

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/12106/1998

**M/s. Ram Chand Jagadish Chand & Anr.
Vs
The State of West Bengal & Ors.**

For the Petitioner: Mr. Sakya Sen, Adv.,
 Ms. Nilanjana Adhya, Adv.

For Union of India: Mr. Debapriya Gupta, Adv.

For the State: Mr. Supratim Dhar.

Hearing concluded on: 19 September, 2023.

Judgment on: 05 October, 2023.

BIBEK CHAUDHURI, J. : –

1. Being aggrieved by the purported interference by the state respondents with the possession of the petitioners in respect of the subject land they have filed the instant writ petition. CS plot No.118 corresponding to RS Plot No.127 in Rs khatian No.134 of Mouza Mondalganthi within P.S Rajarhat measuring about 1.80 acres of land originally belonged to one Nazirul Haque Mondal. The said Nazirul Haque Mondal died leaving behind his two sons namely Tasher Ali Mondal and Asher Ali Monda, two daughters namely, Azizunessa Bibi and Anjumanessa Bibi and widow Khairnessa Bibi. They inherited the said

property according to their share as per Mohammadan Law of Inheritance.

2. Sometimes in 1961 a portion of the said CS Plot No.118 corresponding to RS Plot No.127 were acquired by the Government by an acquisition proceeding under Act 1 of 1894. It is the case of the petitioners that after acquisition the erstwhile owners of the said land were in possession of total 91 decimal of land. Subsequently, the State Government tried to interfere with the possession of the erstwhile owners in respect of the said 91 decimals of land which compelled the erstwhile owners to file a writ petition being CO 14777(W)/1998. The said writ petition was disposed of by the Hon'ble N.K Mitra, J. as His Lordship then was vide order dated 22nd September, 1996 restraining the respondents from taking possession and/or interfering in any way with the possession of the owners in the disputed land without stating appropriate proceeding in accordance with Law after service of notice to the writ petitioners. Thereafter, the erstwhile owners were in uninterrupted possession of the said land and no proceeding was initiated by the State Government or any other authority to acquire the said land with notice to the said erstwhile owners.

3. Thereafter, the erstwhile owners of the said land executed agreement for sale with the petitioners on 3rd September, 1997 and on 5th January, 1998 the petitioners purchased the said land by virtue of separate deeds executed by their vendors in respect of their share of land. It is also stated by the petitioners that in order to ascertain as to whether

the said land was free from all encumbrances, the petitioners made Wide Paper Publication intimating any person interested to state his/their claim over the property. Since there was no objection in respect of the transfer of land and on due search in the Registration Office, it was ascertained that the said land was free from all encumbrances, the petitioners purchased the said land on 5th January, 1998. After purchase possession of the land was delivered to the petitioners and they are in possession of the subject land without any hindrance.

4. It is the case of the petitioners that the petitioners purchased the said plot for the purpose of construction of a showroom and workshop for their business but the Officer of the Housing Department, Government of West Bengal tried to prevent the petitioners and their staff from making any work on the aforesaid land and they threatened that if the petitioners carried out any sort of work they will face serious consequences. It is further contended by the petitioners that the said land was never acquisitioned or vested to the State. The Housing Department, Government of West Bengal has no right to cause any objection against the peaceful possession of the petitioners. the specific act of the petitioners is violative of the provisions of Articles 14, 16, 21 and 300A of the Constitution of India in as much as the petitioners are going to be deprived of their life and liberty by the whimsical and unwanted action on the part of the respondents.

5. On subject pleading the petitioners have prayed for the following reliefs:-

“a) Writ in the nature of Mandamus directing the respondents not to interfere with the possession, right and title of the petitioner in respect of their lands mentioned in paragraph 2 of the petition and further directing them not to vex the petitioner in any manner whatsoever relating to the possession of the petitioners in respect of their lands in question.

b) Writ in the nature of Certiorari directing the respondents to bring before this Hon'ble Court all papers and documents in connection with the instant case within such time as to your Lordships may seem fit and proper and quash all illegal orders if any passed behind the back of the petitioners.

c) An order of injunction restraining the respondents their agents and subordinates from interfering with the possession of the petitioners in respect of the lands mentioned in paragraph 2 of this petition in any manner whatsoever and further from vexing the petitioners in respect of their aforesaid land in question in any form.

d) Rule Nisi in terms of prayers (a) (b), and (c) above;

e) Interim order in terms of prayer

(c) Above;

f) Cost or costs;”

6. One Madhusudan Karmakar, Assistant Land Acquisition Officer has filed an affidavit-in-opposition on behalf of the respondents No.2 and 3. The respondents have specifically denied the case of the petitioners. It is submitted by the answering respondents that the State Government acquired 1.62 acres of land out of 1.80 acres of land in CS Dag No.118 corresponding to RS Plot No.127 of Mouza Mondalganthi for the construction of the super expressway called Noozrul Islam Sarani from Kolkata to Airport. After the acquisition of the land the original owners were granted compensation and award under Act 1 of 1894 sometimes in

the year 1963. Subsequently, in another acquisition proceeding the remaining 18 decimals of land were acquired in the year 1963-64 for construction of a satellite township. However, the answering respondents failed to produce any documents with regard to subsequent acquisition of 18 decimals of land by the State respondents.

7. When the matter came up for hearing on 18th July, 2023 this Court directed the learned Advocate appearing on behalf of the respondent No.2 to submit a report in the form of an affidavit disclosing all the documents for proper adjudication of the case. The Assistant Land Acquisition Officer, North 24 Parganas has submitted a report with all the documents annexed therewith. It is submitted on behalf of the respondent No.2 that the subject land recorded in CS plot No.118 corresponding to RS plot No.127 measuring a total area of 1.80 acres within mouza Mondalganhi was substantially acquired in a land acquisition proceeding being No.D-6/4 of 1961-62 under Act 1 of 1894 for construction of a super highway. The notification under Section 4 of Act 1 of 1894 was published on 12th April, 1961 in the Kolkata Gazette Extraordinary. Thereafter, a declaration under Section 6 was also published. The erstwhile owners of the said land were paid compensation as per the list mentioned in paragraph 7 of the said report.

8. Subsequently, another LA case being LA Case No.4/60 of 1963-64 was initiated as per the proposal of the Development Department, Government of West Bengal which is presently known as Urban Development Department for Establishment of Satellite Township at

Dumdum Rajarhat area by the acquisition of 69.20 acres of land within Mouza Mondalganhi. In the said acquisition proceeding the remaining 18 decimal of land was also included and acquired. In the said proceeding notification under Section 4 was published on 28th November, 1963 and declaration under Section 6 was published on 11th January, 1969. Thus, the entire land in Rs Plot No.127 of Mouza Mondalganhi was acquired by the State Government for the public purpose of construction of a super highway and subsequently for the construction of Satellite Township. It is also found from the said report that the Public Works Department being the requiring body for construction of super highway in whose favour 1.62 acres of land in plot No.127 was delivered, relinquished 0.4152 acre in favour of the Land and Land Reforms Department, vide order dated 28th September, 2014. Subsequently, the Government of West Bengal transferred 0.9444 acres of land comprising of 5 plots being RS Plot No.124, 125, 127, 240 and 241 by execution of a deed of transfer in favour of Union of India for the purpose of stationing the Second Battalion, National Disaster Response Force under Force Ministry of Home Affairs, Government of India. In the said transfer the remaining 18 decimal of land in plot No.127 was involved. The respondent No.2 states that since the entire plot of land in Dag No.127 was acquired by two LA proceedings under Act 1 of 1894, the erstwhile owners of the land had no right, title and interest to sell the property in favour of the petitioners. The petitioners also cannot claim any title over the said property by virtue of their purchase.

9. It is submitted by Mr. Sakhya Sen, learned Advocate for the petitioners that on perusal of the report in the form of the affidavit filed on behalf of the respondent No.2 it is ascertained that subsequent to the acquisition of 1.62 acres of land the State Government also acquired the remaining 18 decimal of land, but no compensation was paid to the erstwhile owners or the petitioners being the subsequent purchaser. It is no longer *res integra* that the subsequent purchaser in respect of a vested land does not have any right over the property except to claim compensation. Therefore, the petitioners being the subsequent purchasers are entitled to get compensation as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 since, Act 1 of 1894 is repealed.

10. It is submitted by Mr. Sen that on the question of assessment of compensation, since Act 1 of 1894 was repealed and substituted by the Act of 2013, the petitioners are entitled to get compensation under the present Act. It is contended on behalf of the petitioners that the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of the vendor's title.

11. The aforesaid principle is laid down in **V. Chandrasekaran & Anr. vs. Administrative Officer & Ors, (2012) 12 SCC 133** and subsequent decisions in **Gain Chand vs. Gopala & Ors, (1995) 2 SCC 528, Yadu Nanda Garg vs. State of Rajasthan & Ors, AIR 1996 SC 520, Jaipur Development Authority vs. Mahavir Housing Coop. Society, Jaipur & Anr, (1996) 11 SCC 229**. The same principle is also laid down in **U.P Jal Nigam vs. Kalra Properties (P) Ltd**, the observation of the Hon'ble in U.P Jal Nigam in paragraph 3 is important and quoted below:-

“3... It is settled law that after the notification under Section 4(1) is published in the gazette, any encumbrance created by the owner does not bind the Government, and the purchaser does not acquire any title to the property. In this case, Notification under Section 4(1) was published on 24-3-1973; possession of the land admittedly was taken on 5-7-1973, and the pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8-7-1973. Admittedly power under Section 17(4) was exercised dispensing with the inquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute viz. pumping station house was to be constructed to drain out floodwater. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply, and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published, and the possession is surrendered pursuant thereto. That apart, since M/s Kalra Properties, the respondent had purchased the land after the notification under Section 4(1)

was published, its sale is void against the State, and it acquired no right, title, or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before the publication of the declaration under Section 6 was published.”

12. The petitioners presently are claiming compensation in terms of Section 24 of 2013 Act. Section 24 runs thus:-

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases – (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.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken, or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

13. A plain reading of Section 24(2) suggests that in a land acquisition proceeding initiated under Act 1 of 1894 if an award under Section 11 has been made five years or more prior to the commencement of the Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceeding shall be deemed to have lapsed and the State Government if it so chooses can initiate fresh proceeding of acquisition of such land in accordance with the provisions of the 2013 Act.

14. In **Shiv Kumar & Ors. vs. Union of India & Ors.** reported in **(2019) 10 SCC 229**, it is held by a Three Judges Bench of the Hon'ble Supreme Court that the provision of Section 24(2) is not the case set up that compensation had not been paid to the purchaser/owners. The only case set up is that physical possession has not been taken and the proceedings of taking over possession have been questioned to take advantage of the provisions under Section 24(2) of the Act of 2013. Where petitioners admit that the possession of 18 decimal of land had been taken sometime in 1963-64, Section 24(2) is not attracted.

15. It is also held by the Hon'ble Supreme Court in **Shiv Kumar** (supra) that proviso to Section 24(2) does not recognize a purchaser after Section 4 notification as much as it provides that where an award has been made and the compensation in respect of the majority of land holdings has not been deposited in the account of beneficiaries, then, all beneficiaries specified in the notification for acquisition issued under the Act of 1894 shall be entitled to compensation under the provision of Section 4

notification that have not been given right to receive the higher compensation under the provisions contained in 2013 Act.

16. Five Judges Bench of the Hon'ble Supreme Court in **Indore Development Authority vs. Manoharlal & Ors.** reported in **(2020) 8 SCC 129** was pleased to hold that deem lapse of proceedings initiated under 1894 Act is occasioned where award under Section 11 of the 1894 Act has been made five years or more prior to the date of commencement of 2013 Act and the two conditions specified in Section 24(2) are cumulative specified that is (a) possession of acquired land has not been taken and (b) compensation has not been paid. Even if one of these conditions is not satisfied, acquisition proceedings under the 1894 Act shall not lapse. It is further held that the word "or" used in Section 24(2) between the above mentioned two conditions in Section 24(2) has to be read as "nor" or as "and". This is because where two negative conditions or two prohibitions are coupled by the word "or", the said "or" has to be read as "and or nor". Thus, it is held in the Indore Development that if possession is taken in acquisition proceeding under Act 1 of 1894, but compensation has not been paid then there would be no lapse. If compensation paid but possession not taken then also there would be no lapse.

17. In the instant case, the petitioners did not contradict that possession of 18 decimal of land was taken by the State Government in a proceeding under Act 1 of 1894 sometime in 1963-64. The petitioners are subsequent purchasers who purchased the said property in the year

1998, that is after a lapse of about 34 years of acquisition of land. Since the vendors had no right, title and interest over the property in question, the sale made by the vendors in favour of the petitioners are is void *ab initio*. It has been void since inspection, as if there was no sale.

18. The respondents however failed to prove that the vendors of the petitioners were paid compensation under the provisions of Act 1 of 1894. In view of the decision of the Hon'ble Supreme Court in **Shiv Kumar** (supra) and **Indore Development Authority** (supra), the purchasers can only claim compensation as may be available under Act 1 of 1894. They are not entitled to claim compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

19. With the above observation, the instant writ petition is disposed of on contest, however, there shall be no order as to costs.

20. The petitioners are entitled to claim compensation as per the provision of Act 1 of 1894 as if the said Act has not been repealed and the acquisition proceeding has not been lapsed.

(Bibek Chaudhuri, J.)