

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 10042 of 2013
Kesharshyam Constructions (Pvt.) Ltd.
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. Suman Kr. Dutt
Mr. Shuvasish Sengupta
Mr. Syantak Banerjee
Ms. Subhra Das
Ms. S. Mitra
.....Advocates

For the State : Mr. Chandi Charan De
Mr. Anirban Sarkar
Mr. P.B. Mahato
.....Advocates

Heard lastly on : 17.01.2023

Judgment on : 17.04.2023

Jay Sengupta, J.:

1. This is an application under article 226 of the Constitution of India praying for direction upon the respondent No. 1, in turn, to direct the respondent Nos. 3 to issue formal communication to the respondent Nos. 4

and 5 informing them that the communication contained in the letter No. 223 / 1-L-A dated 22 February 2012 was incorrect and declaring that the petitioner had always been and was the absolute owner of the premises in question.

2. Learned counsel for presenting the petitioner submitted follows. Admittedly, on 7 May 1966 the respondent no. 1 published a notification under section 4 of the Land Acquisition Act, 1894 for the purpose of acquiring the said premises measuring about four cottahs seven Chittaks fifteen square feet being known and numbered as premises No. 9, Colonel Biswas Road, Kolkata 700019 for public purpose of accommodating Smt Jahar Nihar Vidyapith (Girls' Higher Secondary). A declaration under section 6 of the Land Acquisition Act, 1894 was also published on 30 May 1968. Admittedly, the First Land Acquisition Collector passed an award under section 11 of the Act on 19 May 1977, after a span of nine years from the date of publication of the aforesaid declaration. On 19 July 1977 the Education Department, West Bengal purportedly issued a letter to communicate their decision of dropping the land acquisition proceeding in respect of the premises. In November 1979 Subodh Kumar Biswas, the erstwhile owner of the premises, challenged the acquisition proceeding in a writ petition. By an order dated 4 February 1981, a Division Bench of this Court directed the respondent authority to provide facility under section 4 (1) of the Rehabilitation of Displaced Persons and Eviction of Persons in Unauthorised Occupation of Land Act, 1951 and in return, the said Subodh Biswas was directed to vacate the premises within a fortnight. However, no

such recommendation was ever made and the owner died at the said premises on 6 January 1995. After his demise, his heirs sold the right, title and interest in the said premises in favour of the petitioner herein. To the utter shock and surprise of the petitioner, on 22 February 2012 the respondent authority sent a communication to the petitioner and the Secretary of the school that the premises was vested upon the State. Section 11 A of the Act of 1894 mandated that if the Collector did not make an award under section 11 of the act within two years from the publication of the declaration, the entire proceeding for acquisition would lapse. In the present case, the proceeding had lapsed because of a delay of about nine years in passing the award. On this, reliance was placed on State of U.P. & Ors. Versus Rajeev Gupta, (1994) 5 SCC 698; Nahar Singh Vs. State of U.P. & Ors., (1996) 1 SCC 434; Yusufbhai Noor Mohmed Naldolia versus State of Gujarat & Ors, (1991) 4 SCC 756; M/s. Delhi Airtech Services Pvt. Ltd. Versus State of U.P. & anr. , MANU/SC/0329/1993; Rajveer Singh Bhatti & Ors. Versus State of Haryana & Ors., MANU/SC/0329/2009; Naganna & Ors. Versus State of Karnataka, MANU/ICA/0434/1998. There was also a violation of section 5A of the Act provided for granting an opportunity to any person deprived of his land to oppose the acquisition. On this, reliance was placed on Raghvir Singh Sherawat Versus State of Haryana, (2012) 1 SCC 792. The possession here was not taken as per section 16 of the said Act, which mandated that when the Collector made an award under section 11, he might take possession of the premises, which shall whereupon vest

absolutely on the State. Reliance was placed on *Satyabadi Nayak Versus State of Orissa*, 1998 SCC Online Ori 113.

3. Learned counsel representing the State submitted as follows. After declaring the award in question, the First Land Acquisition Collector sent the money to the Additional Special Land Acquisition Judge, First Court, Alipore on 3 May 1978 and 11 July 1987, respectively and the possession was handed over to the requiring body on 7 May 1993. Mutation of the acquired land in favour of anyone, issuance of municipal tax receipt were non-est in the eye of law. Against the notification under section 4 of the Act, the erstwhile owner preferred a writ application which was rejected by this Court on 27 November 1979. The appeal against the same was disposed of with the order dated 4 February 1981. More interestingly, the petitioner purchased the property in question by a conveyance dated 16 December 2008. Therefore, the writ petitioner was a subsequent purchaser after publication of notice under section 4 of the said Act. So, he did not have any right to challenge the notification under section 4 of the Land Acquisition Act, 1894. On this, reliance was placed on *Chandrasekaran & Anr. Versus Administrative Officer & Anr.*, (2012) 12 SCC 133; *Tika Ram versus State of UP*, (2009) 10 SCC 689. The sale of property after the issuance of notice under section 4 did not confer upon such purchaser any title. At best, he could claim compensation on the basis of his vendor's title. In *Lila Ram Versus Union of India*, (1975) 2 SCC 547, it was held that any land subsequent to section 4 notification did so at his peril. A notification under section 4 was a notice to the public at large that the land in respect of which

it had been issued, was needed for public purpose. On this reliance was placed on *Sneha Prabhu versus State of U.P.*, (1996) 7 SCC 426. Once vesting took place, a person who remained in possession was only a trespasser. Reliance was placed on *Fruit & Vegetable Marchants Union Versus Delhi Improvement Trust*, AIR 1957 SC 344.

4. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. It appears that the land in question was required for public purpose of accommodating a girls' school. But, in 1977 the Education Department communicated a letter about dropping the land acquisition proceeding. In 1979, the erstwhile owner of the property filed a writ petition challenging the acquisition. By and order dated 4 February 1981, a Division Bench of this Court directed the respondents to provide facility under section 4 (1) of the Rehabilitation of Displaced Persons and Eviction of Persons Unauthorised Occupation of Land Act, 1951 and in return, the owner was directed to vacate the premises. However, supposedly no such recommendation was made. The erstwhile owner then entered into an agreement for sale with a third party. But, he died on 6 January 1995. Admittedly, after his demise, his heirs purportedly sold the right, title and interest in the said premises in favour of the petitioner herein with the third party consenting.

6. It has been submitted on behalf of the State that the land in question was duly acquired, an Award was passed, the money was sent to the Court and the land was handed over to the requiring body on 7 May 1993. There

was some delay in taking possession of the land due to pending litigations. Evidently, a notice under Section 4 of the Land Acquisition Act, 1894 had been issued and possession of the land taken. In view of the ratio laid down in *Indore Development Authority Vs. Manoharlal & Ors.*, (2020) 8 SCC 129, there are twin requirements for lapsing of a proceeding – first, physical possession has not been taken and second, compensation has not been paid.

7. Moreover, admittedly the petitioner purchased the property in question by a purported conveyance dated 16 December 2008. Therefore, he was a subsequent purchaser after the publication of notice under section 4 of the Land Acquisition Act, 1894. As such, the petitioner did not have any right to challenge the proceeding or the notification under section 4. On this, reliance was rightly placed on *Chandrasekaran (supra)*. In *Lila Ram (supra)*, it was held by the Hon'ble Apex Court that if anyone purchased a land subsequent to section 4 notification he would do so at his peril. It is a settled law that once the land is vested in the State, a person who remained in possession of the same would be treated only as a trespasser. On this reliance may be placed on *Land and Building Department, through Secretary & Anr. Versus Attro Devi & Ors.*, MANU/SC/0361/2023.

8. On the other hand, most of the decisions relied upon by the petitioner are based on starkly distinguishable facts and do not seem to deal with the ratio as regards the petitioner being a subsequent purchaser of the property.

9. Therefore, it is abundantly clear that the petitioner has no right to challenge the acquisition proceeding in respect of the land in question.

10. This Court, therefore, finds no merit in the petitioner's application. Accordingly, the writ petition is dismissed.

11. However, there shall be no order as to costs.

12. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)