

Civil Appellate Jurisdiction
(Appellate Side)

The State of West Bengal & Ors.

Pranab Kumar Mukherjee

Judgment On : 16.08.2023

1. This appeal is directed against a judgment and order dated May 16, 2016, whereby the writ petition of the respondent no. 1 herein being W.P. No. 5590(W) of 2016, was disposed of with the following direction:-

“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 taken over by the State Government for construction of Haringhata-Panpur Road in the District of Nadia, in connection with L.A. Case no. 2/PWD/04-05. A notice under Section 4 of the Land Acquisition Act, 1894, was issued on January 10, 2007. No declaration was published under Section 6 of the 1894 Act. Hence, the acquisition proceedings initiated by the notice under Section 4 of the 1894 Act in 2007, lapsed.

3. It appears that again a notification dated January 19, 2009, was issued under Section 4 of the 1894 Act, in connection with the said land acquisition case. In the said notification the provision of Section 17(4) of the Act was invoked whereby the requirements of Section 5A were dispensed with. Again the said proceeding appears to have lapsed by reason of there being no declaration under Section 6 of the 1894 Act.

4. Yet another notification under Section 4 of the 1894 Act, dated April 29, 2010, was issued in connection with the said L.A. case. No light has been thrown by either party on the fate of that notification.

5. Finally, another notification dated September 26, 2011, was issued under Section 4(1) of the 1894 Act. In such notification there is no mention of Section 17(4) of the 1894 Act.

6. In the mean time the respondent no. 1 herein had approached a learned Single Judge of this Court in the writ jurisdiction by filing WP No 11152(W) of 2008 for payment of compensation in relation to the said LA Case. Such writ petition was disposed of by the learned Judge by an order dated September 24, 2008, the material portion whereof reads as follows:-

“It is submitted by Mr. A.N. Banerjee, the learned Senior government advocate, High Court on instruction from his client that a joint inspection to the aforesaid plots of land took place on September 19, 2008. On the basis of such inspection, it was revealed that the plots of land under reference had been acquired for the purpose of construction of Haringhata - Panpur Road, District-Nodia. It is submitted by Mr. Banerjee that the compensation has not yet been paid. It is further submitted by Mr. Banerjee on instruction that all the formalities can be completed within six weeks for payment of award money to the owner of the aforesaid plots of land in accordance with law.

Having heard the learned counsels appearing for the respective parties and after considering the facts and circumstances of this case, I direct the competent authority to conclude the above proceeding and to pay award money to the

owners of plots of land under reference within a period of six weeks from the date of communication of this order.”

7. There was no follow up action even with respect to the notification dated September 26, 2011, under Section 4 of the 1894 Act. There was no declaration under Section 6 of the Act.

8. In the aforesaid factual scenario the respondent no. 1 approached the learned Single Judge in the present round of litigation. The order under appeal was passed directing the Government to determine and pay compensation to the respondent no. 1/writ petitioner in terms of the provisions of the 2013 Act.

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

10. Learned Advocate for the appellants/State submitted that the land in question having already vested in the State by reason of the Gazette Notification dated January 19, 2009, whereby the provisions of Section 17(4) of the 1894 Act were invoked, the Land Acquisition Collector could not have subsequently issued any further notification under Section 4 of the 1894 Act, whether on September 26, 2011, or on any other date, in respect of the same land. He submitted that since the question of further acquisition of the land that already vested in the State cannot arise, compensation for such land including the land of the respondent no. 1/writ petitioner should be determined in terms of the provisions of the 1894 Act.

11. Learned Advocate then submitted that the learned Single Judge erred in directing acquisition proceedings to be initiated in terms of the provisions of

the 2013 Act. Since the land in question stood vested in the State once possession thereof was taken by invoking Section 17 of the 1894 Act, there can be no question of the State being divested of such land, even by reason of non-payment of compensation. At best the compensation amount would carry interest at the rate of 9 per cent or 15 per cent per annum as envisaged under Section 34 of the 1894 Act.

12. Learned Advocate finally submitted that the respondent no. 1/ writ petitioner was aware of the alleged violation of his right to receive compensation but did not take any step for enforcing such right for an inordinately long period of time. Possession of land was taken in 1982. The writ petition was filed in 2016. The writ petitioner must be deemed to have waived his right to compensation. In this connection learned Counsel referred to paragraph 350 of Hon'ble Supreme Court's decision in the case of ***Indore Development Authority v. Manoharlal and Ors. reported at (2020) 8 SCC 129.***

13. Learned Advocate for the respondent no. 1/writ petitioner, submitted that in the notification under Section 4 of the 1894 Act, dated September 26, 2011, there is no whisper about possession having been taken by invocation of Section 17 of the 1894 Act. Admittedly such notification lapsed prior to coming into force of the 2013 Act.

14. In this connection Learned Advocate for the Respondent no. 1/writ petitioner drew our attention to a memo dated June 13, 2014 (page 86 of the stay petition) addressed by the Additional District Magistrate (L.A, Nodia) to

the Joint Secretary, Government of West Bengal, L & LR department, which reads as follows:-

“Sir,

This is to draw your kind attention that Hon’ble High Court, Calcutta passed an order in W.P. no. 11252(W) of 2008 for payment of compensation relating to L.A. Case no. 2/PWD/04-05 of mouza Uttardattapara, J.L. No. 3, (sheet No. 3). The instant case was lapsed due to non-publication of Declaration u.s-6 within one year of publication of notification u/s -4. It was informed to this end vide Memo No. 4688-L.A/9R-77/06 (pt.-1) dt. 20.09.2011 of L&LR Deptt. It may be mentioned here that the land acquisition Act 1894 has been repealed w.e.f. 1st January 2014. New Act i.e. Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 is now in force. So necessary instructions may kindly be given so that further action regarding compliance of Hon’ble High Courts order in connection with the W.P. No. 11252(W) of 2008 & CAN no. 504 of 2009 may be taken from this end to avoid further legal complication.”

Relying on the said communication, learned Advocate for the respondent no. 1 submitted that the State has admitted that the land acquisition proceeding lapsed and as on the date of the 2013 Act coming into force, there was no land acquisition proceeding.

15. Accordingly, learned Advocate submitted that a new fresh land acquisition proceeding under the 2013 Act needs to be initiated.

16. Learned Advocate's alternative submission was that even assuming that the proceedings initiated under the 1894 Act did not lapse, in view of the Constitution Bench decision of the Hon'ble Supreme Court in the case of ***Indore Development Authority v. Manoharlal and Ors., (supra) reported at (supra) and Haryana State Industrial and Infrastructure Development Corporation Ltd & Ors. v. Mr. Deepak Agarwal & Ors. rendered in SLP (C) Nos. 16631 -16632/2018***, compensation must be determined in terms of the provisions of the 2013 Act pertaining to computation of compensation.

17. Learned Advocate then submitted that since successive notifications under Section 4 of the 1894 Act have been issued in the present case, it is the third and last notification dated September 26, 2011, which must be considered. That notification must be deemed to have superseded the earlier notifications. In this connection learned Advocate referred to the decision of the Hon'ble Supreme Court in the case of ***Raghunath & Ors. v. State of Maharashtra & Ors. reported at 1988 (3) SCC 294***.

18. Learned Advocate submitted that in view of the above, for the purpose of Section 24 (1) of the 2013 Act, the proceedings under the 1894 Act shall be treated to have been initiated by publication of the notification dated September 26, 2011, issued under Section 4 of the 1894 Act.

19. I have given my anxious consideration to the rival contentions of the parties.

20. The undisputed facts of the case have been noted above and I need not reiterate the same. It is not in dispute that in connection with the LA 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 came into force, there was no Award. The short question is whether or not any of the notifications issued under Section 4 of the 1894 Act survived after coming into effect of the 2013 Act or whether fresh proceedings would have to be initiated under the 2013 Act?

21. Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 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;”

22. 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.

23. In **Haryana State Industrial and Infrastructure Development Corporation Ltd & Ors. v. Mr. Deepak Agarwal & Ors. (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.”

24. The Hon'ble Supreme Court answered the aforesaid questions as 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.”

25. 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 under the provisions of the 1894 Act in so far as the procedure is concerned. However, compensation will be computed applying the provisions of the 2013 Act relating to determination of compensation.

26. 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 & Ors. (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.

27. As regards which of the notifications under Section 4 of the 1894 Act should be taken to be the starting point of land acquisition proceedings under the 1894 Act, the observations of the Hon'ble Supreme Court at para 9 of the reported decision in the case of ***Raghunath & Ors. v. State of Maharashtra & Ors. reported at (supra)*** may be noted:-

“9. Before concluding we must refer to one circumstance which was brought to our notice by learned counsel for the petitioners and which has also been noticed in the judgment of the High Court. It appears that, between the date of withdrawal of the earlier writ petition (namely, August 23, 1983) and the issue of the second declaration under S. 6 (namely, April 4, 1985), the Government had issued a fresh notification under S. 4 for the acquisition of certain lands. The lands in the two notifications under S. 4 do not completely overlap but it appears that some fields are common in both. No declaration under S. 6 appears to have been issued in furtherance of the second notification under S. 4 when the High Court heard the matter. Learned counsel for the petitioners points out that, at least in respect of such of the lands comprised in the S. 4 notification dated 22.6.1982 as are also covered by the subsequent notification under S. 4, it is legitimate to infer that the State Government has superseded the earlier notification by the latter one. This contention is clearly well founded. We would, therefore, like to make it clear that in respect of the lands covered by the first notification under S. 4 which are

also covered by or comprised in, the second notification under S. 4, further proceedings regarding acquisition should be taken, in accordance with law, only in pursuance of the latter notification and the proceedings initiated in respect of such lands by the first notification dated 22.6.1982 should be deemed to have been superseded.”

28. In view of the aforesaid the notification dated September 26, 2011, must be taken to be the notification by which the LA proceedings under the 1894 Act were initiated.

In this connection it may be noted that possession of the land in question was taken over by the Government prior to the initiation of the acquisition proceedings. The notice issued by the Government under Section 4 of the LA Act in 2009, wherein Section 17 of the Act was invoked, was obviously misconceived and not tenable in law for two reasons. Firstly because, such notice was issued years after possession of the land in question was taken over by the Government. Section 17 of the LA Act contemplates an emergency situation in which the Government can take possession of the concerned land any time after 15 days of publication of notice under Section 9(1) of the Act. Section 9(1) and Section 17 (1) of the LA Act read as follows:-

“9(1) **Notice to persons interested.** - (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take

possession of the land, and that claims to compensation for all interests in such land may be made to him.

17. Special powers in case of urgency. – (1) In cases of urgency, whenever the [appropriate Government], so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section 1). [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government], free from all encumbrances”

The second reason why the invocation of the power under Section 17 was untenable is that in the present case notice under Section 9(1) of the LA Act was never issued. Hence, the question of the land having vested in the State under Section 17(1) of the Act could not arise.

29. As regards the point of delay and waiver of right to claim to compensation, in the case of ***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."

30. 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.

31. On the question of the waiver, in our considered opinion, in the facts of the present case, the writ petitioner cannot be said to have waived his right to claim compensation. The operative notification under Section 4 of the 1894 Act, as we have already held, is that of 2011. The first notification is that of 2007. From 2012 onwards the writ petitioner has been making demand for compensation, but in vain. Hence, it can hardly be said that he had waived his right to claim compensation. Waiver of a legal right has to be by an overt clear act. It cannot be lightly presumed. We find no merit in the contention of the appellants that the writ petitioner waived his right to claim compensation.

32. 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.)***.

33. 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 the manner indicated in paragraph 26 above, within 12 weeks from date and pay the amount to the respondent/writ petitioner within two weeks thereafter.

34. 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.)