/876/2018)

With

IA No: CAN/2/2018 (Old No: CAN/877/2018)

The State of West Bengal & Ors.

-Versus-

Pranab Kumar Mukherjee

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants/State : Mr. Susovan Sengupta, Adv.
Mr. Subir Pal, Adv.

For the Respondent/writ petitioner : Mr. Mihir Kundu, Adv.
Mr. Subrata Poddar, Adv.

Judgment On : 16.08.2023

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated May 18, 2016, whereby the writ petition of the respondent no. 1 being W.P. No. 5568(W)

herein was disposed of with similar direction as was given in the judgment and order dated May 16, 2016, rendered in W.P. 5590(W) of 2016. Such direction was as follows:-

“This writ petition, therefore, is disposed of by directing the competent respondent authority to determine the market value of the land in terms of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and thereafter follow the process of law as laid down under the new Act of 2013 and ensure compensation is paid within the statutory time frame stipulated therein to the petitioners.”

2. The undisputed facts of the case are that land of the respondent/ writ petitioner was requisitioned by the State Government under Section 3 of the West Bengal (Requisition and Acquisition) Act, 1948, and possession thereof taken over for construction of Haringhata-Panpur Road in the District of Nadia, in connection with LA Case no. 52/General/B.R.P/Rehab of 1981-82. Possession of such land was handed over to the requiring body on August 13, 1982. The land has been utilized for the purpose of constructing the aforesaid road.

3. For reasons which are not relevant, a fresh L.A. Case No. 3/PWD/2004-05 was initiated by the competent authority by issuance of notice under Section 4 of the Land Acquisition Act, 1894. It is not in dispute that no Award was ever passed in connection with the said land acquisition case.

4. The respondent no. 1 approached the learned Single Judge. The order under appeal was passed directing the Government to determine and pay compensation to the writ petitioner in terms of the provisions of the 2013 Act.

5. Being aggrieved, the State Government has come up by way of this appeal.

6. Appearing for the appellant, learned Advocate submitted that the learned Single Judge erred in directing the Government to pay compensation following the provisions of the 2013 Act. Relying on the decision of the Hon'ble Supreme Court in the case of ***Haryana State Industrial and Infrastructure Development Corporation Ltd & Ors. v. Mr. Deepak Agarwal & Ors. rendered in SLP (C) Nos. 16631 -16632/2018***, learned Advocate submitted that if notice under Section 4 of the LA Act 1894, was issued prior to the 2013 Act coming into force but no Award was passed prior to January 1, 2014, when the 2013 Act came into force, the land acquisition proceedings will continue as per provisions of the LA Act 1894 and only for determination of the compensation amount the provisions of the 2013 Act will be applicable.

7. Learned Advocate then submitted, relying on the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of ***Indore Development Authority v. Manoharlal and Ors. reported at (2020) 8 SCC 129***, that possession of the land of the respondent/ writ petitioner having been taken over in 1982 and the writ petitioner having approached the Court only in 2016, i.e., after a lapse of 34 years, the writ petition is barred on the

grounds of delay and laches. Learned Advocate submitted that if a claimant is aware of violation of his rights and does not claim his remedies promptly, such inaction or conduct tantamounts to a waiver of his right. In such cases, the lapse of time and delay are very material factors and cannot be ignored by the Court. He submitted that the writ petition should have been dismissed on the ground of delay and laches.

8. Learned Advocate for the respondent/writ petitioner submitted that since no declaration under Section 6 was published within one year from the date of notification under Section 4 of the LA Act 1894, or at all, in connection with the L.A. Case initiated in 2004-2005, the acquisition proceedings lapsed. This has also been admitted by the Government in its MEMO no. 214/1-LA dated February 19, 2015, (Annexure R-5 to the affidavit-in-opposition of the writ petitioner filed in connection with the stay application in this appeal). That the acquisition proceedings lapsed was also admitted by the State Government by filing an affidavit before the learned Single Judge in W.P. No. 5568 of 2016. No Award was ever published and no compensation paid to the writ petitioner.

9. Learned Advocate submitted that since the proceedings initiated under the 1894 Act lapsed, therefore proceedings have to be initiated under the 2013 Act. Alternatively, even if the proceedings did not lapse because of physical possession of the land having been taken over by the State Government, since there was no Award as on January 1, 2014, determination of the compensation amount will have to be in terms of the provisions of the 2013 Act.

10. Learned Advocate further submitted that since Section 4 notification in connection with L.A. Case no. 3/PWD/2004 – 2005 was published in the year 2011, the date of such notification should be treated as the material date for determination of compensation amount following the provisions of the 2013 Act.

11. I have given my anxious consideration to the rival contention of the parties.

12. The undisputed facts of the case have been noted above and I do not repeat the same. It is not in dispute that in connection with the L.A. Case initiated in 2004-2005, no Award was ever passed by the competent authority. It is an admitted fact that as on January 1, 2014, i.e., the date when the 2013 Act became operational, there was no Award. The short question is whether or not the notification under Section 4 of the 1894 Act survived after coming into effect of the 2013 Act?

13. Section 24(1)(a) of the 2013 Act reads as follows:-

“24.(1) (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply;”

14. In the case of **Indore Development Authority v. Manoharlal and Ors. (supra)**, the supreme Court held that where Section 24(1)(a) of the 2013 Act applies, i.e., where there is no Award on the date of commencement of the 2013 Act, the proceedings initiated under 1894 Act do not lapse. However, compensation has to be determined under the provisions of the 2013 Act.

15. In ***Haryana State Industrial and Infrastructure Development Corporation Ltd & Ors. v. Mr. Deepak Agarwal (supra)***, a three Judge Bench of the Hon'ble Supreme Court addressed the question as to whether a notification issued under Section 4 of the 1894 Act prior to January 1, 2014, (date of commencement of 2013 Act) "could continue or survive after 01.01.2014 and, as to whether Section 6 notification under the L.A. Act could be issued after 01.01.2014.

16. The Hon'ble Supreme Court answered the aforesaid questions follows:-

"32. We think that while considering those questions we will have to bear in mind the purposes and the legislative history of the 2013 Act and also the intention of the legislature in drafting the same in the manner in which it now exists. We have already dealt with those aspects. One crucial aspect discernible from Section 24(1)(a) has also to be taken note of in this context. The combined effect of Section 24(1) and clause (a) thereof is that if land acquisition proceeding under the L.A. Act was initiated prior to 01.01.2014, the date of coming into force of the 2013 Act, and if it was not culminated in an award under Section 11 of the L.A. Act, then all the provisions of the 2013 Act relating to the determination of compensation should apply to such acquisition proceedings. Thus, it is obvious that in case of non-passing of an award in terms of Section 11 of the L.A. Act where the acquisition proceedings have been initiated prior to 01.01.2014, all provisions under the 2013 Act relating to the determination of compensation

alone would apply to such acquisition proceedings. In other words, it would mean that in such circumstances the land acquisition proceedings should continue, but all the provisions relating to the determination of compensation under the 2013 Act alone will be applicable to such proceedings, meaning thereby, the 2013 Act would come into play only at that stage. There can be no doubt with respect to the position that between the initiation of land acquisition proceedings by issuance and publication of notice under Section 4(1) of the L.A. Act and the stage at which compensation for the acquisition calls for determination, there are various procedures to be followed to make the acquisition in accordance with the law. The question is when Section 24(1) of the 2013 Act makes it clear with necessary implication that all provisions of the 2013 Act relating to the determination of compensation alone would be applicable to such proceedings initiated under the L.A. Act but, not culminated in an award, how the procedures are to be regulated during the intervening period till the proceedings reach the stage of determination of compensation. There cannot be any uncertainty on that aspect. The procedures to be undertaken and the manner in which they are to be regulated cannot remain uncertain. They are conducted either in the manner provided under the L.A. Act or in the manner provided under the 2013 Act. But then, in view of Section 24(1)(a), the provisions relating to the determination of compensation alone

can be applied to such proceedings or in other words, there is only a restricted application of the provisions of the 2013 Act in relation to such proceedings. The inevitable conclusion can only be that what is applicable to the various procedures to be undertaken during the period up to the stage of determination of compensation are those prescribed under the L.A. Act. We have no doubt that without such a construction, the provisions under Section 24(1)(a) would not work out, in view of the restrictive application of the 2013 Act. It is in this context that the decision in '**Ambica Quarry Works**' case (supra) assumes relevance. Any construction of the said provision without taking into the legislative intention, referred hereinbefore would defeat the legislative intention as also the very objects of the 2013 Act. Certainly, it would not be in public interest to allow such proceedings to lapse or allow the authorities to follow the procedures during such period according to their sweet will. A uniform procedure has to be followed in respect of such proceedings. The acquisitions initiated for public purposes should go on in a fair and transparent manner with a view to achieve the intent and purport of the 2013 Act and at the same time, the persons affected shall have definite idea about the manner in which procedures would be conducted. The Party 'B' would not be justified in describing such situations of necessity and the consequential application of provisions which are actually saved on account of the construction of Section 24 as an attempt

to bring the words expressly employed in Section 24(1)(b) and absent in Section 24(1)(a), by indirect method to Section 24(1)(a) of the 2013 Act. The aforesaid conclusions and findings would make the contentions of Party 'B' that Section 4(1) notification issued prior to 01.01.2014 could not survive after 01.01.2014 and also that Section 6 notification under the L.A. Act could not be issued after 01.01.2014, unsustainable. In fact, all such procedures and formalities shall be continued till the determination of compensation by applying all the provisions for determination of compensation, under the 2013 Act. A contra-construction, in view of the restrictive application of the provisions to such proceedings during its continuance, would make the provisions under Section 24(1)(a) of the 2013 Act unworkable."

17. Therefore, the law laid down by the Hon'ble Supreme Court appears to be that a Section 4 notification under the 1894 Act issued prior to January 1, 2014, would be alive even after that date notwithstanding that as on that date no Award had been made. Proceedings will continue in terms of the provisions of the 1894 Act in so far as the procedure is concerned till the stage of determination of compensation. However, compensation will be computed applying the provisions of the 2013 Act relating to determination of compensation.

18. Accordingly, we do not find any infirmity in the judgment and order assailed before us. The learned Judge has directed the competent authority to determine the market value of the land in question in terms of Section 26

of the 2013 Act and thereafter follow the process of law as laid down under that Act. We simply clarify, following the decision in the case of ***Haryana State Industrial and Infrastructure Development Corporation Ltd & Ors. v. Mr. Deepak Agarwal (supra)*** that proceedings will continue following the procedure laid down in the 1894 Act excepting that the provisions in the 2013 Act relating to determination of compensation shall be applicable for computation of compensation.

19. As regards the point of delay, in ***Vidya Devi v. The State of Himachal Pradesh & Ors. reported at (2020) 2 SCC 569=AIR 2020 SC 4709***, the Hon'ble Supreme Court, held, inter alia, as follows:-

“10.1. The Appellant was forcibly expropriated of her property in 1967, when the right to property was a fundamental right guaranteed by Article 31 in Part III of the Constitution.

Article 31 guaranteed the right to private property, which could not be deprived without due process of law and upon just and fair compensation.

10.2 *The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right in a welfare State, and a Constitutional right Under Article 300A of the Constitution. Article 300A provides that no person shall be deprived of his property save*

by the authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300A, can be inferred in that Article.

To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the Constitutional right under Article 300A of the Constitution.

Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai MANU/SC/0610/2005: (2005) 7 SCC 627, wherein this Court held that:

6. ... Having regard to the provisions contained in article 300-A of the Constitution, the State in exercise of its power of “eminent domain” may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

In N. Padmamma v. S. Ramakrishna Reddy MANU/SC/7731/2008 : (2008) 15 SCC 517, this Court held that:

21. If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view the provisions of Article 300-A of the Constitution of India, must be strictly construed.

In Delhi Airtech Services Pvt. Ltd. and Ors. v. State of U.P. and Ors. MANU/SC/0956/2011 : (2011) 9 SCC 354, this Court recognized the right to property as a basic human right in the following words:

30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. “Property must be secured, else liberty cannot subsist” was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists.

In Jilubhai Nanbhai Khachar v. State of Gujarat
 MANU/SC/0033/1995 : (1995) Supp. 1 SCC 596 this Court held as follows:

48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.

10.3. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

.....

10.5 In a democratic polity governed by the Rule of law, the State could not have deprived a citizen of his property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors.*

MANU/SC/0933/2012 : (2013) 1 SCC 353 wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the Rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

This Court in State of Haryana v. Mukesh Kumar held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

.....

10.7. *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.

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.

In Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors., MANU/SC/0933/2012 : (2013) 1 SCC 353 this Court while dealing with a similar fact situation, held as follows:

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.

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.”

20. 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.

21. 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.)***.

22. In view of the aforesaid, we find no merit in the appeal which is dismissed along with the connected applications. We direct the First Land Acquisition Collector/ the Competent Authority to complete the process of determination of the compensation amount, in light of the observations made in this judgment, within 12 weeks from date and pay the amount to the respondent/writ petitioner within two weeks thereafter.

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

(ARIJIT BANERJEE, J.)

I agree.

(APURBA SINHA RAY, J.)