

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE Shekhar B. Saraf

WPA 3729 of 2018

Biswajit Mukherjee

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Malay Bhattacharyya, Adv.

Mr. Subhrojyati Ghosh, Adv.

For the State : Mr. Manas Kr. Kundu, Adv.

For the Asansol-Durgapur Development Authority : Mr. Sayanta Bose, Adv.
Ms. Ankita Chowdhury, Adv.

Last Heard on : August 30, 2023

Judgement on : August 30, 2023

Shekhar B. Saraf, J.:

1. This writ petition was heard after exchange of affidavits. Furthermore, in this writ petition a report has been filed by the State of West Bengal in the form of an affidavit (photostat copy of the said report has been

handed over in Court by the Counsel on behalf of the petitioner) and the same is taken on record.

2. In this writ petition, the petitioner has submitted that Bimalakanta Mukherjee, the grandfather of the petitioner was the actual owner of the property situated at Dag No.1714, J.L. No. 12, LR. Khatian No. 157, Mouza Ganrui, Police Station Asansol, District Burdwan comprising of a total area of 2.66 acres. That in the year of 1962, through a registered deed, the grandfather of the petitioner sold the said property to one Baidyanath Majhi and the said Baidyanath Majhi in the year of 1966 through a registered deed sold the said property to the Nalinakha Mukherjee, the father of the petitioner herein. That after the death of the petitioner's father in the year of 1993, the said property was inherited by the present petitioner. Presently, the petitioner is the actual owner of the property.
3. Subsequently, the petitioner in 2013 suddenly came to know that out of 2.66 acres of land in Dag No.1714, part of it has been recorded in the name of Asansol Durgapur Development Authority (hereinafter referred to as "ADDA").
4. It is upon such knowledge having been received by the petitioner, he has sought information from the Government of West Bengal with regards

to the above acquisition and thereafter filed this writ petition with the following two main prayers:

"a) A Writ of and/or in the nature of Mandamus do issue commanding the respondents not to encroach the petitioner's land situated at Dag No.1714, J.L. No.12 L.R. Khatian No. 157, Mouza Ganrui, Police Station Asansol, District Burdwan without any due process of law and also direct the respondents to act in accordance with law in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,

b) A Writ of and/or in the nature of Mandamus do issue commanding the respondents particularly the respondent nos. 3, 4 & 5 herein to ensure, protect and safeguard the peaceful possession and enjoyment of the land situated at Dag No 1714, J.L. No. 12, LR Khatian No. 157. Mouza Ganrui, Police Station Asansol, District Burdwan."

5. From a bare perusal of the writ petition and the prayers therein, it is clear that the petition is not only time barred but also contradictory in nature. The record clearly indicates that at the time of acquisition, the grandfather of the petitioner had sold the said property to one Baidyanath Majhi and it is only subsequently, on July 29, 1966 that the said portion was again purchased by the father of the petitioner from Baidyanath Majhi.

6. It is the claim of the petitioner that no compensation has been given to the father of the petitioner and he, accordingly, in his first prayer seeks

compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

7. The contention of the petitioner is that it is upon the respondents to indicate that compensation has been paid to his father and only after they can show the same, they shall be acquitted of their liability to make the said compensation to the petitioner.
8. I am amazed that such a frivolous and vexatious petition has been filed, and that too, after a lapse of more than 50 years. The acquisition by the Government is not in dispute. The present petition is nothing but a circuitous method of trying to get unjust enrichment.
9. The argument placed by the petitioner is that only 2.41 acres of land out of 2.66 acres of land was given to ADDA and the balance is still with him is without any basis whatsoever. He relies on *parcha* to indicate that he is still the owner of the remaining portion of the land that was not conveyed to ADDA.
10. In my view, it is immaterial whether the entire portion was given to ADDA or only 2.41 acres of land was given to ADDA. The crux of the matter is that the petitioner/his father lost the right to the said property once the acquisition took place in the year 1966. In fact, the

record shows that the petitioner's grandfather had already sold the property to a third party when the said acquisition took place, and it was only repurchased by the father of the petitioner after acquisition had taken place.

11. Furthermore, it is contradictory to demand for compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 when the purpose of the Act is to provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired by the Government or are affected by such acquisition. It is contradictory in nature to not only ask for ownership of land that has already been acquired by the Government, but to subsequently ask for compensation for land that may have been put back in their possession.

12. On the aspect of contradictory pleas, the Supreme Court in ***Steel Authority of India Ltd. v. Union of India and Ors.*** reported in **2006-III-LLJ-1037** held the following.

“28. The workmen whether before the Labour Court or in writ proceedings were represented by the same Union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should not be allowed to be raised even in an industrial adjudication. Common law principles of

estoppel, waiver and acquiescence are applicable in an industrial adjudication.”

13. It was further held in **Sarva Shramik Sangh vs. Indian Oil Corporation Ltd. and Ors.**, reported in **(2009) 11 SCC 609** that while there is no absolute bar on inconsistent pleadings, there is a bar on pleadings that are mutually repugnant to each other. The relevant paragraph is delineated below :-

“14. The assumption that there is an absolute bar on inconsistent pleas being taken by a party, is also not sound. What is impermissible is taking of an inconsistent plea by way of amendment thereby denying the other side, the benefit of an admission contained in the earlier pleading. Mutually repugnant and contradictory pleas, destructive of each other may also not be permitted to be urged simultaneously by a plaintiff/petitioner. But when there is no inconsistency in the facts alleged, a party is not prohibited from taking alternative pleas available in law.....”

14. Thus, it is clear from the law set down in the above two cases that the petitioner can't pray for two contradictory prayers that are mutually repugnant and destructive of each other. In the current petition, the petitioner can't ask compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and then pray for such land to be put under their possession.

15. The petition furthermore suffers from delay and laches. As law laid down in **Tilokchand Motichand Vs H.B. Munshi** reported in **(1969) 1 SCC 110**, parties should be relieved of the burden of claims when a

plaintiff has slept on his rights. The relevant paragraph has been reproduced below:-

“18. It seems to me, however, that the above solution is not quite appropriate for petitions under Art. 32. A delay of 12 years or 6 years would make a strange bed-fellow with a direction or order or writ in the nature of mandamus, certiorari and prohibition. Bearing in mind the history of these writs I cannot believe that the Constituent Assembly had the intention that five Judges of this Court should sit together to enforce a fundamental right at the instance of a person, who had without any reasonable explanation slept over his rights for 6 or 12 years. The history of these writs both in England and the U.S.A. convinces me that the underlying idea of the Constitution was to provide an expeditious and authoritative remedy against the inroads of the State. If a claim is barred under the Limitation Act, unless there are exceptional circumstances, prima facie it is a stale claim and should not be entertained by this Court. But even if it is not barred under the Limitation Act, it may not be entertained by this Court if on the facts of the case there is unreasonable delay. For instance, if the State had taken possession of property under a law alleged to be void, and if a petitioner comes to this Court 11 years after the possession was taken by the State, I would dismiss the petition on the ground of delay, unless there is some reasonable explanation. The fact that a suit for possession of land would still be in time would not be relevant at all.

16. It is patently illegal for the petitioners to contend that it is upon the respondent authorities to indicate that compensation has been paid and to prove that the compensation has been paid in the year 1966. The State Government cannot be expected to produce the records that are more than 50 years old.

17. In light of the above fact, I am of the view that this petition that has been filed after an inordinate delay of 52 years, is completely baseless and without any merit whatsoever. The prayers itself are contradictory and no relief whatsoever can be sought by the petitioner.

18. The writ petition is dismissed as being without any merit whatsoever. Normally, in such cases costs should be imposed by the Court. However, keeping in mind the pecuniary conditions of the petitioner, there shall be no order of costs.
19. Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)