

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

W.P.A. 13179 of 2021

Sushmita Guin

Vs.

The State of West Bengal & Ors.

With

W.P.A. 11125 of 2019

Jagannath Jasawara & Ors.

Vs.

The State of West Bengal & Ors.

For the Petitioners

:Mr. Supratim Dhar
Mr. Dhananjay Nayak

... advocates

For the K.M.D.A.

: Mr. Satyajit Talukdar
Ms. Piu Karmakar

... advocates

For the State

: Mr. T. M. Siddiqui, Ld. A.G.P.
Mr. Suddhadev Adak

... advocates

Reserved on

: 14.07.2023

Judgment on

: 18.10.2023

Hiranmay Bhattacharyya, J.:-

1. These writ petitions have been filed praying for issuance of a writ of mandamus to command the respondents to acquire the plot of land and to pay compensation to the writ petitioners. A direction for payment of damages/ occupation charges from the date of possession till the date of acquisition was also prayed for.
2. Since common questions of law and fact are involved, both the writ petitions were heard analogously and are disposed of by this common order.

3. One Dwarika Prasad Jeswara was the recorded raiyat of R.S. Plot no. 2642/2829 within Kasba mouja measuring about 22 decimals. The said Dwarika Prasad during his life time transferred 12 cottahs out of his 22 decimals of land in Plot no. 2642/2829 by a registered deed being Deed No. 907 for the year 1974 in favour of one Sadhan Sarkar. Upon the death of Sadhan Sarkar, his share in the aforesaid plot devolved upon his heiress who is the writ petitioner in WPA 13179 of 2021. After transfer of land in favour of Sadhan Sarkar, Dwarika Prasad was left with the balance land measuring about 1.30 cottahs in R.S. Dag no. 2642/2829. Upon the death of Dwarika Prasad, his share in the aforesaid plot devolved upon his heirs and heiresses who are the petitioners in WPA 11125 of 2019.
4. The common grievance of the writ petitioners in WPA 11125 of 2019 and WPA 13179 of 2021 is that though the aforesaid plot no. 2642/2829 was not affected by any land acquisition proceeding but the same was utilised for the purpose of construction of Rash Behari Connector Road. The writ petitioners have approached this Court alleging that the respondent authorities have acted in gross abuse of their powers by utilising the property without payment of compensation.
5. Mr. Dhar, learned advocate appearing for the writ petitioners submitted that the predecessors-in-interest of the writ petitioners were the recorded owners in respect of R.S. Plot no. 2642/2829 and upon joint survey it has been found out that the said plot has been fully utilised for the purpose of construction of R.B. Connector. He, therefore, submitted that a direction for payment of compensation is to be passed.
6. Mr. T.M. Siddique, learned Additional Government Pleader representing the State of West Bengal contended that plot no. 2642/2829 was never affected by any acquisition/ requisition proceeding from the office of the State respondents. He further

submitted that no proposal for acquisition or requisition was placed by any Requiring body in respect of the said land. He contended that the possession of the plot was not handed over to the requiring body by the State.

7. Mr. Talukar, learned advocate appearing from the KMDA seriously disputed the contention of Mr. Dhar. He vehemently contended that the acquisition proceeding was initiated in the year 1976-77 and the award was declared on 21.08.1989. He contended that the writ petitions have been filed at a belated stage only in the year 2019 and 2021 respectively and therefore, the same is liable to be dismissed on the ground of delay and laches. In support of his contention that a writ petition is liable to be dismissed on the ground of delay and laches he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of **State of Maharashtra vs. Digambar** reported at **(1995) 4 SCC 683** and **Banda Development Authority, Banda vs. Motilal Agerwal & ors.** reported at **(2011) 5 SCC 394**. For the same proposition he placed reliance upon the co-ordinate bench decisions in **WPA 4165 of 2018** in the case of **Himangshu Mallick & Anr. vs. The State of West Bengal & Ors.** order passed on 09.02.2022 and **WP No. 524 of 2010** in the case of **Nanda Roy vs. State of West Bengal & Anr.** order passed on 08.09.2017.
8. Mr. Talukdar also submitted that the identity and ownership of R.S. plot no. 2829 still remain in cloud and the same is to be verified in accordance with law.
9. In reply, Mr. Dhar, learned advocates for the petitioner submitted that delay and laches cannot be a ground to dismiss a writ petition in a case of instant case nature as the cause of action is a continuing one. In support of such submission he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of **Vidya Devi vs. State of Himachal Pradesh & ors.** reported at **(2020) 2 SCC 569** and

***Tukaram Kana Joshi & ors. vs. Maharashtra Industrial Development Corporation & ors.* reported at (2013) 1 SCC 353.**

10. Heard the learned advocates for the parties and perused the materials placed.
11. Record reveals that one Hare Krishna Hazari was the recorded raiyat of C.S.Plot No. 2642 under C.S. Khatian Number 924 within Kasba Mouja measuring about 1.44 acres of land. During Revisional Settlement, several bata plots were curved out from the original CS plot no. 2642. One of such bata plot is R.S. Plot no. 2642/2829 which is the subject matter of this writ petition. After several bata plots were curved out from CS Plot 2642, the land measuring about 16 decimals was recorded in the name of Durga Devi.
12. It is evident from the records that Plot no. 2642/2829 was recorded in the name of one Dwarika Prasad Jeswara measuring about 22 decimals. The writ petitioner in WPA 11125 of 2019 claims to be the heirs and heiresses of the said Dwarika Prasad Jeswara. The said Durga Prasad during his lifetime sold and transferred more or less 12 cottahs out of his 22 decimals of land in plot no. 2642/2829 by a registered deed of sale being Deed no. 907 for the year 1974 in favour of one Sadhan Sarkar. The writ petitioner in WPA 13179 of 2021 claims to have inherited the right, title and interest of Sadhan Sarkar in the aforesaid plot no. 2642/2829 upon the death of Sadhan Sarkar.
13. It is the case of the writ petitioners that after the transfer made in favour of Sadhan Sarkar, Dwarika Prasad Jeswara was the owner/ raiyat in respect of Plot no. 2642/2829 measuring about 2.14 decimals equivalent to 1.30 cottahs.
14. The writ petitioners have claimed that R.S. Plot no. 2829 corresponding to Plot no. 2642/2829 have been utilised for the purpose of construction of Rashbehari Connector Road without initiating any proceeding for acquisition.

15. The Special Land Acquisition Officer by a Memo no. 617(1) dated 11.09.2018 requested the Joint Secretary, Estate Unit, KMDA to ascertain whether the R.S. Plot no. 2829 has been utilised by KMDA and if the same has been utilised then a specific proposal towards payment of compensation to the petitioner is needed.
16. It appears from the Memo No. 495/KMDA/EU/LAM- 385 dated 04.10.2018 issued by Joint Secretary KMDA and addressed to Special Land Acquisition Officer, 24 Parganas (South) that a survey was done by the Officials of E&AM Sector. KMDA on 13.02.2017 and it was found that land being R.S.Dag No. 2642/2829 of Kasba mouja has been used by KMDA for construction of R.B. connector. It was further stated in the said Memo that for drawing up specific proposal towards payment of compensation, a joint survey is required with the officials of the Land Acquisition Collector, 24 Parganas (South) to ascertain the quantum of land in R.S. Plot no. 2642/2829 that has been utilised.
17. From the aforesaid Memo it is evident that KMDA approached the officials of the Land Acquisition department for a joint survey in order to draw up a specific proposal for payment of compensation. Therefore, KMDA is estopped from contending that RS Dag 2642/2829 was the subject matter of the land acquisition case initiated for construction of R.B.Connector Road.
18. It appears that a joint survey was made on 16.11.2018 with the help of mouja map and plan of ECAD Project on which Rashbehari Connector Road of KMDA has been drawn. From the joint measurement done in the presence of officials of Land Acquisition Department, KMDA officials as well as the writ petitioner it was reported that RS Plot no. 2829 of mouja Kasba has been fully utilised for Rashbehari Connector Road of KMDA.
19. From the aforesaid discussion it is evident that the RS Dag no. 2829 corresponding to Plot no. 2642/2829 has been fully utilised for the

purpose of construction of R.B. Connector Road. However, no proceeding for acquisition of R.S. Dag No. 2829 appears to have been initiated by the respondent authorities.

20. Mr. Talukdar, learned advocate appearing for KMDA would vehemently contend that the writ petitions are liable to be dismissed on the ground of delay and laches.
21. It is the case of KMDA that the acquisition proceeding was initiated in the year 1976-77 and award was declared on 21.08.1989 and construction of road was completed long back. The writ petitions have been filed in the year 2019 and 2021, i.e., at a belated stage.
22. In the case on hand, the possession of the land of the petitioners were taken without any sanction of law. This Court has to now consider whether in such a case delay and laches can debar a citizen to approach the writ court claiming compensation.
23. A more or less similar issue fell for consideration before the Hon'ble Supreme Court in **Tukaram Kana Joshi** (supra) wherein it was held that if the whole thing shocks the judicial conscience, then the Court should exercise discretion in favour of the petitioners when no third party interest is involved. The Hon'ble Supreme Court held thus-

"10. In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the rule of law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.

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. There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the landowner as a "subject" of medieval India, but not as a "citizen" under our constitution.

12. The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience."

24. In **Vidya Devi** (supra), the Hon'ble Supreme Court after noting several decisions of the Hon'ble Supreme Court including Tukaram Kana Joshi held that delay and laches cannot be raised in a case of continuing cause of action or if the circumstances shock the judicial conscience of the Court. The Hon'ble Supreme Court held thus-

"12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution.

Reliance is placed on the judgment in Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, wherein this Court held that:

“ 6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.” (emphasis supplied)

12.6. In Jilubhai Nanbhai Khachar v. State of Gujarat, this Court held as follows :

“48. ...In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law.

Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.” (emphasis supplied)

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.”

25. It would be evident from an order dated 23.06.2016 passed by a Hon'ble Division Bench in FMA 2643 of 2015 that KMDA paid a sum of Rs. 4,17,33,916/- to one Santosh Karmakar which sum was computed to be the value of land towards compensation amount. It was recorded in the said order that the State and KMDA shall stand discharged from their liability in relation to the land in question upon such compensation being paid. It appears from the record that Santosh Karmakar was the recorded raiyat in respect of an adjoining plot being Rs. 2642/2828.

26. In the case on hand, an instrumentality of the State took over possession of the land in question without initiating any proceeding in accordance with law. Such action of the respondent authority amounts to gross abuse of power. Since the petitioners have been deprived of their property, they have to be adequately compensated therefor. This Court is therefore, of the considered view that a direction should be passed upon the respondents to comply with the procedure laid down under the relevant statute for acquisition of R.S. Dag No. 2829 and to pay the compensation money.
27. Several plots of land were utilised for the purpose of construction of R.B.Connector Road and also that in respect of some of such plots acquisition proceeding was not initiated. An adjoining owner was also paid compensation pursuant to an order passed by this Court. That apart the manner in which an instrumentality of the State has deprived the petitioners of their property without any authority of law has shocked the judicial conscience of this Court. It is also not the case of the respondent authorities that any third party interest has been created. For all the aforesaid reasons, this Court is inclined to exercise discretion in favour of the writ petitioners.
28. After going through the Joint Inspection Report which stated that RS 2829 has been fully utilised for the purpose of construction of R.B. Connector and other documents, this Court is not inclined to accept the submission of Mr. Talukdar that there is no existence of R.S. Plot no. 2829 corresponding to R.S.Plot no. 2642/2829. That apart, the Revenue Officer in a reply to a query made under the Right to Information Act, 2005 stated that RS Plot 2642 and RS Plot 2642/2829 of mouja Kasba are two different plots having an area of 26 decimals and 22 decimals respectively. In case a plot is subdivided, the original plot from which the bata plot is created is indicated as the numerator and the bata plot so created is shown in the denominator. Mr. Talukdar would contend that the name of Sadhan Sarkar finds

place in the award but he failed to satisfy this Court as to how an award could have been declared in his name in respect of R.S.Dag no. 2829 when admittedly no proposal for acquisition of the said plot was forwarded by KMDA coupled with the specific stand of the State that the possession of the said land was not handed over by the State to the requiring body.

29. This Court, therefore, holds that the authorities of the KMDA utilised R.S.Plot No. 2829 which was not subject to any land acquisition proceeding. The petitioners were thus deprived of their property without any sanction of law. As a result the respondents are liable to compensate the owners of the said land for utilising the same.
30. In ***Digambar*** (supra), the collectors who were in charge of the relief works were instructed to impress upon the non official and social workers to use their good offices in ensuring that the land required for scarcity relief works were donated to the Government without any claim for compensation. On such factual background it was held that the writ petitioner had not explained properly and satisfactorily the delay. The said decision being distinguishable on facts do not have any manner of application to the case on hand.
31. In ***Banda Development Authority*** (supra), the writ petition was filed praying for initiation of a fresh acquisition proceedings six years after the pronouncement of award. The said decision being distinguishable on facts do not have any manner of application to the case on hand.
32. In ***Nanda Roy*** (supra) a co-ordinate bench after noting that indefensible third party rights have been created in respect of the property refused to entertain the writ petition. The said decision being distinguishable on facts is of no assistance to the KMDA.
33. In ***Himangshu Mallick*** (supra), the award was declared on 09.01.1979 and on a reference petition the said award was modified on 03.01.1995. A writ petition was filed challenging the modified

award after 23 years. In the backdrop of such factual position, the co-ordinate bench found that no reasonable explanation has been given for such delay in approaching the Court. The said decision being distinguishable on facts do not have any manner of application to the case on hand.

34. For all the reasons as aforesaid, the writ petitions are disposed of by passing the following directions.

(a) The authorities of KMDA are directed to forward a proposal for acquisition of RS Dag no. 2829 within mouja Kasba to the appropriate authority of the State Government forthwith and positively within a period of four weeks from the date of receipt of the server copy of this order.

(b) Immediately upon receipt of such proposal, the appropriate authority of the State shall initiate steps for acquisition of the said land in accordance with law and conclude the proceedings including payment of compensation to the writ petitioners and/or any person interested who may be entitled to such compensation as expeditiously as possible but positively within a period of 8 weeks from the date of receipt of the proposal from KMDA.

35. There shall be, however, no order as to costs.

36. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)