

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1119 of 2022

Sri Bhola Nath Koley

VS.

The State of West Bengal & Ors.

For the Appellant : Mr. Ashok Kr. Banerjee, Sr. Adv.
Mr. Tapajit Dey,
Mr. Miru Hazra, Advocates

For the State : Sk. Md. Galib,
Mr. Abu Siddique Mallik, Advocates

For Respondent
Nos. 5 & 6 : Mr. Debabrata Banerjee,
Mr. Samir Kr. Chakraborty, Advocates

Heard on : July 18, 2023, August 4, 2023 & August 22, 2023

Judgement on : August 22, 2023

DEBANGSU BASAK, J.

1. The appeal is directed against a judgment and order dated July 6, 2022 passed in WPA 1065 of 2011.

2. By the impugned judgment and order, the learned trial Judge dismissed the writ petition which sought a direction upon the authorities to release and/or to derequisition the land belonging to the writ petitioner.

3. Learned senior advocate appearing for the appellant submits that, the entire acquisition proceedings is vitiated with colourable exercise of power. Acquiring authority proceeded in a manner so as to accommodate persons of stature. Lands belonging to the persons with influence and stature were taken out of the purview of the acquisition.

4. Learned senior advocate for the appellant highlights the delay in commencement of the acquisition proceeding subsequent to the decision being taken by the Cabinet of the State. He points out that the Cabinet approval for the acquisition was granted on November 16, 1994. The authorities took about 5 years time till August 10, 1999 to issue the notification under Section 4 of the Act of Land Acquisition, 1894 (in short the Act of 1894). The delay itself shows that there was no urgency for the acquiring authority to acquire the land. In fact, the ostensible public purpose shown was absent as will appear from the conduct of the authorities.

5. Learned senior advocate for the appellant submits that, the land belonging to the writ petitioner was not utilized. He refers to the land Utilization Map submitted in the appeal at the behest of the authorities. He points out the lands belonging to the petitioner are lying and situated beyond the periphery canal. There is hardly any likelihood that the land belonging to the writ petitioner would be utilized for the so-called public purpose. Therefore, in all fairness the land belonging to the writ petitioner should be released.

6. In support of such contention, he relies upon **2021 SCC OnLine 1115 [Hamid Ali Khan (D) Through LRS. & Anr. Vs. State of U.P. & Ors.]**

7. State is represented.

8. The records of the case demonstrate that on November 16, 1994, the Cabinet granted approval regarding acquisition of land of 1435.02 acre pertaining to 12 mouzas including Mouza Mohishgot for an area of 254.54 acres. A notification under Section 4 of the Act of 1894 was published on August 10, 1999. The public purpose declared for such acquisition was for establishing the Rajarhat New Township project.

9. A notification under Section 4 of the Act of 1894 was published in the local newspaper on August 12, 1999. Declaration under Section 6 of the Act of 1994 was published on August 23, 1999. The writ petitioner instituted a writ petition being WP 16001(W) of 1999 challenging the notification under Section 4 of the Act of 1894.

10. The authorities passed an award dated October 13, 2000. It is the claim of the appellant that the award was passed without notice to the appellant. The authorities declared the award under Section 11 of the Act of 1894 on May 22, 2001. Authorities proceeded to make payments on July 9, 2001.

11. The writ petition 16001(W) of 1999 was dismissed as withdrawn at the behest of the writ petitioner on August 11, 2010 with liberty to file afresh.

12. Thereafter, the writ petitioner filed WPA 1065 of 2011 which resulted in the impugned judgment and order.

13. In WPA 1065 of 2011, the prayers made are as follows :-

"a) A writ in the nature of Mandamus commanding the respondents, their agents and/or subordinates to show cause or sufficient cause as to why the lands of your petitioner as mentioned in Paragraph NO. 2 to this application be not released and/or derequisitioned in favour of your petitioner forthwith.

b) A Writ in the nature of Mandamus restraining the respondents, their agents and/or subordinates not to create any disturbance or constructing the dwelling house of your petitioner at L.R. Dag No. 265 as mentioned in paragraph 2 till the disposal of this application pending before this Hon'ble Court.

c) A Writ in the nature of Mandamus commanding the respondents, their agents and/or subordinates not to create any disturbance of the lands of your petitioner as mentioned in Paragraph NO. 2 till the disposal of this Writ Application pending before this Hon'ble Court.

d) A Writ in the nature of Prohibition, prohibiting the respondents, their agents and/or subordinates not to create any disturbance of your petitioner for constructing its residential house at L.R. Dag No.265 measuring about 21 Satak and not to create any further in respect of enjoying and possessing of remaining land of your petitioner as mentioned in paragraph NO. 2 of this Writ petition till the disposal of this application pending before this Hon'ble Court;

e) A Writ in the nature of Certiorari calling upon the respondents, their and/or subordinates to produce or cause to be produced all records pertaining to the instant case so that after perusal of the same conscionable justice may be done by this Hon'ble Court;

f) Rule NISI in terms of prayers (a) to (e) as above;

g) An ad-interim order restraining the respondents not to create any disturbance from peaceful possession and enjoyment of your petitioner of the lands situated at L.R. Dag No. 265, 270 and 299 as mentioned in paragraph NO. 2 of this Writ petition till the disposal of this application pending before this Hon'ble Court;

h) Rule be made absolute should the respondents fail to show cause or sufficient cause before this Hon'ble Court.

- i) Any other Writ, Order and/or direction to which your petitioners are entitled to;*
j) Cost or costs incidental to this application.”

14. Any challenge to the initial Section 4 notice as was made in WP 16001(W) of 1999 is absent in the new writ petition. There is hardly any explanation as to why the earlier writ petition was allowed to be dismissed as withdrawn at the behest of the writ petitioner.

15. Between the time of the order dated August 11, 2010 by which the earlier writ petition was dismissed as withdrawn till the filing of the writ petition on January 17, 2011, the writ petitioner made a representation dated September 7, 2010 to the Land Acquisition Collector for derequisition of land and also made another representation dated December 24, 2010 to the West Bengal HIDCO, the regulation authority.

16. The prayers in the writ petition including averments in the writ petition will demonstrate that, the land belonging to the writ petitioner was acquired by the authorities. Once acquisition is made, it is trite law, the same cannot be derequisitioned. Learned trial Judge referred to the decision of the Constitution Bench rendered in **(2020) 8 SCC 129 [Indore Development Authority vs. Manoharil & Ors.]** in this regard.

17. The allegation of the appellant that, land belonging to persons of influence was not put into the ambit of the acquisition, or was allowed to come out of the purview of the acquisition remains unsubstantiated. Therefore, there is no material to arrive at a finding that, there was colourable exercise of power with regard to the acquisition proceeding.

18. In order to satisfy our conscience, we called for reports from the requiring authority as also from the State with regard to utilisation of the

land in question. They submitted plans with regard to the acquisition. We perused the same.

19. It appears from the Maps that, the land belonging to the petitioner is beyond the periphery canal. Simply on the ground that, the land belonging to the petitioner is beyond the periphery canal, given the nature of the project, it cannot be said that the land in question were not required for public purpose. We should consider the requirement of public purpose on the date of the initiation of the acquisition proceedings. Subsequent developments also do not establish conclusively that, the land in question is not required for public purpose.

20. Hamid Ali Khan (supra) was rendered in a different factual context and is required to be understood in the factual context that it was rendered in. In the facts of that case initially, the land in question therein was not the subject matter of the first acquisition proceedings. Subsequently, it was sought to be brought into the acquisition by a second acquisition proceeding. On elaborate discussions of the facts, the Court found that, such an acquisition was bad in law and, therefore, proceeded to grant relief to the writ petitioners therein. Such factual position does not obtain herein.

21. In such circumstances, we find no merit in the present appeal.

22. MAT 1119 of 2022 is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

23. I Agree.

(Md. Shabbar Rashidi, J.)