

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

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 8148 of 2017

**Smt. Sucharita Roy
Vs.
The State of West Bengal & Ors.**

For the Petitioner: Mr. Milan Bhattacharyya, Sr. Adv.,
Mr. Dilip Kumar Chatterjee, Adv.,
Mr. Mrinmoy Bhattacharyya, Adv.

For the State: Mr. Soumitra Bandyopadhyay, Adv.,
Mr. Wasim Ahmed, Adv.,
Mr. Sk. Md. Masood, Adv.,
Mr. Parikshit Goswami, Adv.,

Hearing Concluded on: 06.12.2023

Date: 14.12.2023

SUVRA GHOSH, J. :-

1. The petitioner prays for issuance of writ in the nature of mandamus directing the respondent authorities to pay compensation at the present market value along with solatium and admissible interest upon declaring the land in question has already been acquired and utilised by the respondents.
2. The petitioner claims to be the owner of 23 decimals of land situated in mouza- Uttar Latabari, Khatian No. 409/1, R.S Dag No. 299 under Police Station Kalchini in Jalpaiguri. The petitioner was asked by the respondent

authorities to submit relevant documents relating to her title and possession for acquisition of the property under the project Uttar Latabari Water Supply Scheme and submitted the said documents on 3rd January, 2012 accordingly. The petitioner was dispossessed from the land prior to issuance of notification under section 4(1) of the Land Acquisition Act, 1894 and has been deprived of her right to property as enshrined under Article 300 A of the Constitution of India. The land has already been utilised by the State Government for the Water Supply Scheme but no compensation was paid to the petitioner for the same.

3. Learned counsel for the petitioner has drawn the attention of the Court to the application made by the requiring body for acquisition of the land which reveals that the estimated total quantum of land to be acquired was 0.23 acres and the estimated cost of land acquisition was Rs. 56.35 lakhs. The letter issued by the Executive Engineer, Jalpaiguri Division to the Joint Secretary, Government of West Bengal, Land and Land Reforms Department on 14th July, 2015 indicates that the scheme was already complete on that date. The market value of the land appears to be Rs. 60,26,000/- as in the year 2016. Learned counsel has taken this Court to the affidavit submitted by the Executive Engineer, Alipurduar Division of the Public Health Engineering Department which demonstrates that the land utilised for the scheme belong to the petitioner. Annexure R-5 to the affidavit records the names of the members of the beneficiary committee for the scheme which does not include the petitioner, the petitioner therefore not being aware of the committee or the details of the scheme at all. The Pradhan of Latabari

Gram Panchayat, one of the members of the beneficiary committee, apprised the Executive Engineer vide memo dated 13th October, 1999 that the land in question was owned by the petitioner the beneficiaries were responsible for contributing towards the share of the capital cost of the scheme and not for providing land, as appears from the letter dated 5th June, 2002 issued by the Deputy Secretary (Technical) to the Government of West Bengal to the Chief Engineer, Northern Zone, PHE Department, Government of West Bengal.

4. Learned counsel has also relied upon the affidavit submitted by the Additional Land Acquisition Officer, Jalpaiguri which reveals that upon physical enquiry it was found that construction work was already completed by the PHE Department, Jalpaiguri Division. The land was never acquired and there was no question of payment of compensation.
5. Learned counsel has placed reliance on the authorities in Vidya Devi v/s. State of Himachal Pradesh and Others reported in (2020) 2 Supreme Court Cases 569 and Sukh Dutta Ratra and Another v/s. State of Himachal Pradesh and Others reported in (2022) 7 Supreme Court Cases 508, in support of his contention.
6. Placing reliance on the affidavit submitted on behalf of the State respondents, learned counsel for the State respondents has submitted that admittedly the land of the petitioner was not acquired and she is therefore not entitled to any compensation. The land pertaining to 33 decimals was utilised for the Water Supply Scheme upon knowledge and consent of the petitioner and construction of the pump houses was completed in 2008. The

petitioner chose to remain silent over the matter for considerable period of time and approached the authority for the first time only in 2012, the inordinate delay not being explained. The pattern of finance provided that the scheme would be funded on grant basis by the Central Government to the extent of 50% and the State Government to the extent of remaining 50% including 5% contribution by the beneficiary. A beneficiary committee was formed on 22nd August, 2022 and it was resolved that the committee would provide land free of cost for installation of four tube wells in lieu of 5% cost of the total project estimate. The committee ear-marked the petitioner's land for the purpose and sent the same to the Government for installation of the tube wells. The members of the beneficiary committee should have been added as party respondents in the writ petition.

7. Learned counsel has distinguished the judgment in Vidya Devi (supra) and has submitted that in the said judgment, the State took over the land of the appellant whereas in the present case, the land was given to the State by the beneficiary committee. Learned counsel has also submitted that the quantum of land involved in the writ petition is in dispute, the Government records indicating that it is 33 decimals and the petitioner claiming that it is 23 decimals.
8. The affidavit submitted on behalf of the 9th respondent is more or less a reiteration of the contention of the State respondents.
9. The facts which are not in dispute are enumerated hereunder:-

The petitioner is the owner of 23 decimals of land in mouza- Uttar Latabari, Khatian No. 409/1, R.S. Dag No. 29, Police Station- Kalchini, District- Jalpaiguri.

The land has been utilised for the Water Supply Scheme by the Public Health Engineering Department and construction of pump houses was completed in 2008. No compensation has been paid to the petitioner for utilisation of her land.

10. At the outset, the delay in approaching the authority by the petitioner as pointed out on behalf of the State respondents is required to be dealt with. It is a fact that though the project was completed in 2008, the petitioner approached the authority seeking compensation in about 2015.
11. In dealing with such delay, the Hon'ble Supreme Court, in the authority in Vidya Devi (supra) has held that 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. In the said matter, the appellant being an illiterate person who was deprived of her private property by the State without resorting to the procedure prescribed by law and the State admitting that the land was taken over without initiating acquisition proceedings, the delay was condoned and the State was directed to pay compensation to the appellant along with all statutory benefits including solatium, interest, etc by treating it as a case of deemed acquisition.

12. The authority in Sukh Dutta Ratra (supra) reiterates the same proposition of law and records that it is unacceptable that merely on the ground of delay and laches the State can evade its legal responsibility towards those from whom private property has been expropriated. The Hon'ble Court has held such dispossession has violative of human right as well as constitutional right under Article 300 A and directed to treat the subject land as a deemed acquisition and appropriately disburse compensation to the appellants therein.
13. The fact of the present case being identical to the said reports, the delay in approaching the authority ought to be condoned and the petitioner cannot be deprived of her legitimate claim merely on the ground of delay.
14. On merits, since the plot in question admittedly owned by the petitioner has been utilised by the Public Health Engineering Department, being the 7th and 8th respondents herein without compensating the petitioner for the same, the petitioner is entitled to compensation along with all statutory benefits including solatium, interest, etc., at the present market rate from the said respondents
15. Learned counsel for the State respondents has tried to impress upon the Court that for the purpose of the scheme a beneficiary committee was formed and in terms of the program, the committee was to contribute 5% of the total project cost. Since the committee was unable to provide the said cost, it was resolved that it would provide land free of cost. The petitioner's land was accordingly provided by the Committee to the PHE Department.

16. It is not in dispute that the petitioner was not a member of the beneficiary committee and there is nothing on record to indicate that the land was offered for the scheme upon knowledge and consent of the petitioner. Therefore the petitioner cannot be said to have had any liability for the said transfer which was made beyond her knowledge. The said transfer made by the beneficiary committee is not tenable in law. The State respondents also cannot shirk their responsibility to pay compensation to the petitioner for utilising her land without acquiring it by due process of law. Since the land has been utilised by the PHE Department, the members of the beneficiary committee are not necessary or proper parties to the writ petition, *moreso*, as decision taken in the writ petition shall not affect their interest in any manner.
17. It is trite law that the right to property is a human right in a welfare State and a constitutional right under Article 300 A of the Constitution. No person can be deprived of his property by anyone including the State except in accordance with procedure established by law. The authority in *Vidya Devi* (*supra*) says that in such case, the obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article.
18. In the present case, since the petitioner has been deprived of her property by the State without resorting to procedure prescribed by law, she is entitled to compensation for the same along with other statutory benefits including solatium, interest, etc., treating it as a case of deemed acquisition. In other words, the property of the petitioner is deemed to have been acquired by the

State and the petitioner is entitled to compensation and other statutory benefits for the same.

19. In the light of the observation made hereinabove, the writ petition succeeds.
20. Accordingly, W.P.A. 8148 of 2017 is allowed.
21. The respondents are directed to pay compensation to the petitioner at the present market rate along with all statutory benefits including solatium, interest, etc., within two months from the date of communication of this judgment.
22. There shall however be no order as to costs.
23. 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)