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22-12-2023
Kole
(Ct. no.06)

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

M.A.T. 580 of 2018

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**IA NO: CAN 2 of 2018
(Old CAN NO: 9210 of 2018)**

The State of West Bengal & Others

Vs

Sk. Yeamin Ali & Others

Mr. Susovan Sengupta, Adv.,
Mr. Subir Pal, Advocate-on-Record
... For the Appellants

Mr. Lal Ratan Mondal, Adv.
Mr. Dilip Kumar Sadhu, Adv.
... For the Respondents.

Arijit Banerjee, J. :-

1. A Judgment and order dated August 30, 2017, whereby the writ petition of the respondent nos. 1 and 2 herein being W.P. No. 8939(W) of 2017, was disposed of by a learned Judge of this Court, is under challenge in this appeal.

2. The undisputed facts of the case are that land belonging to the respondents/writ petitioners was requisitioned by the Government by issuing notification under Section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 (in short 1948 Act) for the purpose of constructing an irrigation canal. Sometime in 1982 possession of the land was delivered to the Government.

3. In connection with L.A. Case no. 83/81-82, a notice of acquisition under Section 4(1a) of the 1948 Act was published in the Calcutta Gazette on July 29, 1988. Subsequently, notice under Section 9(3B) of the Land Acquisition Act 1894 (in short 'the 1894 Act') was also served on the writ petitioners. However, no award was ever published by the Collector.

4. Being aggrieved, the writ petitioners approached the learned Single Judge. The learned Judge allowed the writ petition by the judgment and order assailed in this appeal. Operative portion of the impugned judgment reads as follows:-

“Mr. Prasant Behari Mahata, learned Counsel representing the State-respondents has submitted on the basis of the written instruction given by the Special Land Acquisition Officer, Paschim Medinipur that the land acquisition proceeding initiated against the petitioners under the provisions of Act II of 1948 was converted to the land acquisition proceeding under the provisions of Land Acquisition Act of 1894, but the said proceeding was lapsed without declaring the award.

Since the award was not declared in connection with L.A. Case no. 83 of 1981-82, the said proceeding lapsed by operation of law under Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short “the New Land Acquisition Act of 2013”). The petitioners have suffered for utilising the land of the petitioners without payment of

compensation. Accordingly, the respondent no. 7, Special Land Acquisition Officer, Paschim Medinipur is directed to initiate fresh proceeding against the petitioners for the purpose of payment of compensation under the provisions of the New Land Acquisition Act of 2013 within a period of three months from the date of communication of the order.”

5. Being aggrieved, the State has come up by way of this appeal.

6. We have heard learned Counsel for the parties at some length.

7. Learned Advocate for the State argued that the learned Judge erred in holding that the acquisition proceedings lapsed under Section 24(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short the ‘2013 Act’). Section 24(1) would apply only to acquisition proceedings initiated under the 1894 Act and not to acquisition proceedings initiated under any other statute. In the present case, the acquisition proceeding was initiated under the 1948 Act by invoking Section 4(1a) of the Act. Hence, Section 24 of the 2013 Act would have no manner of application.

8. Learned Advocate for the respondents/writ petitioners submitted that no award was made by the Collector under the 1948 Act or under the 1894 Act. The life of the Act of 1948 came to an end by efflux of time on March 31, 1997. The 1894 Act stood repealed by the 2013 Act with effect from January 1, 2014. Admittedly the writ petitioners have not received any compensation for their land which was taken

over by the Government. They must be compensated. The only way to determine the quantum of such compensation is to imitate fresh proceedings under the law of the land since the previous LA proceedings have lapsed. Presently, the only law of the land pertaining to acquisition of land is the 2013 Act. Accordingly, the learned Single Judge rightly directed the State Government to initiate fresh proceedings and pay compensation to the writ petitioners under the provisions of the 2013 Act.

9. We have given our anxious consideration to the rival contentions of the parties.

10. Admittedly, land of the writ petitioners was taken over by the State. The land has been utilized for constructing irrigation canal. The land cannot be returned to the writ petitioners. Therefore, they must be duly compensated for the value of the land.

11. It appears from the pleadings of the parties that after requisitioning the land of the writ petitioners under Section 3 of the 1948 Act, the land was acquired under Section 4(1a) of that Act. It further appears that notice under Section 9(3B) of the 1894 Act, was also served on the writ petitioners. This had the effect of the acquisition proceedings under the 1948 Act being converted into proceedings under the 1894 Act.

12. Sub-section 3(B) of the Section 9 of the 1894 Act, reads as follows:-

“(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 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).”

13. Section 6 of the 1894 Act provided for publication of a declaration that the concerned land is required for a public purpose. As per the provision of Section 9(3B), of the 1894 Act, once notice under that provision was served on the persons known or believed to be interested in the concerned land, the provisions of Sections 4, 5, 5A, 6, 7, 8 and 16 of the 1894 Act were deemed to have been complied with. In other words, declaration under Section 6 was deemed to have been made once notice under Section 9(3B) of the 1894 Act was served on the interested persons. Logically, we will have to take the date of service of Section 9(3B) notice as the date of the

declaration under Section 6 of the 1894 Act. If that be so, then as per Section 11 A of the 1894 Act, the collector was required to make an award under Section 11 of that Act within a period of 2 years from the date of service of Section 9(3B) notice (which will be the date of deemed declaration), failing which, the entire proceedings for acquisition of the land would lapse. Section 11A of the 1894 Act reads as follows:-

“[11-A. Period within which an award shall be made.-(1) The collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.]”

14. However, there is an amendment to section 11A of the 1894 Act in its application to the State of West Bengal. After the first proviso to Section 11A the following has been added:-

“Provided further that in respect of the acquisition of the land referred to in sub-section (3-A), and sub-section (3-B) of

Section 9, the award shall be made within a period of two years from the date of the issue of the public notice under Section 9.”- W.B. Act 7 of 1997, S. 4 (w.e.f.2-5-1997)”

15. This would however make no difference in the facts of this case since no award was published whether within 2 years from the date of the deemed declaration or within 2 years from the date of issuance of public notice under Section 9 of the 1894 Act or at all. Since the entire acquisition proceedings stood lapsed by reason of non-publication of Award, the learned Judge was perfectly justified in directing initiation of fresh acquisition proceedings under the 2013 Act and pay compensation to the writ petitioners in terms of the provisions of that Act. With the expiry of the 1948 Act which was meant to be a temporary piece of legislation and with the repeal of the 1894 Act, the 2013 Act is the only piece of legislation that governs the issue of computation of compensation for acquiring land of a citizen.

16. In view of the aforesaid although Section 24 of the 2013 Act may not have been attracted in the present case since the acquisition proceeding was initiated under the 1948 Act, the conclusion of the learned Single Judge is correct and warrants no interference. The appeal and the connected application are accordingly dismissed. There will be no order as to costs. The Special Land Acquisition Officer, Paschim Medinipur is directed to initiate fresh acquisition proceedings in respect of the concerned land of the writ petitioners under the 2013 Act, for the purpose of paying compensation to the writ petitioners and complete such proceedings within 4 months from the date of communication of this order. The

compensation shall be paid to the writ petitioners within a month thereafter.

17. M.A.T 580 of 2018 stands disposed of accordingly along with the connected application being IA CAN 2 of 2018 (Old CAN 9210 of 2018).

18. 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.)