

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 9042 of 2008
M/S Singhania Commercial Corporation & Ors.
Versus
State of West Bengal & Ors.

For the petitioner	:	Mr. Buddhadev Ghoshal Mr. Supratim Dhar Mr. U.S. Menon Ms. Madhupriya Mr. Abhirup ChakrabortyAdvocates
For the WBSEDCL	:	Mr. Debayan Bera Mr. Sumit Kr. Panja Mr. Sumit Ray Mr. Sujit Sankar KoleyAdvocates
For the State	:	Mr. Soumitra Bandopadhyay Mr. Prasanta Behari MahataAdvocates
Heard lastly on	:	01.12.2022
Judgment on	:	07.02.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India, inter alia, challenging the impugned notification dated 11.04.2008 issued on 17.04.2008 under Section 4 of the Land Acquisition Act 1894 in respect of the land situated at Sevoke Road, Mouza Debgram, District-Jalpaiguri.

2. Learned counsel appearing on behalf of the petitioners submitted as follows. In May 1977 the owners of a plot of land at Jalpaiguri measuring about 2.04 acres with its structures executed several indentures of lease in favour of the petitioner nos. 2 to 11 for 99 years with an option of renewal for further two terms of 99 years. The petitioner nos. 2 to 11 granted a sub-lease to the petitioner no. 1 company with a right to sublet. Subsequently, the petitioner nos. 2 to 11 executed several indentures of sub-lease in favour of the petitioner nos. 12 and 13 to which the petitioner no. 1 was confirming party. By an agreement dated 01.12.1979, the petitioner no. 1 inducted the West Bengal State Electricity Board (now known as West Bengal State Electricity Distribution Co. Ltd.), being the respondent no. 4, for a period of 5 years as lessee at a monthly rental. Thereafter, certain disputes and differences arose between the petitioner no. 1 and respondent no. 4 and the respondent no. 4 stopped paying the lease rent from April 1984. The State of West Bengal then issued the order of requisition dated 10.08.1984 by invoking provisions of Act II of 1984. Being aggrieved, the petitioner nos. 1 and 2 filed a writ petition before this Court. A Civil Order No. 16358 (W) of 1984 dated 26.11.1984 was issued and an interim order was passed restraining the respondents from taking any steps in connection with the

requisition and/or acquisition of property. During its pendency, the petitioner nos. 1 and 2 applied for direction upon the State to complete the acquisition proceeding and pay compensation and in the alternative, to de-requisition the property. However, the Collector failed to pass an award within 3 years of the date of publication of notice in the Official Gazette under Section 4(1) (a) of the Act. Hence, the notice lapsed on 31.03.1997. Yet, the respondent no. 4 had been in illegal occupation of the said property. Several writ petitions were filed seeking return of possession. Similar orders as the one passed in June 1990 were passed. The writ petitioners filed W.P. No. 16524 (W) of 2001 for necessary orders for restore possession. By an order dated 19.10.2001, this Court directed the State to pay 50% of the admitted arrear lease rent to the petitioners. In compliance, on 12.04.2002 the State respondent paid 50% of the arrear lease rent for the period of 23.04.1984 to 28.02.2002 after deduction of TDS. By an order dated 14.09.2005, this Court directed the acquisition proceeding to be completed within six months, in default of which the Board was to vacate the property in question. The Collector concerned was also directed to assess the occupation charges and lease rent/rental compensation. Accordingly, the State paid a sum of Rs. 18 lakhs and odd to the petitioners being the arrears of contractual rent upto 31.10.2005. However, in spite of this Court's order, the Collector Jalpaiguri, deliberately failed and neglected to assess occupation charges and lease rent and rental compensation of the property within the time stipulated. Finally, the impugned notification dated 11.04.2008 was issued by the State Government under Section 4 of the

Land Acquisition Act for construction of the regional store of the WBSEDCL. While the said writ petition was pending, on 28th July 2010 the writ petitioner received a special notice dated 21st July 2010 purportedly issued under Sub-Sections (3) and (4) of Section 9 of Act-1 of 1984 notifying that the land in question was about to be taken over by the Government for construction of Regional Store of WBSEDCL in accordance with a purported declaration. In fact, the said declaration dated 2nd June 2008 was published purportedly under Section 6 of the Act of 1984 on 4th June 2008, i.e. more than 2 years before issuance of the purported notice dated 21st July 2010. On the prayer of the writ petitioners, a status quo order was passed by this Hon'ble Court as the Court prima facie found that the land acquisition proceedings had lapsed as over 2 years had elapsed since the date of publication of declaration. On or about August 2022, the writ petitioners filed a supplementary affidavit in the instant writ petition wherein they stated that the occupation of the respondent no. 4 in the said property had become illegal since the expiry of the time as mentioned in the order dated June 5, 1990 and hence, the writ petitioners were not only entitled to the arrear rent for legal occupation, but also entitled to the damages for illegal/unauthorized occupation by the respondents. It was during the pendency of the writ petition herein that the respondent no. 4 filed a supplementary affidavit, where they pleaded that the company was no longer desirous of acquiring/purchasing the said property and thus, had taken a decision to vacate the land within one year of the filing of the affidavit and to pay the rent as assessed by the Collector, Jalpaiguri from

2009 till the handing over of the possession of the land. The petitioners filed their reply to such supplementary affidavit by the respondent no. 4, where they expressed their concurrence. However, as far as the contention of the respondent no. 4 that the rent was to be assessed by the Collector, Jalpaiguri was concerned, they might be granted liberty to move the appropriate forum. It was pertinent to mention here that on or about 2006, the petitioner nos. 2 to 11 executed several indentures of sub-lease, thereby assigning their right, title and interest in respect of their leasehold interest of the said property in favour of petitioner nos. 12 and 13. The petitioner no. 1 was made a confirming party to such deeds. In the circumstances mentioned above, the vacant possession of the said property should be given in favour of petitioner nos. 12 and 13. In fact, during hearing of the matter on November 10, 2022, the respondent no. 4 consented to such possession being handed over in favour of petitioner nos. 12 and 13. One year's time to vacate and handover possession to the petitioner nos. 12 and 13 should be reckoned from September 20, 2022 in view of the order dated September 20, 2022, wherein the Hon'ble Court was pleased to record that the Company would vacate the land within a year. Accordingly, the respondent no. 4 (WBSEDCL) be directed to handover vacant possession of the property in favour of the petitioner no. 12 and 13, and the petitioner no. 12 and 13 be granted liberty to move the appropriate forum in accordance with the law for assessment of arrear rent/occupation charges and/or damages.

3. Learned senior counsel representing the WBSEDCL submitted as follows. The then WBSE Board took lease of 2.04 acres of lands with three

go-downs from writ petitioner no. 1, M/s Singhania Commercial Corporation for a period of five years by deed dated 01.12.1979 at the rate of rent mentioned in the deed. The lease was to expire on 31.11.1984. During the continuance of the lease, the then Board approached the State Government for acquisition of the said property along with other property. In 1984 the State initiated a proceeding under W.B. Act II of 1948 for acquisition of 3.17 acres of lands and a notification under Section 4(1a) of Act II of 1948 was published on 13.07.1984. Manik Chand Debriwal & Ors who were owners of part of requisitioned lands measuring about 1.63 acres and were also the lessors of that land, challenged the acquisition proceeding in High Court in C.O. No. 13268 (W) 1984. The writ petitioner nos. 1 and 2 challenged the acquisition proceeding in High Court in C.O. No. 16358 (W) of 1984 and this Court, by an order dated 05.06.1990, disposed of the writ petition and directed to complete the acquisition proceeding within four months. But, the proceeding for acquisition was not completed. In C.O. No. 13268 (W) of 1984, this Hon'ble Court, by an order dated 25.09.1998, quashed the requisition proceeding and directed to pay all rents accrued up to 31.01.1999. However, the Board continued with the possession of the land which it got on basis of the lease agreement. The petitioners filed another writ petition being W.P. No. 16524(W) of 2001. There it was disclosed by way of supplementary affidavit that the writ petitioners had already filed a suit for recovery of possession of the property before a Civil Court, which was pending. In the written statement, it was pleaded by the Board that out of 2.01 acres, 0.43 acres was vested land. In the said writ petition an order

was passed on 14.09.2005 directing to initiate acquisition proceeding under Land Acquisition Act, 1894 and to deposit compensation money with the Collector and to complete acquisition proceeding within a period of six months and if not completed, the property was to be restored back to the land owners. The Collector was directed to assess the occupation charges/lease rents. In terms of said order, admitted lease rent up to 31.10.2005 was paid to Bimala Devi Singhania on 14.12.2005. In terms of said order, the estimated value of compensation for a sum of Rs. 1,90,78,741.00 was deposited with the Land Acquisition Collector, Jalpaiguri on 09.04.2008. However, the time period of six months fixed for acquisition, expired in the meantime. In such situation, the Board filed an appeal against order dated 14.09.2005. During the pendency of the appeal the Board was substituted with effect from 01.04.2007. The appeal was disposed by order dated 19.03.2008 without interfering with order dated 14.09.2005 with liberty to approach the Trial Judge seeking review/clarification and/or modification of the order dated 14.09.2005. Thereafter, a fresh proceeding under Land Acquisition Act, 1894 was initiated by the Land Acquisition Collector, Jalpaiguri and a notification under Section 4 was published on 11.04.2008 for acquisition of 1.58 acres of lands. The declaration under Section was also published in the official Gazette on 30.06.2008. In terms of order dated 14.09.2005, the Collector, Jalpaiguri assessed the rent of the property till November, 2009 by his order dated 26.11.2008 and his decision was communicated to the respondent no. 4. Pursuant to the said liberty granted by appeal Court, the respondent no.

4 filed application for review of order dated 14.09.2005 being R.V.W. No. 63 of 2008. An order was passed on 07.07.2008 in the said review application whereby certain directions were given with further direction upon the Land Acquisition Collector to proceed with the acquisition in terms of notification dated 11.04.2008. A further order was passed on 05.02.2009 in the review application along with some directions. Thereafter, lease rent, as assessed by the Collector, Jalpaiguri, up to November, 2009 was paid to Bimala Devi Singhania. No further rent was paid because of claims for various other persons. At this juncture, the writ petition was filed on 09.05.2008 challenging the acquisition notification published on 11.04.2008 and mainly praying for not to give any effect of the acquisition notice. Thereafter, the declaration under Section 6 was published in Gazette on 03.06.2008 and substance of the declaration was also published in the locality. Thereafter on diverse dates payments were made to the Land Acquisition Collector, Jalpaiguri. A total sum of Rs. 8,16,66,568.00 has been deposited by WBSEDCL with the L.A. Collector and the said sum is still lying with the Collector. But, unfortunately no award was declared in the acquisition proceeding within two years from the date of declaration. In the aforesaid situation this Hon'ble passed an interim order on 09.08.2010 staying acquisition proceeding on the ground that the acquisition proceeding had lapsed since no award was passed within two years from the date of declaration. The acquisition proceeding had lapsed and there was no scope to revive the lapsed proceeding. The erstwhile Board and now WBSEDCL came into possession of the lands on the basis of lease and was still

continuing with the said possession. Twice attempts were made for acquiring the property, one under the West Bengal Act II of 1948 and another under the Land Acquisition Act, 1894. The case under Act II of 1948 was initiated when the respondent no. 4 was already in possession of the lands on the basis of lease and ultimately, the proceeding was set aside by this Hon'ble Court on 25.09.1998. So, the question of continuity of possession after taking possession under Act II of 1948 did not arise in this case. Possession continued on the basis of lease. So far as acquisition proceeding under the Land Acquisition Act, 1894 was concerned, although Section 17(4) was invoked dispensing with provisions of Section 5A, possession under Section 17(1) was not taken. So, the question of continuing possession under the Land Acquisition Act, 1894 did not arise in this case. The respondent no. 4 continued with the possession on the basis of lease. In the aforesaid factual situation, the respondent no. 4 decided, as a good gesture, to restore back possession of the lands to the writ petitioners within one year and to pay rents as would be assessed by the Collector, Jalpaiguri from November, 2009 to the date of handing over of the lands and the said decision was communicated to the learned Advocate of the respondent no. 4 by a letter dated 14.09.2022. The said decision was filed before this Hon'ble Court as an enclosure to the supplementary affidavit affirmed on 23.09.2022 and the same was taken on record in the writ proceeding. So, the writ petition ought to be disposed of on the basis of the decision of the WBSEDCL as disclosed by way of supplementary affidavit affirmed on 23.09.2022.

4. Learned counsel appearing on behalf of the State submitted that the State would not come in the way if a solution is arrived at in terms of the arrangements proposed by the private parties.

5. I heard the learned counsels appearing on behalf of the parties and perused the writ petition, the affidavits and the written notes filed.

6. It appears that two attempts were made for acquiring the property, one under the Act 2 of 1948 and another under the Act 1 of 1894. The case under the Act 2 of 1948 was started when the respondent no. 4 was already in possession of the land on the basis of a lease. The proceeding was finally set aside by this Court on 25.09.1998. The possession of the land thus continued on the basis of the lease. So far as the acquisition proceeding under the Act 1 of 1994 is concerned, possession under Section 17 (1) was not taken. So, the question of continuing with the possession under the said Act did not arise.

7. It also appears that the respondent no. 4 has finally decided to restore back possession of the land to the writ petitioners within a year and to pay rents as would be assessed by the Collector, Jalpaiguri from November 2009 till the handing over of the land.

8. The writ petitioners appeared to be quite agreeable to this proposition, except for the fact that as regards the rent to be assessed by the Collector, Jalpaiguri, they may be granted liberty to move appropriate forum. According to them, the one year's time to vacate and hand over the possession to the petitioner nos. 12 and 13 should be reckoned from September 20, 2022 in view of the order passed by this Court on that date

purportedly recording that the company would vacate the land within a year.

9. In view of the above and in the interest of justice, this Court is inclined to pass the following directions -

(i) The respondent no. 4 shall deliver vacant and peaceful possession of the land in question to the petitioner nos. 12 and 13 quite in keeping with the pleadings in the supplementary affidavit of the former and the submissions made by the parties in this proceeding, within a period of one year from the date 23rd September, 2022.

(ii) The respondent no. 4 shall pay rents as would be assessed by the Collector, Jalpaiguri from November 2009 to the date of handing over of possession of the land in question.

(iii) It is needless to say that this Court now cannot deal with any future grievance that may arise out of the assessment of rent to be made by the Collector, Jalpaiguri at a future date.

(iv) The parties shall render necessary co-operation to each other so that the directions passed herein are complied with at the earliest and in accordance with law.

10. With these observations, the writ petition is disposed of.

11. 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.)