

AD-23
Ct No.09
13.12.2023
TN

WPA No. 18598 of 2022

Rakesh Mandal and others
Vs.
The State of West Bengal and others

Mr. Rajib Kumar Basu
.... for the petitioners

Mr. Anirban Roy,
Mr. Tanoy Chakraborty
.... for the State

- 1.** The moot question which has arisen in the present case is whether the petitioners are entitled to the benefit of recruitment given under a notice dated August 21, 2002, which pertains to the families of land losers who are uprooted from their places of residence due to acquisition of homestead land by the State Government or whose main source of income is substantially affected due to loss of agricultural lands as a result of the land-in-question being acquired by the Government for a public purpose.
- 2.** Learned counsel for the petitioners argues that in terms of the notice of acquisition, the land which was the only source of livelihood of the petitioners was acquired by the State Government. However, despite the Notification

dated August 21, 2002 conferring the entitlement on land losers similarly placed as the petitioners to the benefit under the said Notification, the same is not being given to the petitioners.

- 3.** In a previous round of litigation, a coordinate Bench directed the matter to be considered by the authorities. Thereafter, by the impugned order dated April 06, 2022, the Special Land Acquisition Officer, Murshidabad turned down the petitioners' claim for benefit under the said Notification primarily on the ground that the land was acquired by the Central Government and not by the State Government. When it was pointed out by the petitioners that some of the land losers whose names were included in the eligibility list before already got the benefits of the scheme, it was observed by the Special Land Acquisition Officer that simply on the ground of wrongful inclusion of any name, any right cannot be said to be conferred upon a particular person.
- 4.** Heard learned counsel for the parties.
- 5.** The question which falls for consideration is whether the Notification dated August 21, 2002 is applicable in respect of an acquisition carried out by the State Government at the behest of the Government of India.

- 6.** In the notice of acquisition annexed at page-20, it has been specifically mentioned that the functions of the Central Government under the Land Acquisition Act in relation to the acquisition of land for the purpose of the Union have been entrusted to the State Government by a particular Notification of 1985 of Rural Development Department issued by the Government of India through the Ministry of Agriculture and Rural Development.
- 7.** Pursuant to the said entrustment, it was observed that the land is likely to be needed for public purpose, the specifics of which were enumerated therein, and to be taken by the Government at the public expense in the mouzas concerned.
- 8.** Thus, it is seen that although only upon being entrusted to do so by the Central Government, ultimately the acquisition was carried out by the State Government for public purpose. The language of the concerned Notification dated August 21, 2002 is specific. It states that candidates hailing from families who might have been uprooted from their places of residence due to “acquisition” of homestead land by the “Government” or whose main source of income is

substantially affected due to loss of agricultural land as a result of the land-in-question being “acquired by the Government” for public purpose shall also be covered in the said category.

9. In the preamble of the Notification dated August 21, 2002, it was categorically mentioned that the same was being issued in exercise of the powers conferred by sub-section (a) of Section 3 of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999.
10. Hence, it is clearly seen that the entire ambit of the Notification pertained to acquisitions carried out by the Government of State of West Bengal.
11. In the present case, the notice of acquisition mentions that the State of West Bengal is carrying out the acquisition of the land for public purpose, *albeit* at the behest of the Union Government.
12. Whatever may be the purpose for which the acquisition was effected, the same was admittedly for public propose and was carried out by the State Government. The Notification dated August 21, 2002 does not distinguish between

acquisition carried out on behalf of the Central Government and/or for purposes of the Central Government and those carried out for the purposes of the State Government but merely refers to acquisition by the 'Government', meaning thereby the State Government.

- 13.** The Government spoken of in the said Notification is obviously the State Government, since the Notification itself was issued under Section 3(a) of the 1999 Act, which is a State Act.
- 14.** Thus, the premise on which the petitioners' claim was refuted by the Special Land Acquisition Officer, that is, the acquisition was for the purpose of the Central Government, is erroneous and not tenable in the eye of law.
- 15.** Insofar as the other aspect of the challenge is concerned, the petitioners categorically pointed out other persons on the land losers' list of the Central Government having been given the benefit under the said Notification. The same squarely pertains to the right of equality as enshrined in Article 14 of the Constitution of India, which aspect was brushed aside by the Special Land Acquisition Officer on the flimsy ground that the enlistment was on an erroneous basis, without exploring the issue at all.

- 16.** The Special Land Acquisition Officer, thus, acted without jurisdiction and refused to exercise the jurisdiction vested in him by law in deciding on fringe issues and refusing to consider the petitioners' claim on its merits. As such, it is required that the petitioners' claim is looked into by the Special Land Acquisition Officer by proceeding on the premise that the acquisition-in-question also comes within the purview of the Notification dated August 21, 2002 insofar as it was carried out by the State Government.
- 17.** In view of the above observations, WPA No. 18598 of 2022 is allowed, thereby setting aside the impugned order of refusal of the petitioners' claim dated April 06, 2022 passed by the Special Land Acquisition Officer, Murshidabad and remanding the matter to the said officer for a reconsideration of the petitioners' claim on merits by proceeding on the premise that lands acquired under the notice of acquisition-in-question, even if on the basis of entrustment by the Central Government, come within the ambit of the Notification dated August 21, 2002.
- 18.** Upon a consideration of the petitioners' claim on merits in the light of the above observations, the Special Land Acquisition Officer shall come to a

reasoned conclusion at the earliest in accordance with law, upon giving ample opportunity to the petitioners to ventilate their cases.

- 19.** The entire exercise, it is expected, shall be concluded within three months from this date. It is made clear that the merits of the claim of the petitioners have not been gone into and it will be open to the Special Land Acquisition Officer, Murshidabad to deal with such issues in accordance with law.

- 20.** There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)