

02. 22.12.2023
Court No.6
Kole

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 478 of 2018

+

IA NO: CAN/1/2018 (Old No: CAN/4594/2018)

+

CAN/2/2018 (Old No: CAN/4595/2018)

The State of West Bengal & Anr.

Vs.

Premendu Sekhar Hazra & Ors.

For the Appellants / : Mr. Susovan Sengupta, Adv.,
State Mr. Subir Pal, Adv.

For the writ petitioners/ : Mr. Anjan Datta, Adv.
respon-dents Mrs. P. Dey, Adv.

For Amicus Curiae : Mr. Amit Kumar Pan, Adv.

Arijit Banerjee, J. :-

1. A Judgment and order dated January 9, 2018, whereby the writ petition of the respondent nos. 1 and 2 herein, being W.P. 11798(W) of 2017, was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of the State of West Bengal, and the Land Acquisition Collector Burdwan.

2. The material facts of the case are not in dispute. The respondents/writ petitioners were owners of land described in details in the writ petition. Such land was taken over by the State Government for the purpose of constructing a road, in exercise of power under Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948

(hereinafter referred to as the 1948 Act). It appears that possession of the land was made over to the requiring body sometime in December, 1976. No notice under Section 4(1a) of the 1948 Act, for acquiring the concerned land, was ever published by the State Government. The proceeding under the 1948 Act was converted into a proceeding for acquisition of the land under the provisions of the Land Acquisition Act, 1894 (in short the 1894 Act), by issuing notice under Section 9(3A) of the 1894 Act to the persons interested including the respondents/writ petitioners herein. Hearing under Section 9 (3A) of the 1894 Act was completed in December 2013. The State says that the Award was prepared and was duly approved by the then Collector, Burdwan before the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short the 2013 Act) came into force. However, admittedly such Award was never published nor the writ petitioners received any compensation for their land possession of which was taken over by the State Government.

3. Being aggrieved, the writ petitioners approached a learned Single Judge of this Court by filing W.P. no. 11798(W) of 2017 primarily with the following prayer:-

“A) A writ in the nature of mandamus directing the respondents, their men, agents and subordinates to pay the compensation as per market value of plot no. 459 measuring 44 cents under Irkona Mouza, J.L. No. 103,

Khatian No. 1049, Galsi –II as requisition /acquisition vide order Case No. 121(82) LA/SGD-11/13 of market price of lands since the date of acquisition in the year with product value with interest @ 10% as applicable.”

4. Before the Learned Single Judge a report in the form of affidavit was filed by the then Land Acquisition COLLECTOR, Shri Subrata Mandal, on January 2, 2018. The said report clearly stated that no Award had been made in connection with the concerned land acquisition case. Taking note of the said report the learned Judge held that since the 2013 Act has come into force and the 1894 Act stands repealed, the State cannot any more attempt to determine compensation under the 1894 Act. The State must determine compensation in terms of Section 24(1) (A) of the 2013 Act and utilize all the provisions of that Act which are applicable for determination of compensation. The material date for compensation of market value would be the date when fresh notice is issued.

5. The learned Judge disposed of the writ petition with the following directions.

“A) The State of West Bengal shall issue notice in terms of Section 24(1) A of the Act of 2013 granting at least 15 days’ time to the writ petitioners and other persons in terms of the Act of 2013 within a period of a fortnight from the date of communication of this order.

B) The State of West Bengal shall determine the compensation through the proper authority after hearing

the concerned parties by passing a reasoned award within a period one month from the date of concluding the hearing.

C) The state of West Bengal shall thereafter proceed to pay compensation as determined under the provisions of Section 24(1) A of the Act of 2013 to the writ petitions and other persons interested expeditiously, but positively within a period of one month from the date of determination of the compensation. In addition to the time periods mentioned above in no case the entire procedure shall take more than six months. I make it clear that the State must mandatorily conclude the entire proceedings within six months.”

6. Being aggrieved, the State of West Bengal and the Land Acquisition Collector have come up by way of this appeal.

7. Learned Advocate for the State submitted that acquisition proceedings were initiated under the provisions of the 1948 Act by invoking Section 3(1) of that Act. Possession of the land in question was taken and made over to the representative of the requiring body on December 6, 1976. Thereafter the State invoked the provisions of Section 9(3A) of the 1894 Act since, no notice under Section 4(1a) of the 1948 Act had been published in the Calcutta Gazette. Under Section 9(3A) of the 1894 Act, the State Authorities were empowered to proceed with the pending acquisition proceedings and such proceedings were completed in terms of the provisions of the 1894 Act.

The 2013 Act does not contain any provision which would annul completed acquisition proceedings.

8. It was submitted that once Section 9(3A) notice was issued, acquisition proceedings stood initiated under the 1894 Act. Thereafter, there could be no question of applicability of the provisions of the 2013 Act. The compensation that is payable to the respondent/writ petitioners would be governed by the provisions of the 1894 Act.

9. Relying on the decision of the Hon'ble Supreme Court in the case of ***Indoor Development Authority v. Manoharlal & Ors. (2020) 8 SCC 129***, learned Advocate submitted that since admittedly possession of the land in question was taken over by the State way back in the year 1976, Section 24 of the 2013 Act would not have any manner of application.

10. It was then submitted that the estimated award amount of Rs. 22,88,977/- was approved by the then Collector prior to July 25, 2013, and such amount was deposited by the Executive Engineer, Burdwan Division – II, P.W.D Directorate (Roads) on September 27, 2013. In this connection learned Advocate referred to a letter dated September 23, 2013, issued by the then Executive Engineer, Burdwan Division –II P.W.D Directorate.

11. It was finally submitted, relying on the decision of the Hon'ble Supreme Court in the case of ***U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr., reported at (2006) 11***

SCC 464., that if the claimant in a legal proceeding is aware of violation of his right but does not claim his remedy for a long time, such inaction or conduct tantamounts to waiver of his right. In such cases, the lapse of time and the delay are most material factors and cannot be ignored by the Court. By reason of the delay and laches on the part of the respondents/writ petitioners, the learned Single Judge should not have entertained the writ petition at all.

12. Learned Advocate for the respondents/writ petitioners submitted that no notice of acquisition under Section 4(1a) of the 1948 Act was ever published in the Calcutta Gazette. Section 9 (3A) of the 1894 Act was invoked and hearing in that connection was completed on December 19, 2013. No award was however published.

13. Learned Advocate drew our attention to the report in the form of affidavit filed by Subrata Mandal, the then Land Acquisition Collector, before the learned Single Judge, on January 2, 2018. It was pointed out that the said report clearly stated that no award had been made till the date of the report.

14. Learned Advocate then drew our attention to another report in the form of affidavit filed by the Additional Land Acquisition Collector, Purba Burdwan, in July, 2022, in this appeal. That report also clearly states that till the date of that report, no award had been made.

15. A supplementary affidavit filed by one Shri Pijush Kanti Sarkar being the Additional Land Acquisition Officer, Purba Burdwan, in August, 2022, in this appeal, was also brought to our notice. In the said affidavit also there is a clear statement that till the date of that affidavit no award had been made.

16. Learned Advocate submitted that the award may have been prepared in December 2013 and may have also been approved by the Competent Authority. However, that does not tantamount to declaration or making of the Award. Hence, the entire acquisition proceeding lapsed in terms of Section 24 of the 2013 Act and the respondents/writ petitioners are entitled to receive compensation in accordance with the provisions of the 2013 Act.

Court's view

17. The material undisputed facts of the case are recorded in paragraph 2 hereinabove and the same are not repeated here.

18. The 1948 Act was a temporary piece of legislation. The life of the said Act was extended from time to time and was finally extended till March 31, 1997, by the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, which was published in the Calcutta Gazette extraordinary on March 31, 1994. The Act of 1948 died a natural death on March 31, 1997. Further, by reason of the 1994 Amendment Act, Section 3 of the 1948 Act was

omitted with effect from April 1, 1994. Consequently, with effect from that date, State's power to requisition land under Section 3 of the 1948 Act stood abrogated.

19. The 1948 Act was again amended by the West Bengal Land (Requisition and Acquisition) (Amendment) Act 1996, which was published in the Calcutta Gazette extraordinary on October 8, 1996, with retrospective effect from April 1, 1994. By Section 3 of the 1996 Amendment Act, Section 7A was inserted in the 1948 Act. Section 7A of the Act reads as follows:-

“7A. Award by Collector. :-

The Collector shall make an award under sub-section (2) of section 7 within a period of three years from the date of publication of the notice in the Official Gazette under sub-section (1a) of section 4 (hereinafter referred to as the said notice), and if such award is not made within the period as aforesaid, the said notice shall lapse: Provided that in a case where the said notice has been published more than two years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the award shall be made within a period of one year from the date of commencement of that Act.

Explanation. In computing the period of three years or one year, as the case may be, under this section, the period during which any action or proceeding to be taken in

pursuance of the said notice is stayed by an order of a Court having jurisdiction, shall be excluded.”

20. The effect of Section 7A was that if any notice under Section 4(1a) of the 1948 Act was issued before March 31, 1992, and the Collector failed to pass any award by March 31, 1995, the notice of acquisition would lapse. In respect of a notice issued after March 31, 1992, the Collector was obliged to pass an award within 3 years from the date of publication of the notice under Section 4(1a) of the 1948 Act, in default, the notification under Section 4(1a) would lapse.

21. To save the proceedings initiated under the 1948 Act, from lapsing, the 1894 Act, in its application to the State of West Bengal, was amended by the Land Acquisition (West Bengal Amendment) Act, 1997. By section 3 of the 1997 Amendment Act, after sub-section 3 of Section 9 of the 1894 Act, two new sub sections namely (3A) and (3B) were inserted. These two sub-sections read as under:-

“(3-A) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under Section 3 of the West Bengal Land (Requisition and Acquisition) Act, 1948 (hereinafter referred to in this section as the said Act), as re-enacted by

the West Bengal Land (Requisition and Acquisition) Re-enacting Act, 1977, and, in every such case, the provisions of sub-section (1) of Section 4, Section 5, Section 5-A, Section 6, Section 7 and Section 8 of this Act shall be deemed to have been complied with:

Provided that the date of notice under this sub-section shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that when the Collector has made an award under Section 11 in respect of any such land, such land shall, upon such award, vest absolutely in the Government, free from all encumbrances.

(3-B) The Collector shall also serve notice to the same effect on all such persons known or believed to be interested in any land, or to be entitled to act for persons so interested, the possession whereof has already been taken on requisition under Section 3 of the said Act, and notice for acquisition of such land has also been published under sub-section (1-a) of Section 4 of the said Act, and, in every such case, the provisions of Section 4, Section 5, Section 5-A, Section 6, Section 7, Section 8 and Section 16 of this Act shall be deemed to have been complied with:

Provided that the date of publication of notice under sub-section (1-a) of Section 4 of the said Act shall be the date of reference for the purpose of determining the value of such land under this Act:

Provided further that in every such case, the Collector shall make an award under Section 11 in respect of such land only for the purpose of payment of due compensation to the persons interested in such land where such land has, upon the Collector taking possession thereof, already vested absolutely in the Government, free from all encumbrances.”-W.B. Act 7 of 1997, S. 3 (w.e.f.2-5-1997).”

22. In the facts of the present case, admittedly no notice of acquisition under Section 4(1a) of the 1948 Act was issued.

23. In other words, no acquisition process was initiated under the 1948 Act. By service of notice under Section 9(3A) of the 1894 Act, the land in question was sought to be acquired. In other words, the concerned land was sought to be acquired under the provisions of the 1894 Act. Admittedly no award under Section 11 of the 1894 Act had been made as on the date of the 2013 Act coming into force, i.e., January 1, 2014. Clearly, the land acquisition proceedings lapsed and Section 24(1)(a) of the 2013 Act came into play. Section 24(1) of the 2013 Act reads as follows:-

“(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(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; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.”

24. In the instant case, notice under Section 9(3A) of the 1894 Act was dated 26th November, 2013. With the service of such notice, Sections 4 and 6 of the 1894 Act were deemed to have been complied with. However, no award was made prior to repeal of the 1894 Act with effect from January 1, 2014. Hence, Section 24 1(a) of the 2013 Act would come into play and all the provisions of that Act relating to determination of compensation shall apply.

25. However, that does not mean that fresh notice of acquisition has to be issued under the 2013 Act. As interpreted by the Hon’ble Supreme Court in the case of ***Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation v. Mahesh & Ors., reported at (2022) 2 SCC 772***, paragraph 15, Section 24(1)(a) of the 2013 Act “consciously saves the legal effect of the notifications issued under Section 4 and/or Section 6 of the 1894 Act and obviates the necessity to issue a fresh notification under the 2013 Act.” In paragraph 18 of the reported judgment the Hon’ble Supreme Court further held as follows:-

“18. In paragraph 295 in **Indore Development Authority**, the Constitution Bench held that the 2013 Act operates prospectively. Further, Section 114 of the 2013 Act effects a repeal but with certain savings, in accordance with Section 24. Thus, the acquisition proceedings are preserved under the 1894 Act till the stage of making of the award. Where an award is not made, the provisions relating to determination of compensation under the 2013 Act would apply; where the award is made, proceedings would continue under the provisions of the 1894 Act as if the said Act has not been repealed. Our interpretation of Section 24(1) of the 2013 Act respectfully follows this precedent.”

26. In so far as the direction of the learned Single Judge is concerned, the 2013 Act does not contain any Section 24(1)(A). Hence no notice can be issued under Section 24(1)(A) of the 2013 Act. The judgment under appeal is modified to the extent indicated in this judgment.

27. As regards the point of delay or laches on the part of the respondent/writ petitioners, urged by learned Counsel for the State, I can do no better than to reproduce the observations of the Hon’ble Supreme Court in paragraphs 12.12, 12.13, 12.14 in the case of **Vidya Devi v. The State of Himachal Pradesh and Ors. reported at (2020) 2 SCC 569.**

“12.12. 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.

12.13. *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.*

12.14. *In **Tukaram Kana Joshi and Ors. v. M.I.D.C. and Ors., (2013) 1 SCC 353: (2013) 1 SCC (Civ) 491**, this Court while dealing with a similar fact situation, held as follows:*

“11. 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. The 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.”

28. In the case of **Sukh Dutta Ratra v. State of Himachal Pradesh reported at (2022) 7 SCC 508**, the Supreme Court directed payment of compensation to the appellants who had filed the writ petition after 38 years

against the State. In that case, the Supreme Court was approached after about six years after the order passed by the Himachal Pradesh High Court in the year 2013. Negating the contention advanced on behalf of the State of Himachal Pradesh as to the delay and laches, the Supreme Court held as follows:-

“16. Given the important protection extended to an individual vis-a-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains - can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

17. When seen holistically, it is apparent that the State's actions, or lack thereof, have in fact compounded the injustice meted out to the appellants and compelled them to approach this court, albeit belatedly. The initiation of acquisition proceedings initially in the 1990s occurred only at the behest of the High Court. Even after such judicial intervention, the State continued to only extend the benefit of the court's directions to those who specifically approached the courts. The State's lackadaisical conduct is discernible from this action of initiating acquisition proceedings selectively, only in respect to the lands of 12 those writ petitioners who had approached the court in earlier proceedings, and not other land owners, pursuant to the orders dated 23.04.2007 (Anakh Singh Vs. State of H.P.) and 20.12.2013 (Onkar Singh Vs. State) respectively. In this manner, at every stage, the State sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

18. There is a welter of precedents on delay and laches which conclude either way - as contended by both sides in the present dispute - however, the specific factual matrix compels this court to weigh in favour of the appellant-land owners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a 'limitation' to doing justice. This court in a much earlier case - Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, held: (AIR pp. 335-36 Para 11)

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the

party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

29. 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.

30. 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.)***.

31. In view of the aforesaid, we dispose of the appeal and the connected applications by directing the First Land Acquisition Collector/ the Competent Authority to complete the proceedings for acquisition of land of the respondents/writ petitioners by taking November 26, 2013, (date of the noticed under Section 9 (3A) of the 1894 Act) as the date of issuance of notice under Section 4 of the 1894 Act and also date of declaration under Section 6 of the 1894 Act, applying the provisions in the 2013 Act relating to determination of compensation, within 4 months from date and pay the compensation amount to the respondents/writ petitioners within 4 weeks thereafter. We give this direction keeping in view the decisions of the Hon'ble Supreme Court in the case of ***Indore Development Authority (Supra)*** and ***Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation v. Mahesh & Ors., (Supra)*** which clearly state that the acquisition proceedings initiated under the 1894 Act are preserved by

Section 24 of the 2013 Act, till the stage of making of the Award.

32. We record our grateful appreciation of the assistance rendered to us by Mr. Amit Kumar Pan, learned amicus curiae, in deciding the present appeals.

33. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)