

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 6843 of 2022

**Ranjan Banerjee & Ors.
Vs.
State of West Bengal & Ors.**

For the Petitioners: Mr. Amit Kumar Pan, Adv.
Mrs. Tanusri Santra, Adv.,

For the State: Mr. Susovan Sengupta, Adv.
Mr. Soumitra Bandyopadhyay, Adv.
Mr. Ram Chandra Guchait, Adv.,

Hearing Concluded on: 28.03.2023

Date: 11.04.2023

SUVRA GHOSH, J. :-

1. The prayers of the petitioners are hereunder:-

“(a) A writ in the nature of Mandamus commanding the respondents to rescind and/or withdraw the impugned order dated 10.03.2022 being ‘Annexure-P/8’ herein, forthwith;

(b) A writ in the nature of Mandamus commanding the respondents to pay the compensation money so awarded in respect of the said land to the petitioners, forthwith;”

2. It is contended on behalf of the petitioners that the petitioners are recorded owners of the plots in question situated in Mouza – Patharpratima, J.L. No. 213, Police Station – Patharpratima (at present Gobardhanpur Costal), District- South 24 Parganas. The plots were acquired by the State Government for the purpose of reconstruction of Aila affected Sundarban embankment vide LA Case No. 4/6 of 2012-13 and possession of the land was taken over on 12th July, 2012 upon invoking section 17 of the Land Acquisition Act, 1894. Notice under section 4 of the Act was published on 12th July, 2012. Declaration under section 6 of the Act was published on 27th December, 2012. No compensation was paid to the petitioners despite making several visits to the office of the respondents and on 27th September, 2020 the petitioners learnt that award was declared way back on 12th December, 2013. The petitioners made a representation before the Special Land Acquisition Officer on 5th October, 2020 for disbursement of compensation and were called for a hearing by the Additional Land Acquisition Officer on 15th October, 2020. No further communication was made to the petitioners by the State respondents for which the petitioners were constrained to approach this Court in a writ petition being W.P.A. No. 20853 of 2021. By an order passed on 4th December, 2022 this Court directed the concerned authority to consider and dispose of the representation submitted by the petitioners within a period of two months

from the date of communication of the order after affording reasonable opportunity of hearing to all the interested parties including the petitioners, in accordance with law. Pursuant to the said direction, the concerned authority, being the Special Land Acquisition Officer, South 24 Parganas, Alipore, took up the matter for hearing and by an order passed on 10th March, 2022, disposed of the representation with a direction that the award declared against the suit plots as claimed by the petitioners marked as 'Non-Verified Award' are to be deposited in the Court of Learned Special LA Judge, Alipore, under section 30 read with section 31 of the LA Act I of 1894 for further adjudication of the matter. The said order is assailed in the writ petition.

3. It is submitted on behalf of the petitioners that in terms of the memo issued by the Special Land Acquisition Officer on 3rd March, 2022 requesting the petitioners along with their learned counsel to remain present at the hearing on 10th March, 2022 the petitioners through their learned counsel appeared before the authority and placed their submission along with copies of relevant documents in support of their claim. But it has been recorded in the order impugned that in spite of receiving notices, the awardees did not turn up during the hearing. The concept of 'Non-Verified Award' is unknown to law and the order demonstrates that the award was verified and the petitioners were held entitled to get the compensation amount. The petitioners plead violation of the principles of natural justice due to such observation made by the authority in the order impugned.

4. Per contra, learned counsel for the State respondents submits that there is no fault in the decision making process of the authority that can be canvassed in the writ petition. In the earlier writ petition, there was no direction upon the respondents to pay the compensation to the petitioners and the compensation amount has been rightly directed to be deposited before the Civil Court in compliance with the statute. The petitioners approached the authority for compensation after delay of 7 years which has not been explained. Referring to Clause 84 of Chapter VI of the compilation of executive instructions of the Government of West Bengal, learned counsel has submitted that in terms of the said instructions, if the apportionment is complicated and beyond the capacity of the Collector to determine, he is to refer the matter to the Court himself under section 30 of the Act. Learned counsel has also placed reliance on the authority in Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others v/s. Director General of Civil Aviation and Others reported in (2011) 5 Supreme Court Cases 435 and submitted that an executive order can be issued by the authority keeping in view the rules and executive business which may not have the force of law but provides guidelines to all concerned, who are bound by it. The law merely prohibits the issuance of a direction, which is not in consonance with the Act or the statutory rules applicable thereunder. The rules can be supplemented and gaps filled up.
5. I have considered the submission made on behalf of the parties and material on record.

6. At the outset, sections 30 and 31 of the Land Acquisition Act, 1894 are required to be set out:

“Section 30:- Dispute as to apportionment.- When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.”

“Section 31:- Payment of compensation or deposit of same in Court.- (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted.”

7. The order impugned records that on the date of hearing the petitioners were represented before the authority through their learned counsels who submitted an authorisation letter. According to the respondents, since the awardees/petitioners did not turn up before the authority despite receiving notice of acquisition, the award was declared as non-verified since

verification/apportionment of the same in respect of each awardee could not be made. The said observation is not supported by any document which suggests receipt notice of award by the petitioners. The petitioners claim to have appeared before the authority upon receipt of notice of acquisition and have produced documents to substantiate their claim. Strangely, the award was directed to be deposited before the Civil Court only by the order impugned, after lapse of 9 years from the date of award. No explanation has been given by the authority as to what prevented them from depositing the award before the Civil Court immediately after the alleged absence of the petitioners before it. Even if it is held that the award could not be verified when it was declared, the order impugned demonstrates that upon hearing the petitioners and perusing the documents produced by them, individual award was declared in favour of the petitioners, determining their respective shares and holding them to be entitled to the same.

8. Section 30 of the Act of 1894 is invoked when there is any dispute as to the apportionment of the award or as to the persons to whom the same or any part thereof is payable. Section 31 of the Act contemplates that the compensation shall be tendered and paid to the persons interested/entitled unless they do not consent to receive it or there is no person competent to alienate the land or there is any dispute as to the title to receive the compensation or as to the apportionment of it. In the event of any of the said contingencies, the compensation shall be deposited in Court.
9. In the case in hand, no such contingency has arisen before the authority to invoke section 30/31 of the Act of 1894. It is not understood how despite

declaration of the shares of the petitioners and holding them to be entitled to compensation, the authority could have directed to deposit the compensation amount in the Court of the Learned Special LA Judge in terms of section 30/31 of the Act of 1894 when the said provisions are not applicable at all.

10. Such decision in the order impugned is undoubtedly de hors the statute and strikes at the root of the decision making process and therefore, cannot be sustained. It is ridiculous to note that the petitioners were deprived of the compensation by the authority merely because there was no specific order to that effect by the Court in the earlier writ petition. The authority appears to have lost sight of the fact that in the earlier writ petition the Court directed it to dispose of the applications filed by the petitioners which in no uncertain terms indicate that the applications which were for payment of compensation were directed to be disposed of, meaning thereby, that the authority ought to have paid the compensation to the petitioners since the order impugned demonstrates that the petitioners are held to be entitled to the same. Clause 84 of Chapter VI of the compilation of the executive instructions of the Government of West Bengal relied upon by the respondents also demonstrates that the matter can be referred to the Court under section 30 of the Act if the apportionment is complicated and beyond the capacity of the Collector to determine. This is definitely not the case in the present application. Once the Special Land Acquisition Officer decided the entitlement of the petitioners upon verification of all relevant documents, he had no alternative but to pay compensation to the petitioners in

accordance with their respective entitlement. Under no provision of law could he have directed the award to be deposited in the Civil Court.

11. The ratio laid down in the authority in Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others (supra) has no manner of application in the facts and circumstances of the present case in so far as it deals with filling up gaps and supplementing rules by way of executive instructions issued for guidance, not being inconsistent with the Act or statutory rules applicable thereunder.
12. In this case, the executive instructions referred to are in consonance with the statute and do not come to the aid of the respondents.
13. Last but not the least, learned counsel for the respondents has raised the issue of unexplained delay of seven years on the part of the petitioners in approaching the authority for compensation. The petitioners have contended that despite appearing before the authority with all relevant documents upon receipt of acquisition notice, no further communication was made by the authority. The petitioners learnt about the award only on 27th September, 2020 and approached the authority for payment of the same on 5th October, 2020. The respondents have not been able to substantiate issuance of notice of award upon the petitioners or receipt of the same by the latter. The petitioners having approached the authority immediately upon knowledge of the award, there has been no delay on their part that can frustrate their cause in the writ petition. The gap between the dates of

declaration of award and approach made by the petitioners before the authority has been sufficiently and adequately explained.

14. In the light of the above discussion, this Court is inclined to set aside the order impugned passed on 10th March, 2022 and direct the Special Land Acquisition Officer, South 24 Parganas, Alipore, being the 3rd respondent herein, to disburse the compensation to the petitioners forthwith.
15. In view of the above, the order impugned passed by Special Land Acquisition Officer, South 24 Parganas, Alipore, on 10th March, 2022 is set aside.
16. The Special Land Acquisition Officer, South 24 Parganas, being the 3rd respondent herein, is directed to disburse the compensation to each of the petitioners in terms of the award within six weeks from the date of communication of this order. He is at liberty to take necessary steps for withdrawal of the amount deposited before the Learned Special LA Judge, Alipore in accordance with law.
17. The writ petition being W.P.A. 6843 of 2022 is accordingly allowed.
18. There shall however be no order as to costs.
19. Since no affidavit is invited, the allegations contained in the writ petition are deemed not to be admitted.

20. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)