

# IN THE HIGH COURT AT CALCUTTA

## Constitutional Writ Jurisdiction

### Appellate Side

#### **Present :-**

**The Hon'ble Justice Moushumi Bhattacharya.**

W.P.A 17214 of 2021

Dharam Chand Agarwal

vs.

The State of West Bengal & Ors.

|                    |   |                                                                                                |
|--------------------|---|------------------------------------------------------------------------------------------------|
| For the petitioner | : | Mr. Debabrata Saha Roy, Adv.<br>Mr. Supriya Chattopadhyay, Adv.<br>Mr. Sudip Kumar Maiti, Adv. |
| For the State      | : | Mr. Amitesh Banerjee, Adv.<br>Mr. Tarak Karan, Adv.                                            |
| For the KMC        | : | Mr. Alok Kumar Ghosh, Adv.<br>Mr. Monojit Pal, Adv.                                            |
| Last Heard on      | : | 06.02.2023.                                                                                    |
| Delivered on       | : | 07.02.2023.                                                                                    |

#### **Moushumi Bhattacharya, J.**

1. The petitioner claims to be the Managing Trustee of Dinodiya Welfare Trust. The petitioner seeks a declaration that the respondent nos. 2 and 3

being the Kolkata Police authorities and the respondent no. 4 being the Kolkata Municipal Corporation do not have any right and authority to hold and possess the land of the petitioner. The petitioner also seeks a Mandamus on the respondent no. 2 / Police authorities to remove damaged vehicles ceased by the Police from the petitioner's land. The petitioner's land is located at Paschim Chowbaga, Kolkata.

2. Learned counsel appearing for the petitioner submits that the petitioner purchased the land which forms the subject matter of the dispute, from third parties sometime in 2006 – 2008. The Title deeds referred to by the parties substantiate this fact.

3. Both KMC as well as the Police authorities, represented by learned counsel and the learned senior standing counsel respectively dispute the contentions made on behalf of the petitioner. The respondents claim that the petitioner does not have locus to approach the writ court for the relief prayed for.

4. Upon perusal of the materials disclosed in the writ petition and the Reports filed by the respondents, it appears that the plot numbers amounting to a total of 18.22 acres of land was requisitioned by the State under section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 for the public purpose of maintaining services essential to the life of the community, namely, dumping of the garbage collected from Kolkata. The possession of the plot numbers / land was handed over to the Calcutta Corporation on 13.5.1969 and an Award was declared on 31.3.1973. The copy of the Possession Certificate is part of the Report. The Report does not

enclose a copy of the Award which the respondents claim to have been declared on 31.3.1973. A Gazette Notification of 21.12.1972 enclosed with the Report of the respondents, shows that 18.22 acres of land was requisitioned under the provisions of the 1948 Act for the public purpose of dumping of garbage of the city of Calcutta. Notice was thereafter given under section 4 of the Act to the effect of the Governor acquiring such land for the stated public purpose.

5. The admitted position from the records is that the State acquired the land on 19.12.1972 which was notified in the Gazette on 21.12.1972. The Title Deeds to this land of 2006-2008 record the name of the petitioner as the owner of the land, there is hence no explanation before the Court as to how the petitioner purchased this land or became the owner thereof in 2006/2008 when the land was admittedly requisitioned by and acquired by the State on 19.12.1972 under the provisions of the 1948 Act.

6. Learned counsel appearing for the petitioner seeks to rely on the statements made in the Report of the Police that Award for acquiring the land was declared on 31.3.1973. Counsel submits that no such Award was ever made for acquiring the land which would consequently prove that the land continued to remain in the possession of the erstwhile owners of the land before it was allegedly acquired by the State in December, 1972. It is submitted that the very fact of the Award not being passed for the acquisition proceedings would prove that the land did not vest in the State on and from 1972.

7. Although the petitioner seeks to challenge the process of acquisition by the State in 1972 and consequently show that the petitioner's subsequent claim to ownership of the said land is valid, this Court is of the view that the petitioner must first show a right for claiming the aforesaid relief. The petitioner admittedly came into the picture much later in 2006/2008 as reflected from the Title Deeds. However, since the petitioner was not the original owner of the land from who the land was acquired by the State in 1972, the petitioner cannot seek a direction on the State to produce proof of Award / compensation. This direction or any relief with regard to Award / compensation can only be claimed by the erstwhile owner from who the land was acquired. The petitioner has not been able to show any connection with the erstwhile owner or a surviving interest in claiming compensation. The land was in any event acquired in 1972 and the writ petition has been filed in October, 2021.

8. The power conferred on High Courts under Article 226(1) of the Constitution for enforcement of rights in Part-III is premised on an aggrieved person approaching the High Court complaining of infringement of the rights guaranteed under that Part. The person must complain of an action or inaction by a person or authority which has led to deprivation of any of the rights. In other words, the person must have *locus standi* to bring an action to the Writ Court under Article 226 and show a corresponding duty on the part of the concerned authority to uphold and preserve the right. The petitioner in the present case does not have the necessary *locus standi* to bring the present action to the Court.

9. Even if it is assumed that the petitioner's argument of the acquisition proceedings not being in accordance with law is correct, the petitioner must first satisfy the requirement of *locus* for approaching the writ court. Since that requirement has not been established by the petitioner, this Court is unable to give any relief or pass any direction on the respondents to show that the acquisition was either illegal or invalid. The petitioner is therefore disentitled to claim any consequential relief or seeking a direction on the respondent no. 2 to remove the damaged vehicles / mechanical garbage from the land which the petitioner allegedly owns.

10. WPA 17214 of 2021 is accordingly dismissed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

**(Moushumi Bhattacharya, J.)**