

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**IA No.:CAN/2/2017 (Old No.:CAN/10740/2017),
CAN/3/2017 (Old No.:CAN/10742/2017)
in
WPA No. 12574 of 2007**

**Asok Kumar Maiti & Anr.
Vs.
The State of West Bengal & Ors.**

**For the Petitioners : Mr. Gopal Chandra Ghosh,
Mr. Uttam Kumar Bhattacharyya.**

**For the State : Mr. Chandi Charan De,
Mr. Anirban Sarkar.**

**For the Respondent
No. 3. : Mr. Salil Kumar Maiti.**

Judgement on : 06.09.2023.

Bibek Chaudhuri, J.

It is the case of the petitioners that the petitioners were the original raiyats in respect of land measuring about 1.27 acres in Plot No. 1837 of Mouza – Bhabanipur, J.L.No. 150 within P.S. – Sutahata in the district of Purba Medinipore. Out of the said 1.27 acres of land initially 31 decimals of land was acquired for public purpose for the construction of roadways from Haldia Petro-Chemical to Haldi river under Act I of 1894. It is not disputed by the petitioners that petitioner no. 1 received compensation in respect of the said

acquisition of land on 5th November, 1998. It is the further case of the petitioners that subsequently the LA Collector, Purba Medinipore acquired remaining 96 decimals of land for construction of urban complex in Haldia.

It is submitted on behalf of the petitioners that though on paper the said land was acquired, neither the acquiring nor the requiring authority took over physical possession of the said 96 decimal of land from the petitioners. The petitioners are still in possession of the said 96 decimal of land. Under such circumstances, the petitioners have prayed for issuance of writ in the nature of mandamus commanding the respondents to relinquish and/or to release and/or derequisition the said 96 decimals of agricultural land out of 1.27 acres of land in Plot No. 1837, Mouza – Bhabanipur, J.L. No. 150, P.S.-Sutahata from the status of acquired land needed for Haldia Urban Complex for residential purpose as the petitioners have been evicted from all other lands of Mouza – Bhabanipur and they do not have any other land in the said Mouza.

It is submitted by Mr. Gopal Chandra Ghosh, learned Advocate for the petitioners that the said land was declared to be acquired on 30th June, 1997 on the basis of notification dated 23rd December, 1996 as per the report submitted on behalf of the Special Land Acquisition Officer, Haldia, Purba Medinipore. However, physical possession of the said land has not been taken as yet by the respondents.

The learned Advocate for the petitioners thus submits that in view of Sub-Section 2 of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 since physical possession of the land has not been taken by the respondents the acquisition proceeding should be held to be

lapsed. Under such circumstances, the petitioners are entitled to get back the possession of the subject land.

Having heard the learned Advocate for the petitioners and the learned Additional Government Pleader and on perusal of the provisions contained in Sub-Section 2 of Section 24 of 2013 Act it is found that in order to declare an acquisition proceeding lapsed two conditions are required to be fulfilled. First, the physical possession of the land has not been taken by the acquiring or requiring body or the compensation has not been paid. If any one of such conditions is complied with the statutory fiction of Section 24 of 2013 Act cannot be held to be applicable. In the instant case, it is found from the report of the State respondents that in respect of LA Case No. 74/97-98 by virtue of which 96 decimal of land was acquired the LA Collector declared the award on 17th April 2001 and as the awardee did not turn up to receive the awarded compensation, the amount was deposited to the learned District Judge, Purba Medinipore. In view of such circumstances, since compensation has been declared and kept in custody of the District Judge for payment, Sub-Section 2 of Section 24 of 2013 Act cannot be applicable.

It is contended on behalf of the petitioners that the Haldia Development Authority has been selling different parts of the said land dividing the same in plots to other persons for residential purpose. Thus, the purpose for which the land was taken has been violated. This Court does not think that the purpose for which land was acquired is being violated by the Haldia Development Authority because of the fact that the land was taken for construction of urban complex. Urban complex can be constructed by converting the land to residential plot and selling the same to different purchasers.

Therefore, this Court also holds that the public purpose for which the land was taken has not been violated by the respondents. Mr. Ghosh next draws my attention to paragraph 23 of the writ petition. It is stated by the petitioners that the social principle/policy of the Government is that nobody shall be evicted/dispossessed of his hearth and home without making him alternative accommodation and paying him reasonable compensation/award.

I have already held that award has already been declared by the LA Collector in respect of 96 decimal of land on 17th April, 2001 and it is lying with the learned District Judge, Purba Medinipore. The petitioners can withdraw the award from the Court of the learned District Judge, Purba Medinipore.

The learned Additional Government Pleader strenuously urges that the petitioners are not in a position to get any alternative accommodation because of the fact that no such prayer has been made by the petitioners in the instant writ petition. It is true that the petitioners have not specifically made any such prayer for alternative accommodation. However, the State respondents should and must consider that Land Acquisition Act is a socially beneficial legislation and under the scheme of Haldia Development Authority land loser are entitled to get settlement of land for their accommodation.

It is open for the respondent no. 3 to consider as to whether a piece of land can be provided to the petitioners as their entire land was acquired under Act I of 1894.

The petitioners are at liberty to make appropriate prayer before the respondent no. 3 within 15 days from the date of this order and the respondent no. 3 shall consider their prayer for settlement of land

for their accommodation within 45 days thereafter. With the above order, the instant writ petition is disposed of.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 86.