

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 8172 of 2011
With
WPA 4886 of 2008
CAN 1 of 2008 (Old No: CAN 3997 of 2008)
Anita Mukherjee & Ors.
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Dilip Kumar Samanta Mr. Biswapriya Samanta Mr. Debapriya SamantaAdvocates
For the State	:	Mr. Ram Mohan PalAdvocate

Heard lastly on : 10.01.2023

Judgment on : 31.03.2023

Jay Sengupta, J.:

1. WPA 8177 of 2011 is an application under Article 226 of the Constitution of India praying for direction upon the respondents to rescind, recall and/or withdraw the impugned land acquisition proceeding initiated

by the respondent no. 4 in LA Case No. 41179 of 1988-89 as well as the impugned Award made in the same.

2. It appears that the original writ petitioners herein had earlier filed another application being WPA 4866 of 2008, inter alia, praying for correction of record of rights and praying either for initiating an acquisition proceeding afresh or for releasing the land in question. The same was dismissed on 04.04.2008. By an order dated 11.04.2012, the earlier order was recalled and the application was restored to its file. However, by that time WPA 8172 of 2011 had come into existence.

3. It further appears from the initial submissions of the learned counsels for the parties that the land records having been corrected by the appropriate authority, the issue is no more a contentious one. Therefore, a decision in WPA 8172 of 2011 would fairly govern the other application being 4886 of 2008. In this backdrop, the applications had been taken up for hearing together.

4. Mr. Samanta, learned counsel for the petitioners, submitted as follows. On 19.01.1966 the predecessor-in-interest of the petitioners purchased land measuring 2.20 acres lying at R.S. Dag No. 336, R.S. Khatian No. 175, J.L. No. 21, Mouza – Tarulia, Police Station – Rajarhat, District – North 24 Paraganas. Subsequently, the J.L.R.O., Rajarhat passed an order of vesting and made an order for settlement of the said land. On 22.11.1979 the respondents accepted the rent of the land in question from the predecessor-in-interest of the petitioners for the period 1974 to 1979. On 09.01.1982 the predecessor-in-interest preferred a writ petition being

C.O. No. 2156 (W) of 1982 before this Court and this Court was pleased to make the said Rule absolute by quashing the order of vesting and directed the respondents to treat the petitioners as raiyat directly under the State of West Bengal and to accept rent regularly. On 21.03.2005 the petitioner no. 1 made a representation to the Minister of the Land and Land Reforms Department on 04.07.2005 contending, inter alia, that the order of vesting having been quashed by the Hon'ble Court by the order dated 09.01.1982 in C.O. No. 2156(W) of 1982 and the land having been acquired by the Government without notice to the petitioners, the Record of Rights had not been corrected and the same was kept pending. The petitioner no. 1 however also made a prayer for making payment of compensation relating to the acquisition of the said land in question. It was submitted that a proceeding had been initiated by the BL & LRO, Rajarhat, the initiation of the proceeding being with effect from 03.01.2006 being North 24 Pgs/MISC (Peti) No. 1 of 2006 in the nature of a proceeding under Section 57 of the West Bengal Land Reforms Act. The order sheet of the Misc. proceeding with effect from 03.01.2006 to 28.05.2008 was clear regarding the divesting of the land in question in favour of the petitioners to the extent of 3.53 acres of land and in respect of the acceptance of the rent from petitioners. It was also declared that the order of vesting was erroneous and hence, the suit land was kept outside the ambit of Section 14T(3) of the West Bengal Land Reforms Act, 1955 and a Khatian was opened up in the name of Hiranmoy Mukherjee under Section 51A(4) of the West Bengal Land Reforms Act, 1955 suo motu. The Mouza was finally published in 1985. It was also held that

the erstwhile raiyat of the suit plot was Hiranmoy Mukherjee although the land was subsequently acquired on 1998 – 99 vide L.A. Case No. 4/179 of 1988-1989. It was also held that as a matter of fact, the raiyat Hiranmoy Mukherjee was liable to get retrospective effect since he had purchased the land and it was detected that the land was erroneously vested and as such the land was treated as never vested. It was directed to open up Khatian in the name of Hiranmoy Mukherjee and as he expired in 1989 and the names of the legal heirs were noted. Hence, 2.20 acres of land would be divided amongst several legal heirs of Hiranmoy Mukherjee by opening L.R. Khatian being No. 752, 753, 754, 755, 756, 757 and 758 with a entry of acquisition of the said L.R. Khatians and the proceeding was disposed of. The respondents having admitted that the acquisition of the land in question treating the same as a vested one was erroneous and as such, no notice of acquisition had been served upon the petitioners at any point of time in terms of Section 9(3) read with Section 45 of the L.A. Act, 1984. The acquisition of land without notice upon the interested parties like the petitioners who were the owners of the land was wholly illegal including the award made by the Land Acquisition Collector. On 03.07.2008 the petitioner no. 3 made a representation before the respondent no. 3 praying for release of the compensation money kept in P.L. A/C. The respondents accepted the rent of the land in question from the petitioners for the period with effect from 1985 to 2000. The respondent no. 4 had initiated Land Acquisition Proceeding being L.A. Case No. 4/179 of 1988-1989 without serving any notice upon the petitioners which was mandatory in terms of Section 9(3) of

the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) read with Section 45 of the said Act and acted illegally in making an award in favour of the Collector, North 24 Parganas in respect of the land of the petitioners. The petitioners were affected by the impugned acquisition proceeding. Under Section 9(3) of the said Act read with Section 45 of the said Act, it was provided there that service of notice upon the persons interested in the land was a mandatory one. The respondents proceeded against the petitioners illegally and the initial action of the respondents in respect of the acquisition of the land in question was not in consonance with law. Therefore, all subsequent actions relating to the acquisition including the award alleged to have been made by computing the value of the land in question under Section 12(2) of the Land Acquisition Act, 1984 and all subsequent actions were liable to be set aside and quashed in terms of the declaration of law made by the Apex Court in the judgments reported at (1990) 1 SCC 193, (2005) 3 SCC 422 and (2011) 5 SCC 142.

5. Mr. Pal, learned counsel representing the State, submitted as follows. On 11.01.1999 plot no. 336 BIL by classification measuring 3.53 acres of mouza Tarulia J.L. No. 21, P.S. – Rajarhat, Dist. North 24 Parganas was acquired in full in LA Case No. LA-4/179 of 1998-99 for a public purpose namely, for Rajarhat New Township projects, by virtue of notification under section 4 of the Land Acquisition Act, 1894 being no. North 24 Parganas No. 293-LA-4/179 of 1998-99/NTP, which was published in the Calcutta Gazette Extra Ordinary on 05.04.1999. On 05.04.1999 the aforesaid acquisition was published in the Calcutta Gazette Extra Ordinary and also

published in English Daily News Paper “The Asian Age” on 02.04.1999 and in “Ganashakti” on 03.04.1999. On 03.05.1999 the declaration was published in the Calcutta Gazette Extra Ordinary and in “The Asian Age” and in the “Ganashakti” on 03.05.1999 under Section 6, Act-I of 1894 being no. North 24 Parganas no. 451-LA-4/179 of 1998-99/NTP. A copy of said publication dated 03.05.1999 was annexed to the opposition. A notice under Section 9 of the LA Act 1894 was issued upon the recorded owner asking to appear for verification before the appropriate authority on 18.06.1999. On 25.11.1999 after verification, the award was made and was declared by the Collector. On 10.12.1999 possession of the land was taken and handed over to the requiring body i.e. the Housing Department Board of West Bengal. In 1991 and 1999 as the said plot 336 was involved in title suit being no. T.S. 371 of 1991 and another title suit 524 of 1999 by and between the writ petitioners and another person for dispute of title and claim, the amount of award money was kept in deposit with the Collector, North 24 Parganas under proper head of account. In 1999, in spite of the fact that notification under Section 4(1) and declaration under Section 6 of the Act-I of 1994 was published in Calcutta Gazette and also in English and Bengali News papers and the substance of the notice was widely published in the locality, the writ petitioners and/or their predecessor-in-interest/any of their representatives did not appear nor raise any claim before passing of the award, which became final. In 2008 the writ petitioner filed W.P. No. 4886(W) of 2008 and stated in para 8 that the writ petitioners came to know that the said land had been acquired by the respondent/State for the development of area, but

any compensation had never been provided to the petitioner. In para 18 of the writ, the petitioner stated that such compensation should be Rs. 54,03,719.72 and in para 19 stated that they were deprived from lawful earnings and in prayer (i) prayed for an order directing the respondents to pay the writ petitioners the sum already kept reserved in respect of the said land and in page 48 the writ petitioners prayed for compensation for such acquisition. On 10.09.2008 ASPIO & SPL. L.A.O. North 24 Parganas Barasat gave answer to the applications under the RTI Acts, 2005 as prayed for by the writ petitioner, Narendra Nath Mukherjee. In 2008 the writ petitioners' names were recorded in the records of rights in respect of 2.20 acres of land for the first time and not before the vesting of land.

6. I heard the learned counsels for the parties and perused the writ petitions, the affidavits and the written notes of submissions.

7. The facts relevant for adjudicating the present lis may be briefly enumerated as follows. On 19.01.1966 the predecessor-in-interest of the petitioner purchased land measuring about 2.2 acres at mouza Tarulia J.L. No. 21, P.S. – Rajarhat, Dist. North 24 Parganas. Subsequently, an order was passed of vesting and settlement of the said land in 1982. The said predecessor-in-interest was constrained to prefer a writ petition being CO No. 2156 (W) of 1982 and this Court was pleased to quash the order of vesting and direct the respondents to treat the petitioners as raiyats directly under the State and to accept rent. In 2005 the petitioner no. 1 made a representation before the concerned Minister for having the record of rights corrected. But, the same was kept pending. Thereafter, the BL & LRO

Rajarhat initiated a proceeding in respect of the purported divesting of land in favour of the petitioners. It was declared that the order of vesting was erroneous and a khatian was opened in the name of Hiranmoy Mukherjee, the erstwhile raiyat. It was also held that the raiyat was liable to get retrospective effect. As the said Hiranmoy Mukherjee had passed away in 1989, the names of the legal heirs were noted. Yet, the respondent no. 4 initiated land acquisition proceeding being LA Case No. 4/179 of 1988-89 without serving any notice to the petitioners which was mandatory in terms of Section 9(3) of the Land Acquisition Act 1894. The petitioners contended that such acquisition proceeding without notice to the real owners was bad in law. Since the land was utilised, the petitioners were required to be compensated by starting fresh proceeding. On the other hand, the State contended that the record of rights were not corrected by the time steps were being taken in the land acquisition cases. However the notification under Section 4 of the Act I was published in the Gazette as well as in daily newspapers as required. The declaration under Section 6 was also published accordingly. A notice under Section 9 of the Act I was issued upon the recorded owner. Only thereafter on 10.12.1999 possession of the land taken and handed over to the requiring body i.e., the Housing Development Board of West Bengal. Therefore, there is no illegality whatsoever in the acquisition proceeding. The petitioners did not respond to the public notices and did not intimate the concerned authorities about their claim.

8. Had it been a case that the proceeding for acquisition had lapsed and the land had been taken over and utilised, one would have simply directed

initiation of a fresh proceeding under the Act of 2013. But, here the authorities proceeded with the name of the owner recorded in the land records on the premise that there was a title dispute in respect of such land. Adequate public notices were given and even a notice was sent to the recorded owner and the land was finally handed over to the requiring body. Compensation money too was deposited with the Collector.

9. It is indeed true that the petitioners did not respond to the publication of notices and declaration in the official Gazette and in the local newspapers.

10. After the order of divesting was passed, the BL & LRO should have had the records corrected. But, the predecessor-in-interest also could have taken steps to have the relevant records corrected. Making a representation before the Hon'ble Minister is hardly the proper way of going about things. Finally, an application was made for correcting the records only after the acquisition was effected. These latches on the part of the petitioners go against them in trying to set the entire events at naught.

11. However, it is significant that the land records authority declared that the petitioners would be getting retrospective effect. This, at best, would make the petitioners entitled to compensation.

12. In other words, the proceeding for acquisition of land did not suffer from any apparent procedural illegality. It is only after the subsequent correction of records that the petitioners could claim that they were deprived of their dues in respect of such land.

13. Therefore, this is not a fit case to turn everything upside down and direct a fresh initiation of proceeding for acquisition of land. Afterall, the land has already been utilised through a valid acquisition proceeding after giving public notices.

14. The only harmonious way of providing a retrospective effect to the petitioners' rights is to direct the respondents to pay the amount of compensation money deposited before the concerned Collector in lieu of the acquisition of the petitioners' land to the petitioners.

15. In view of the above discussions, the writ petitions and connected application, if any, are disposed of by directing the respondents to pay the said sum received by the concerned Collector in lieu of the acquisition of the petitioners' land to the petitioners, as per their respective shares, within a period of eight weeks from the date of communication of this order.

16. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)