

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

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 18340 of 2017

**Smt. Dropadi Devi Bhagalewala
Vs.
The District Magistrate Malda & Ors.**

For the Petitioner: Mr. Saktinath Mukherjee, Adv.,
Mr. Arif Ali, Adv.,
Mr. S. Bhattacharjee, Adv.

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

For the WBIIDC: Mr. Amit Kr. Nag, Adv.,
Mr. Partha Banerjee, Adv.

Hearing Concluded on: 30.11.2023

Date: 08.12.2023

SUVRA GHOSH, J. :-

1. The petitioner has prayed for issuance of writ in the nature of mandamus commanding the respondents not to interfere with the possession of the petitioner in respect of the land in question measuring 1.07 acres in plot nos. 1117/1203, 1118, 1119 in mouza- Jadupur, District – Malda.
2. The petitioner purchased 1.10 acres of land in the plots referred to above vide three registered deeds dated 19th January, 1987 and her name was duly mutated as a raiyat in the record of rights. In 2013, the National Highways Authority of India acquired 0.03 acres out of 1.10 acres upon

payment of adequate compensation to the petitioner. The petitioner continues to own the remaining 1.07 acres of land. The land in question was requisitioned by the Additional District Magistrate, Malda under section 3(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948 on 15th January, 1987 and notification under section 4(1a) of the Act bearing Malda No. 728-LA(II)/1G-S2/89 dated 2nd February, 1990 was published on 9th February, 1990.

3. The Land Acquisition Collector, Malda declared award on 19th September, 1995 though the period for declaration of such award expired on 31st March, 1995 in terms of the proviso to section 7A of the Act of 1948. As a result, the proceeding lapsed upon expiry of the statutory period of time.
4. The petitioner learnt that the State Government had issued a notification under section 4 of the Land Acquisition Act, 1894 on 2nd February, 1990 in respect of several plots including the petitioner's plots for setting up an Industrial Growth Centre in the District of Malda but the Government did not proceed with the acquisition pursuant to the notification any further. The State did not take possession of the land, nor was any compensation paid. Therefore even if it is held that the respondents published award within the statutory period, the proceedings stood lapsed under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
5. The petitioner has alleged that the respondent authorities are disturbing her possession in respect of the plots in question and have demolished the boundary wall at the outer periphery of the plots. Learned counsel for the

petitioner has placed reliance on the authorities in State of Haryana v/s. Mukesh Kumar and Others reported in (2011) 10 Supreme Court Cases 404, Tukaram Kana Joshi and Others v/s. Maharashtra Industrial Development Corporation and Others reported in (2013) 1 Supreme Court Cases 353, Re Sinclair (deceased) Lloyds Bank plc v/s. Imperial Cancer Research Fund and Another reported in (1984) 3 All ER, State of West Bengal v/s Sabita Mondal with State of West Bengal v/s. Sabitri Devi with State of West Bengal v/s. Nur Islam with Samir Kumar Das v/s. State of West Bengal reported in 2011 SCC OnLine Cal 1602, Laxmi Devi v/s. State of Bihar and Others reported in (2015) 10 Supreme Court Cases 241 & The State of West Bengal and Others reported M.A.T 86 of 2016 passed by a Hon'ble Division Bench of this Court in support of his contention.

6. Placing reliance on the report in the form of affidavit submitted by the Additional Land Acquisition Officer, Malda, learned counsel for the State respondents has submitted that land comprising 157.49 acres of mouzas – Kaludewan, Mandilpur and Jadupur was acquired vide L.A. Case No. 19 of 1986-87 under the West Bengal Land (Requisition and Acquisition) Act, 1948 for the purpose of construction of West Bengal Industrial Growth Centre in the District of Malda and the said land was requisitioned by a notice under section 3(1) of the Act, 1948 on 15th January, 1987. Possession of the acquired land was handed over to the requiring body on 20th February, 1987 and notice under section 4 (1a) of the Act dated 2nd February, 1990 was published on 9th February, 1990. The land stood vested in the State of West Bengal free from all encumbrances on and from 9th

February, 1990 in terms of section 4(2) of the Act of 1948. Award was declared by the Land Acquisition Collector, Malda on 19th September, 1995 and payment of compensation was made to the awardees on and from 11th October, 1995. The plots were recorded as “not verified” and payment of compensation in respect of 1.10 acres has not been made till date since ownership of the land has not been ascertained. The compensation amount is lying under control of the Land Acquisition Collector, Malda.

7. 0.03 acres of land out of 0.09 acres in plot nos. 1117/1203 and 1118 in mouza Jadupur was acquired by the National Highways Authority of India vide L.A. Case No. 25/NH-34/2008-09 for the purpose of construction of four laning of Farakka to Raiganj section of NH- 34 in Malda. Following notification under section 3A and 3D of the National Highways Act, 1956, award was declared on 15th March, 2013 and possession of the land handed over to the requiring body on 10th April, 2013. Compensation to the tune of Rs. 2, 45, 536/- has been received by the petitioner.

8. Since possession of the acquired land was made over on 20th February, 1987, award declared on 19th September, 1995 and compensation paid to most of the awardees on and from 11th October, 1995, the proceedings does not lapse under section 24(2) of the Act of 2013. Land once vested cannot be divested and the petitioner is not entitled to any relief in the writ petition.

9. Learned counsel for the 4th respondent, at the outset, has submitted that inordinate delay in filing the writ petition has not been explained. On merits, learned counsel has submitted that though notice of acquisition was served

upon the petitioner under section 4(1) and 5 of the Act of 1948, the petitioner took no steps in terms of section 5 of the Act.

10. By virtue of an indenture dated 4th January, 2002 executed between the Governor of West Bengal and the West Bengal Industrial Infrastructure Development Corporation (4th respondent herein) plots of land measuring about 156.20 acres including the plots in question were handed over to the 4th respondent, who allotted the same to different allottees pursuant to public auction, upon depositing the entire compensation amount with the Land Acquisition Collector, Malda.

11. I have considered the rival contentions of the parties, material on record and the law on the point.

12. At the outset, the delay in filing the writ petition as alleged on behalf of the 4th respondent is required to be dealt with. The petitioner acquired title and possession in respect of the plots in question in 1987 and was informed about the acquisition by the 5th respondent in 2015. The writ petition was filed in 2017. In dealing with delay in approaching the Court seeking relief, the Hon'ble Supreme Court in the authority in *Tukaram Kana Joshi* (supra) has observed that the question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. According to the Hon'ble Court, there can be mitigating factors, continuity of cause of action,

etc., and that apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion. The same principle has been enumerated in the authority in State of Haryana, (supra).

13. In the present case, since the petitioner complains of threat imposed by the respondents to deprive her of her property, the cause of action herein is continuous and the matter needs to be adjudicated on merits in the interest of justice.

14. The judgment in M.A.T. 86 of 2016 referred to by learned counsel for the respondents deals with a fact situation where the petitioner therein claimed compensation under the Act of 2013 after sitting over the matter for considerable period of time and filed the writ petition only after the Act of 2013 came into force. In the said case, the land was requisitioned under the 1948 Act and possession handed over to the requiring body. Compensation could not be paid since fund was not placed by the requiring body. The *ratio decidendi* of the said case can be distinguished from that of the present case.

15. It is not in dispute that out of 1.10 acres of land purchased by the petitioner, 0.03 acres have been acquired by the National Highways Authority of India for widening of National Highway No. 34 and compensation has been paid to the petitioner. The petitioner's claim is in respect of the remaining 1.07 acres of land. It appears from the report submitted on behalf of the State respondents that the land was requisitioned by the Additional District Magistrate, Malda under section 3(1) of the West Bengal Land (Requisition and Acquisition), Act, 1948 on 15th

January, 1987. Notice under section 4(1a) of the Act was published on 9th February, 1990. Award was declared by the Land Acquisition Collector, Malda on 19th September, 1995. The West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994 was notified on 31st March, 1994.

16. It is pertinent to reproduce section 7A of the Act of 1948 :-

“7A. Award by Collector.:- The Collector shall make an award under sub-section (2) of section 7 within a period of three years from the date of publication of the notice in the Official Gazette under sub-section (1a) of section 4 (hereinafter referred to as the said notice), and if such award is not made within the period as aforesaid, the said notice shall lapse:

Provided that in a case where the said notice has been published more than two years before the commencement of the West Bengal Land (Requisition and Acquisition) (Amendment) Act, 1994, the award shall be made within a period of one year from the date of commencement of that Act.”

17. Therefore in terms of the proviso to section 7A, since the notice under section 4(1a) was published on 9th February, 1990 the period for making the award expired on 31st March, 1995. In the result, the acquisition proceeding had already lapsed when the award was declared on 19th September, 1995. The authority in The State of West Bengal (supra) has elaborately discussed the said proposition of law and has observed that by the Amendment Act, the proceedings in respect of notices given prior to

March 31, 1992 stood lapsed if award was not published within one year from March 31, 1994.

18. In view of the above, this Court is inclined to hold that the acquisition proceedings being L.A. Case No. 19 of 1986-87 lapsed with effect from 31st March, 1995 in terms of the proviso to section 7A of the Amendment Act, 1994. There is nothing on record to suggest that fresh acquisition proceeding was initiated by the State respondents in respect of the plots in question thereafter. The documents of acquisition and possession produced by the State respondents pertain to the acquisition under the National Highways Act, 1956 in respect of 0.03 acres of land belonging to the petitioner which is not in dispute. There is not a scrap of paper within the four corners of the report submitted on behalf of the State respondents demonstrating initiation of fresh acquisition proceeding under the 1948 Act.

19. Learned counsel for the 4th respondent has submitted that the petitioner took no steps upon publication of notice under section 5 of the Act of 1948. There is no document on record to indicate that such notice under section 5 was issued or served upon the petitioner.

20. The 4th respondent also submits that by virtue of an indenture executed between the Governor of West Bengal and the 4th respondent on 4th January, 2002, plots of land measuring 156.20 acres including the plots in question were handed over to this respondent who in turn, allotted the same to prospective entrepreneurs for establishment of industrial units. In this context, this Court is inclined to hold that since the acquisition

proceeding lapsed with effect from 31st March, 1995 and no fresh proceeding appears to have been initiated thereafter, transfer of the plots in favour of the 4th respondent and the subsequent allotments are void ab initio.

21. In the light of the observation made hereinabove, it is held that upon lapse of the acquisition proceeding initiated under the 1948 Act, the petitioner being the owner and occupier of the plots in question, is entitled to the relief sought.

22. Accordingly, the writ petition succeeds.

23. A writ in the nature of mandamus do issue directing the respondents not to interfere with the petitioner's possession in respect of the land measuring 1.07 acres. However the State respondents are at liberty to initiate fresh acquisition proceeding in accordance with law if the said land is required for public purpose.

24. There shall however be no order as to costs.

25. Since no affidavit is invited, the allegations contained in the writ petition are deemed not to be admitted.

26. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)