

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 14387 of 2013

Gourhari Maity

Versus

State of West Bengal & Ors.

For the petitioner : Mr. Amit Kumar Pan
Ms. Tanusri Santra
.....Advocates

For the State : Mr. Soumitra Bandopadhyay
Mr. Prasanta Behari Mahata
.....Advocates

Heard lastly on : 28.11.2022

Judgment on : 09.01.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for directions upon the respondents to return back the possession of the land, the particulars of which were given in paragraph no. 2 in the petition that was taken over in connection with Case No. LA-4/31 of 2001-

02 to the petitioners and to pay just and fair possession upon declaring the award in respect of the land so taken over.

2. On 25.11.1984 the father of the petitioner namely, Chittaranjan Maity passed away leaving behind his widow, two daughters and four sons as his legal heirs. In the year 2001 the Collector being the respondent no. 2 initiated a proceeding being Case No. LA-4/31 of 2001-02 under the Land Acquisition Act 1894 (Act I of 1894). On 06.09.2010 the petitioners made representations before the respondents nos. 2, 5 and 6, inter alia, requesting them to pay the compensation in question at an early date. The representations were duly received by the said respondents. Thereafter, the petitioner made several visits to the office of the respondent no. 2 in question. But, the respondents refused to pay any heed. The last said visit was made on 26.04.2013.

3. Mr. Amit Kumar Pan, learned senior counsel representing the petitioner, submitted as follows. The deceased father of the petitioner was the recorded owner of plot nos. 2995, 2996, 2997 and 3001 at Mouza Debnagar, Police Station -Namkhana, District- South 24 Parganas. On his death in November 1984 he left behind his widow, two daughters and four sons. In 2001 the Collector started the LA Case as mentioned above purportedly for construction of a retired embankment. On or about 03.05.1999 the possession of the land was forcibly taken over by the respondent no. 6 without complying with the provisions of the Act of 1894. In the present case, no notification under Section 4 of the 1894 Act has ever been published in the Official Gazette. As a result, the said land was never

acquired by the Collector. In such situation, the respondents were illegally and forcibly enjoying possession of the land without making any payment towards compensation thereof in favour of the heirs of the deceased Chittaranjan Maity. On 06.09.2010 the petitioner along with other land losers made a representation before the respondents 2, 5 and 6 requesting to pay compensation at an early date. The respondent authority could not continue with the possession of the land without payment of any compensation. After all the land has been utilised and the project was completed long back. As such, the acts of the respondents were violative of Articles 14, 19 (1) (g) and 300A of the Constitution. The respondents failed to controvert bulk of the statements made by the petitioner in the affidavit in opposition filed on 14.08.2003. The respondent nos. 2 and 3 categorically admitted that the said plot had been utilised. It was also admitted that the land acquisition case in question had not been concluded. Therefore, the question of payment of compensation did not arise. It was their further case that RS plot no. 2997 could not be involved in the project as the same was submerged in river Chenergang. The proceeding under the 1894 Act could not be continued for the purpose of declaration of award as the said Act stood repealed in view of Section 114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act of 2013 for short). The case of the writ petitioner was covered by Section 24 (1) (a) of the Act of 2013. Therefore, it was prayed that a direction be passed upon the respondents to determine the compensation in question in respect of the said land taking into consideration the provisions

of Sections 11, 19, 20, 21, 23, 25, 26, 27, 28, 29, 30 and 37 of the Act of 2013. During the course of argument the State referred to a circular bearing memo no. 215/LA/9R-71-2022 dated 29.06.2022 issued by the Additional Secretary, L & LR & RR & R Department, Government of West Bengal. The circular was nothing but an administrative instruction that had no legal force. It was settled law that a notification could not be a substitute of the statutory rules framed with the authority of law. On this reliance was placed on Dr. Rajinder Singh versus State of Punjab and Others, (2001) 5 SCC 482. The forcible dispossession of a person from his property without following due process of law was violative of human and constitutional rights under Article 300A of the Constitution. Furthermore, the State must comply with the procedure laid down for acquisition and requisition or any other permissible statutory mode. On this reliance was placed on Tukaram Kana Joshi & Ors. versus Maharashtra Industrial Development Corporation and Others, (2013) 1 SCC 353. In the facts and circumstances of the case the respondents were illegally and forcibly enjoying the possession in question without any authority of law since the respondents were not in a position to proceed any further with the said proceeding bearing Case No.LA-4/31 of 2001-02 so initiated under the Land Acquisition Act, 1894 (Act I of 1894) since the said Act of 1894 had already been repealed with effect from 1st January, 2014. Being statutory authority, the respondents could not continue with the possession in question without payment of compensation and such compensation could only be determined and/or made upon initiating a fresh proceeding under the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, since the Land Acquisition Act, 1894 stood repealed in view of Section 114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, it was humbly prayed that the respondents should determine and pay the compensation in question in respect of the said land (being plot Nos. 2995, 2996, 2997 and 3001) upon initiating a fresh proceeding under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, forthwith.

4. Mr. Soumitra Bandopadhyay, learned counsel appearing on behalf of the State submitted as follows. A communication was made by the Executive Engineer, Kakdwip Irrigation Division to the LA Collector, South 24 Parganas, vide letter dated 13.12.2001, stating that some plots of land including suit plot nos. 2995, 2996, 2997 and 3001 of Mouza Debnagar, PS-Namkhana were urgently required for construction of retired embankment and it was requested to take action under the Act of 1948. However, the requirement as stated had no approval or consent from the concerned Department of Irrigation Division, Government of West Bengal. It appeared that land acquisition proceeding over the suit plot including other plots was initiated, but no further action was found taken. No requisition proceeding was initiated and hence, the question of delivery possession by the LA Collector, South 24 Parganas to the Executive Engineer, Kakdwip Irrigation Division did not arise. Later, on a joint field enquiry undertaken by the surveyors of the LA Department and the Irrigation and Waterways

Department on 30.05.2013 and from the report it appeared that plot no. 2995, 2996 (part) and 3001 had been utilised, but 2997 was not utilised as it was found merged into the river. As the suit plots were never acquired by the Land Acquisition Department and the possession was not handed over to the Irrigation and Waterways Divisions, therefore the onus of payment of compensation did not lie upon the Collectors of South 24 Parganas. Besides, the Government Circular dated 29.06.2002 provided for a solution to the problem at hand. It would be incorrect to state that the Circular did not have any legal force.

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

6. It appears that in 2001 a proceeding was initiated in terms of Act I of 1894 for acquisition of land for construction of a retired embankment. On or about 03.05.1999 the possession of land in question was taken over by the respondent no. 6 purportedly without complying with the provisions of Act I of 1894. It is the petitioner's case that no notification under Section 4 of the said Act was ever published in the official Gazette. As a result the said land was never acquired by the Collector. Yet, the respondents were illegally enjoying possession of the land without making any payment towards compensation.

7. The case of the writ petitioner appears to be squarely covered by Section 24 (1) (a) of the Act of 2013 as the proceeding purportedly initiated under the 1894 Act could not be continued for the purpose of

declaration of award because the said Act stood repealed in terms of Section 114 of the 2013 Act.

8. In the affidavit in opposition, the respondent no. 2 and 3 admitted that some of the plots had been utilised. Therefore, the submission advanced on behalf of the State that as the said plots were never acquired by the Land Acquisition Department and the possession was not handed over to the Irrigation and Water Ways Division therefore, the onus of payment of compensation did not lie upon the Collector of South 24 Paraganas, is contradictory and without any basis.

9. So far as the plot no. 2997 is concerned, it has been submitted on behalf of the State that the same merged into the river. However, at the time when the said plot was taken over by the respondents along with the other plots, the same was not submerged. Therefore, the petitioners as the heirs of the original owners of the land would be entitled to compensation for the said plot just as they would be entitled to get compensated for the other plots of land taken over and utilised.

10. As regards the Circular dated 29.06.2002, it is true that the same cannot act as a surrogate for the established procedure of law as laid down in the respective statutes. Therefore, the Circular cannot come in the way of the operation of ordinary law as applicable in the present case.

11. In view of the above and in the interest of justice, the respondents are directed to initiate a fresh proceeding under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013 so that the compensation payable to the petitioners in respect of the

land in question could be determined and paid to them. The respondents shall initiate the proceeding within four weeks from the date of communication of this order and conclude the same within a period of three months from then.

12. With these observations, the writ petition is disposed.

13. There shall be no order as to costs.

14. 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.)

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