

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 10293 of 2015
Dilip Kumar Ghosal
Versus
The State of West Bengal & Others

For the petitioner	:	Mr. Amit Kumar Pan Ms. Tanusri SantraAdvocates
For the State	:	Mr. Chandi Charan Dey Mr. Anirban SarkarAdvocates

Heard lastly on : 23.02.2023

Judgment on : 22.06.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for a direction upon the respondents to rescind and/or withdraw the notice dated 02.05.2014 and to pay compensation as per the new Act of 2013 by initiating a fresh proceeding after treating the earlier proceeding being Case No. R.A.-44/77-78 as lapsed.

2. Mr. Pan, learned senior counsel appearing on behalf of the petitioner, submitted as follows. The petitioner is the owner of R.S. Plot Nos. 1696,

2356, 2199 and 1721 measuring an area of about 0.12 acre, 0.06 acre, 0.08 acre and 0.10 acre respectively (hereinafter referred to as 'the said land') and the said land is situated within Mouza – Kandra, J.L. No. 114, presently under Police Station – Salar, District – Murshidabad. For providing proper facilities for transport and communication, viz. widening of Salar-Bharatpur Road the 4th and 5th kilometre in the district of Murshidabad, the Collector being the respondent no. 2 herein, initiated a proceeding under the West Bengal Land (Requisition and Acquisition) Act, 1948 (Act II of 1948), at present expired, bearing Case No. R.A. – 44/77-78 and the possession of the said land was taken over on 28th April, 1978, upon an order under sub-Section (1) of Section 3 of the said Act II 1948. Subsequently, the said land was acquired upon publication of a notification under Sub Section (1a) of the Section 4 of the West Bengal Land (Acquisition and Requisition) Act, 1948 (Act II of 1948) and the said notification was published in the Calcutta Gazette on 27.09.1982. During pendency of the aforesaid proceeding, the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 came into force on and from 31st March 1994 and by the said Amendment Act Section 3 of the Principal Act (Act II of 1948) was omitted with effect from 1st April 1994 and in view of such omission power to requisition under Section 3 of Act II of 1948 was taken away with effect from 1st April 1994. However, the life of the said Act II of 1948 was extended till 31st March 1997. Subsequently, the West Bengal Land (Requisition and Acquisition) Act, 1948 (Act II of 1948), since expired, was further amended on 8th October 1996 and by virtue of Section 3 of the West Bengal Land

(Requisition and Acquisition) (Amendment) Act, 1996 (West Bengal Act XXV of 1996), Section 7A was inserted after Section 7 of the Principal Act. In view of insertion of Section 7A, the said notice/notification under Section 4(1a) of the West Bengal Land (Requisition and Acquisition) Act, 1948 dated 27.09.1982 in connection with the said proceeding stood lapsed, as no award could be made on or before 31st March 1995 and thereby, the said land reverted back under requisition from acquisition and was under requisition till 31st March 1997. By the said amendment, Section 9 of the Principal Act, namely Act I of 1894 was amended by which sub-section (3B) was inserted. Furthermore, by such amendment Act after the proviso of Section 11A of the Principal Act, a further proviso had been added which was as follows: - "Provided further that in respect of the acquisition of the land referred to in such Section (3A) and sub-section (3B) of Section 9 the award shall be made within a period of two year from the date of issue of public notice under Section 9." The respondents, particularly the respondent no. 2 herein, never made any attempt to determine and/or to pay the compensation in question either during the pendency of the said Act II of 1948, since expired or under the said Land Acquisition Act, 1894 which stood repealed with effect from 1st January 2014 and in fact, till date no award had been declared in respect of the said land although the project for which the said land was taken over, was completed long back which was permanent in nature. The Land Acquisition Act, 1894 stood repealed on and from 1st January, 2014 and in place and stead of the said Land Acquisition Act, 1894, a new Act namely The Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) came into force on and from 1st January 2014. The respondents ought to have initiated a fresh proceeding under the said Act of 2013 for the purpose of determining the compensation in question in respect of the said land since no award could be made during the lifetime of the Land Acquisition Act, 1894. On the contrary, on or about 5th May 2014 the petitioner was served with notices under sub-section (3B) of Section 9 of the Land Acquisition (West Bengal Amendment) Act, 1999 dated 02.05.2014 issued by the Collector, being the respondent no. 2 herein whereby the petitioner was asked to appear before the said respondent on 21.05.2014 and 22.05.2014, respectively to state his nature of interest in respect of the said land and to submit the particulars of the claim on account of compensation along with the relevant documents in support of the claim. In terms of the aforesaid notices dated on 21.05.2014 and 22.05.2014, respectively the petitioner duly appeared before the Collector being the respondent no. 2 herein when the petitioner requested the said respondent to rescind and/or withdraw the said notices dated 02.05.2014 since no notice under sub-Section (3B) of Section 9 of the Land Acquisition Act, 1894, wrongly mentioned as Land Acquisition (West Bengal Amendment) Act, 1999, could be issued in the year 2014, particularly when the Land Acquisition Act, 1894 stood repealed with effect from 1st January 2014. However, the petitioner produced all the relevant documents, as was asked for, in support of his claim in respect of his title of the said land to the satisfaction of the said respondent. Thereafter, the petitioner made several

visits to the Office of the Collector being the respondent no. 5 herein to know the fate of the compensation in question, when ultimately on 20th April 2015, the petitioner was handed over with a Memo bearing No. 2020/LA/EN dated 22.10.2014 wherefrom it would be evident that the respondents were taking steps to declare the award in question on the basis of the said notices dated 02.05.2014. The proposed attempt on the part of the respondents to declare the award on the basis of the said notices dated 02.05.2014 was illegal, arbitrary, mala fide, perverse and tantamounted to colourable exercise of power. The said notices issued under sub-Section (3B) of Section 9 of the Land Acquisition Act, 1894 wrongly mentioned as Land Acquisition (West Bengal Amendment) Act, 1999 could not be sustained in the eye of law inasmuch as the Land Acquisition Act, 1894 stood already repealed on the date of issuance of the said notices. The said notices dated 02.05.2014 were issued without proper application of mind since Land Acquisition Act, 1894 stood repealed on and from 1st January 2014. Being statutory authority, the respondents could not issue any notice in connection with an Act which was not in existence at the time of issuance of such notice. They were duty bound to determine and pay the compensation in question in respect of the said land, upon initiating a fresh proceeding under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), by withdrawing and/or cancelling the said notices dated 02.05.2014.

3. Mr. Dey, learned senior counsel representing the State, submitted as follows. A Land Acquisition Case being RA Case No. 44/1977-78 was

initiated as per provision of West Bengal Land (Requisition and Acquisition) Act 1948 for the Requiring Body Public Works (Roads) Department, Government of West Bengal for construction of Road and notice under Section 3(1) of the said Act was published and subsequently, notice under Section 4(1a) of the said Act was published on 27.09.1982. One writ petition being WP Case No. 9355(W) of 2014 was filed by some persons before the Hon'ble High Court at Calcutta and Order was passed directing the Special Land Acquisition Officer, Murshidabad was directed to disburse the amount to the writ petitioner according to their proportionate share by four weeks from the date and notices were issued to the writ petition and they attended the Office of the Special Land Acquisition Officer being person having interest in the acquired plots of land mentioned in the notice. Action of the respondent authority was taken as per order dated 12.08.2014 of the Hon'ble Justice Ashoke Kumar Adhikary being WP No. 9355(W)/14 and instant writ petition was similar in nature and involved the same RA Case No. 44/1977-78 and the petitioner was entitled to get award/compensation as per calculation made in RA Case No. 44/1977-78. The award/compensation was declared as per order of the Hon'ble Court being WP Case No. 9355/14 and as such, this writ petition would also get the similar benefit. The admitted position that the possession of the said land was taken over on 28th April, 1978 upon an order sub-section(1) of Section 3 of the said Act II of 1948 and the land was acquired upon publication of a notification under sub-section (1a) of Section 4 of the West Bengal Land (Requisition & Acquisition) Act, 1948 published in Calcutta Gazette on

27.09.1982. According to the provision of Section 24 of the right to fair compensation and transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 was not applicable in West Bengal Land (Requisition and Acquisition) Act, 1948 i.e. Act II of 1948 and it was only applicable in Act No. 1 of 1894. From the above it was very clear that if the acquisition was started from the West Bengal Land ((Requisition & Acquisition) Act 1948 the provisions to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 is not applicable. From the order dated 12.08.2014 passed by this Court in WP No. 9355(W)/14 it was also very clear that the Hon'ble Court was pleased to direct to pay the award/compensation to the then writ petitioner. The Hon'ble Division Bench, in MAT 86 of 2016 (The State of West Bengal & Ors. versus Niladri Chatterjee & Ors.), was pleased to observe that the writ petition/respondents were certainly entitled to get the award/compensation alongwith interest 8% per annum to be calculated from the date of taking possession of the land in question till date of disbursement and other.

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

5. It appears that the petitioner's land in question was taken over by the respondent authorities for widening of a road in the District of Murshidabad, by initiating a land acquisition proceeding being Case No. RA-44/77-78 under the Act II of 1948. The possession of the land was taken on 28.04.1978 upon an order under Section 3(1) of the said Act. Subsequently, the land was acquired upon publication of notification under Section 4 (1a)

of the Act II of 1948. However, no award was passed during existence of the said Act.

6. In the meantime, the life of the said Act II of 1948 came to be extended till 31.03.1997. There were some amendments made by inserting Section 7A in it.

7. Therefore, as no award could be made on or before 31.03.1995 the above referred notice/notification dated 27.09.1982 under Section 4 (1a) of the Act II stood lapsed. In the meantime, sub-section (3B) was added to Section 9 of the Act I of 1894 and a further proviso was added to Section 11A of the said Act.

8. However, the respondents, particularly the respondent no. 2 herein, never made any attempt to determine and/or pay compensation in question either during the pendency of the Act II of 1948 or thereafter, under the Act I of 1894, which stood repealed with effect from 01.01.2014. Till date, no award has been declared in respect of the land although the project was completed long back for which the land was taken.

9. After lapsing of the Act I of 1894, a new Act namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act of 2013, for short) came into force from 01.01.2014. Therefore, the respondents ought to have initiated a fresh proceeding under the said Act. On the contrary, even after the commencement of the new Act on or about 05.05.2014 the petitioner was served with a notice dated 02.05.2014 under Section 9 of the Land Acquisition (West Bengal Amendment) Act 1999. The petitioner appeared

before Collector and purportedly requested him to withdraw the notices and also pointed out that no notice under Section 9 (3B) of Act I of 1894 had been issued and instead the Land Acquisition (West Bengal Amendment) Act 1999 was referred to. In any event, such notice could not be issued in 2014 after lapsing of the Act I of 1894.

10. Even the earlier notice could not have survived. Here, it may not be out of place to quote what was laid down by a Special Bench of this Court in State of West Bengal versus Sabita Mondal, 2011 (3) CHN (Cal) 555 –

“20. However, in respect of those notices under sub-section (1a) of Section 4 which were issued prior to March 31, 1992 and in respect of which no award had been passed by March 31, 1995, those notices had already lapsed and by the Amendment Act 1997 of the Land Acquisition Act by the West Bengal Legislature, no provision has been made for revival of the lapsed notices which stood lapsed already on March 31, 1997 for non-compliance of the provision of Amendment Act of 1996. By the Amendment Act of 1997 only those notices under sub-section(1a) of Section 4 which would have lapsed on the midnight of March 31, 1997 or on subsequent dates, have been saved.”

11. The contention of the respondent authorities that another similar matter was considered by this Court and the aggrieved was found entitled to get award/compensation as per calculation would be of no avail. First, the petitioner was apparently not a party therein. Secondly, no law, as such, has been laid down in the said WP 9355(W) of 2014, especially concerning invoking of a provision of a dead Act when a new Act on the same subject

matter had called already come into existence. There, the petitioners were simply found accepting a sum as compensation.

12. The directions passed by a Division Bench of this Court in MAT 86 of 2016 do not enure to the benefit of the petitioner. The contention of the State that, as per the judgment, the provisions of Section 24 of the Act of 2013 was only applicable to Act I of 1894 and not to Act II of 1948 is hardly of any consequence in the instant case. Here, the question is not of applying the principles of Section 24 of the new Act. Section 24 only enables certain proceedings under the Act I to continue in certain eventualities. But, in the instant case, the facts and the issues are different. Here, a land was acquired as far back as in 1978 and a proceeding was initiated under the Act II of 1948. No award was passed and the said Act lapsed. No award was passed even thereafter under Act I of 1894 and the Act I lapsed as well. But, the land was already utilised. Moreover, unlike in MAT 86 of 2013, the petitioners did not just come up with a claim under the new Act. They have also challenged an attempt made by the respondent authorities to issue an illegal notice under a dead Act although the earlier proceeding was not saved by any provision of law.

13. After all these, there is no option left for the respondent authorities but to initiate a fresh proceeding under the existing law, in this case, under the new Act of 2013 so that the petitioner can be compensated. Afterall, the land has been utilised and cannot be returned.

14. In view of the above discussions, I direct the respondent authorities to treat the impugned notice as lapsed and to initiate a fresh proceeding under

the provisions of the Act of 2013 and compensate the petitioner in terms of such Act at the earliest, preferably within a period of twelve weeks from the date of communication of this order.

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

16. 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.)