

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 13581 (W) of 2012
Shivam Industrial Parks & Estate Limited & Anr.
Versus
The State of West Bengal & Ors.

For the petitioner : Mr. Aniruddha Chatterjee
Mr. Rahul Karmakar
Mr. Sounak Mukherjee
.....Advocates

For the State : Mr. Amitesh Banerjee
Mr. Suddhadev Adak
.....Advocates

For the respondent nos. 3 & 4 : Mr. Ashok Kr. Banerjee
Mr. Debabrata Banerjee
Mr. S.K. Chakraborty
.....Advocates

Heard lastly on : 10.01.2023

Judgment on : 31.03.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for direction upon the respondent to forthwith hand over 1.50 acres

of land at Mouza-Gopalpur, Police Station-Rajarhat, North 24 Paraganas adjacent to the road constructed, inter alia, within 1.69 acres of land belonging to the petitioners as stated in the terms of settlement annexed with the writ petition on payment of acquisition cost for the land within a stipulated period.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. At all material times, the petitioner company was the owner of the land measuring about 3.55 acres in Mouza-Gopalpur, Police Station-Rajarhat, North 24 Paraganas. By a notification dated 09.06.2006, the said plot of land was sought to be acquired under the Land Acquisition Act, 1894. Assailing the said notification to acquire 2.96 acres of land out of the said 3.55 acres, the petitioner company filed a writ petition before this Court being WP No. 17498(W) of 2006. The same was dismissed on 07.08.2006. Being aggrieved, the petitioner company preferred an appeal. The said appeal being MAT No. 3582 of 2006 was disposed of on 01.11.2006 by granting liberty to the petitioner company to raise a formal objection against the notification dated 09.06.2006, which was to be considered and disposed of by the concerned authorities upon granting an opportunity of hearing. Aggrieved by this, the State preferred a Special Leave Petition before the Hon'ble Supreme Court. This was registered at SLP (Civil) No. 3148 of 2007. During the pendency of such petition, the State through the Managing Director of HIDCO entered into terms of settlement with the petitioner company and settled the disputes amicably. It was agreed that out of the said 2.96 acres of land, 1.27 acres of land would be immediately released.

After such release, 1.69 acres would remain as balance. It was recorded that 1.50 acres of land was lying as surplus land with the Transport Department Government of West Bengal and the petitioner company would accept the said 1.5 acres of land in lieu of the said 1.69 acres of land on payment of cost of acquisition of such 1.50 acres of land. The settlement was accepted by an agreement dated 06.02.2009, which was recorded before the Hon'ble Apex Court in the order dated 13.05.2009. The Special Leave Petition was thus disposed of. Pursuant to such compromise, the Government of West Bengal by a notification dated 09.04.2010 issued a fresh acquisition notice for the said 1.69 acres of land which was also duly handed over by the petitioner company to the State. The remaining 1.27 acres of land was released by the State in favour of the petitioner. Despite repeated reminders and writ petitions, no steps were taken by the State to make over the said 1.5 acres of land to the petitioner. Nor was the cost of acquisition of the said land that was lying surplus with the Transport Department indicated. This led to the filing of the present petition. The writ petition was very much maintainable before this Court for executing an order passed in the previously instituted writ petition. A contempt petition before the Hon'ble Apex Court could only be invoked by the petitioner against an offender and not to execute any order although consequently, the order might have been executed. The existence of a remedy of contempt did not take away the right of the petitioner to execute a Court order. Reliance was placed on the decisions reported at *Bibekananda Mondal Versus State of West Bengal*, (2003) 1 CHN 154 and *Indrapuri Studio Pvt. Ltd. & Anr. Versus West Bengal*

State Warehousing Corporation and Ors., (2003) 4 CHN 148 and on a judgment the Hon'ble Supreme Court reported at AIR 1983 SC 1134. In Kapildeo Prasad Shah and Ors. Versus State of Bihar and Ors., (1999) 7 SCC 569, it was held that initiation of a contempt proceeding was not a substitute for an execution proceedings though at times the purpose might be achieved. In Rama Narang Versus Ramesh Narang and Anr., (2006) 11 SCC 114, it was held that the fact that a decree was executable did not take away the Court's jurisdiction of contempt. During the pendency of the petition by a letter dated 14.05.2019, the cost of acquisition of land measuring 1.5 acres was disclosed as Rs. 5,40,90,855/- as per the direct purchase policy. However, the petitioner company disputed the receipt of the letter. Moreover, the letter was in clear contravention of the terms of settlement dated 06.02.2009 recorded by the Hon'ble Apex Court. The affidavit in opposition of the State, except for reliance on this letter, was basically defenceless. There was no other option for the State, but to comply with the order dated 13.05.2009 as effectively merged with the order dated 01.11.2006 passed by this Court.

3. Learned counsel appearing on behalf of the State submitted as follows. A large number of land acquisition cases went up to the Hon'ble Apex Court and finally, the same were settled and for this purpose the parties duly filed terms of settlement. On the basis of this, the Special Leave Petition was disposed of. By a letter dated 14.05.2019, the State had intimated the learned advocate of the petitioner that the cost of acquisition for further land measuring 1.5 acres was 5,40,90,855/-. The writ petitioner

failed to pay the said acquisition cost to the Government. Upon payment of such sum, the State shall duly transfer the land to the writ petitioner. Otherwise, the writ petition did not have any merit.

4. Learned Senior Counsel representing the respondents 3 and 4 submitted as follows. The writ petitioner did not prefer any contempt application before Hon'ble Supreme Court although the purported settlement between the parties were recorded in an order passed by the Court. Instead, the writ petitioner preferred an application under Article 226 before this Court. This was not maintainable. This was itself not an execution petition, which could be filed to cure a failed attempt to reach a settlement by and between the parties. Besides, by the order dated 13.05.2009 the Apex Court held that the High Court would examine the scope. This would go to distinguish the decision cited by the petitioner in *Kapildeo Prasad Shah and Ors. Versus State of Bihar* (supra).

5. I heard the submissions of learned counsels appearing on behalf of the parties and perused the writ petition and the, affidavits filed and the written notes of submissions.

6. The facts relevant to the adjudication of the present list in brief as follows. The petitioner company was the owner of the land measuring about 3.55 acres in Mouza-Gopalpur, Police Station-Rajarhat, North 24 Paraganas. By a notification dated 09.06.2006 the land was sought to be acquired under the Land Acquisition Act, 1894. Challenging such notification to acquire 2.96 acres of land out of the said 3.55 acres, the petitioner company filed a writ petition, which was dismissed on 07.08.2006. The appeal

preferred by the petitioner company was disposed on 01.11.2006 granting liberty to it to raise a formal objection against such notification, which was to be considered by the concerned authorities. Aggrieved by this, the State preferred a Special Leave Petition being SLP (Civil) No. 3148 of 2007. During pendency of such petition, the State through the Managing Director of HIDCO entered into terms of settlement with the petitioner company and settled the disputes amicably. It was agreed that out of the said 2.96 acres of land, 1.27 acres would be immediately released. After such release, 1.69 acres would remain. It was recorded that 1.59 was lying as surplus land with the transport department and the petitioner company would accept the said 1.5 acres in lieu of the said 1.69 acres on payment of cost of acquisition of such 1.5 acres of land. The settlement was accepted by an agreement dated 06.02.2009 and was recorded in the order dated 13.05.2009 of the Hon'ble Supreme Court. Pursuant to this, the State issued a notification dated 09.04.2010 for fresh acquisition of the said 1.69 acres of land that was duly handed over by the petitioner company to the State. The remaining 1.27 acres of land was released by the State in favour of the petitioner. However, despite reminders no steps were taken by the State to hand over the said 1.7 acres of land to the petitioner nor was the cost of acquisition indicated.

7. While the petitioner company contends that regardless of any contempt petition before the Hon'ble Apex Court, a writ petition can be maintained before the High Court for having a settlement recorded before the Hon'ble Apex Court executed. This is opposed by the respondents and it

is contended that an application for execution of an order passed by the Hon'ble Apex Court would lie before that Court and not before the High Court and the decisions relied on in this regard are factually of such nature and therefore, distinguishable on present facts.

8. Another bone of contention between the parties is a purported letter dated 14.05.2019 by which the cost of acquisition of land measuring 1.5 acres was disclosed as Rs. 5,40,90,855/- allegedly by the respondents.

9. It is trite law that existence of a remedy of contempt cannot take away the right of the petitioner to execute a Court order.

10. On the other hand, respondents were unable to substantiate their stand as regards whether a writ petition could be filed before a High Court for executing an order passed by the Supreme Court.

11. At the crossroads, one is reminded of the latin maxim - Ubi Jus Ibi Remedium (where there is a right, there is a remedy).

12. The right accrued to the petitioner company by way of a settlement recorded before the Hon'ble Apex Court cannot be simply effaced on the purported ground of absence of an appropriate remedy. In the writ jurisdiction, the High Court has plenary powers to pass necessary orders in order to do justice. Therefore, this Court finds no reason not to entertain the application for appropriate relief made by the petitioner company in pursuance of an order passed by the Hon'ble Supreme Court regarding a settlement between the parties.

13. Even without going into the factual debate about whether the notice dated 14.05.2019 intimating the cost of acquisition of land measuring 1.5

acres was actually served, one can fairly arrive at a harmonious and equitable conclusion that in the view of the settlement arrived at between the parties before the Hon'ble Supreme Court, it will be apt to direct the respondent authorities to release 1.5 acres of land in question to the petitioner company upon payment of cost of acquisition for the said land by it.

14. In view of the above discussions and in the interest of justice, this Court is inclined to pass the following directions -

(i) Within a period of one month from the communication of this order, the respondent authorities shall communicate to the petitioner company the cost of acquisition for the said land measuring 1.5 acres.

(ii) The petitioner company shall make payment of the said sum within two months from the date of such communication and simultaneously, the respondent authorities shall deliver vacant and peaceful possession of the said land measuring 1.5 acres to the petitioner company upon complying with incidental formalities.

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.)