

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 3036 OF 2015
Girdhar Das Mimani
Vs.
State of West Bengal & Ors

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellants	: Mr. Saptansu Basu, Sr. Adv., Mr. Soumyen Datta, Adv. Mr. Tapan Sil, Adv.
For the State	: Mr. T. M. Siddiqui, Adv. Mr. Soumitra Bandopadhyay, Adv. Mr. Subhasis Bandopadhyay, Adv.
For the HIT	: Mr. Kallol Bose, Adv. Mr. Sibojyoti Chakraborti, Adv.
Judgment On	: 30.06.2023

Apurba Sinha Ray, J. :-

1. The writ petitioner/appellant says that he was a lawful occupier of a godown at 128/1, G.T. Road, Salkia, Howrah by virtue of two registered deeds of lease. While the petitioner was in

actual physical possession of the said godown, on February 09, 2010 he was asked to vacate the godown by 5/7 persons and from them he came to know that a purported acquisition proceeding had taken place before the Special Law Acquisition Officer as the property was requisitioned for 'Salkia Flyover Project' at the instance of Howrah Improvement Trust (HIT in short). Subsequently, the petitioner was forcibly evicted from the said godown by the H.I.T. after confiscating the goods.

2. The writ petitioner challenged such action by filing a writ petition being W.P. No. 4800(W) of 2010 on the ground that no notice under Section 9 of the Land Acquisition Act, 1894 was served on him though he was a lawful occupier of the said godown. He came to know about such acquisition proceeding only when his godown was attempted to be taken over and not before that. However, during the pendency of the proceeding the petitioner came to learn that Hon'ble Supreme Court has directed the H.I.T. to rehabilitate all the evictees, and accordingly, he prayed for such benefit to be bestowed upon him, by filing an affidavit and such prayer was not opposed by the H.I.T. by filing any affidavit-in-opposition. According to the Learned Single

Judge, the lease deed of the petitioner was not registered, and the petitioner did not object to the notices under Section 4 and 6 of the Land Acquisition Act, 1894, and there can, according to the Learned Judge, be no notice to those whose occupation is not known. Not a single word was uttered in the said judgment regarding non-service of notice to the writ petitioner under Section 9(3) of the said Act of 1894. Hence the present appeal.

3. Learned Senior Advocate, Sri Saptansu Basu, appearing for the appellant, has placed his arguments mainly on four points.

4. In the first place, notice under Section 9(3) to an occupier of the land is a mandatory one and admittedly no notice under Section 9(3) has been served upon the petitioner who was in actual physical possession of the said acquired land measuring about 10 cottahs, equivalent to 7200 sq.ft. approximately and was also having all necessary licenses to carry on business from the said godown.

5. According to learned Senior Advocate, the Act of 1894 is a self contained Code and therefore, each and every stage of acquisition has been elaborated with specific provisions.

Similarly, Section 9 with its various sub-sections has specifically made provisions for the occupier of the acquired land and their participation in the proceeding have been deliberately caused to be involved but this legislative wisdom was not respected in this case.

6. Secondly, a tenant/lessee is entitled to compensation under the Act 1894 and lack of apportionment of compensation makes the proceedings liable to be quashed. In support of such contention, learned counsel has relied upon case laws reported in ***AIR 1952 Cal 380 (Abul Hashem Vs. Balahari Mondal)***, ***AIR 2010 Cal 60 (State of West Bengal and Others Vs. Asiatic Investment Ltd. And Others)*** and ***74 CWN 349 (Biswamitra Shukla and Others Vs. L.A. Collector, Burdwan and Others)***. According to the petitioner, he did not get any opportunity to pray for apportionment for the fault of the respondents, and as such the acquisition proceeding is liable to be quashed.

7. Thirdly, a new point touching the main issues in the writ petition can be taken in the Affidavit-in-Reply. In this regard, the learned counsel has placed reliance on ***68 CWN 179***

(Mohananda Dutta & Co.(P) Ltd. Vs. Uma Charan Law and Others).

8. Fourthly, the petitioner is entitled to benefit of the scheme of Rehabilitation of Howrah Improvement Trust framed to rehabilitate the displaced evictees for the said Salkia Flyover Project.

9. Learned Senior Counsel of the appellant argued that a compromise had been arrived at between Salkia Businessmen's Association and the H.I.T. It was further argued that for non-compliance of the terms of the said compromise, the matter went to Hon'ble Apex Court, and the Hon'ble Apex Court directed that the State Respondents are bound to comply with the said terms. As the terms of the said compromise petition arise out of the Rehabilitation Scheme of the H.I.T., they are effective in rem and the petitioner is also entitled to such benefit.

10. Learned Advocate, Mr. T.M. Siddiqui, appearing for the State has submitted chronological events of the fact as hereunder:-

“(a) L.A. case was initiated by the Collector on the basis of a proposal submitted by the HIT on 15.06.2007.

(b) Notification under Section 4 was published in the Times of India on 17.07.2007 and Ganashakti on 15.07.2007 and local notices in Form 3D were issued on 29.11.2007.

(c) Huge number of objections under Section 5 were heard and rejected but the petitioner did not file any objection (Contention of the State in the A-O at Para 3(e) at Pg. 138).

(d) Section 6 Declaration was published in the Gazette on 10.11.2008, in Times of India on 07.11.2008, Ganashakti on 07.11.2008 and local notices in Form 5B on 17.11.2008 (pgs. 155 to 158).

(e) Section 9 notices were issued to the recorded owners for hearing and verification fixed on 31.07.2009 and another date for hearing and verification was fixed on 26.08.2009 (Pgs. 159-160).

(f) Award was declared on 28.01.2010 (Pg. 161).

11. According to learned Advocate of the State, the contention of the appellant that as the land which was not utilized for the purpose for which the acquisition was made, the same should be returned back, has no leg to stand upon since in a series of

judicial decisions the Hon'ble Apex Court has been pleased to hold that once acquisition is complete in all respects, the land cannot be returned. He placed reliance on **(1996) 6 SCC 405 (Chandragauda Ramgonda Patil and Another Vs. state of Maharrashtra and Others) (para 2); (2003) 1 SCC 335 (para 9) (Northern Indian Glass Industries Vs. Jaswant Singh and Others)**

12. Learned counsel further urged that neither the case law reported in **AIR 2010 Cal 60 (Asiatic Investment Limited) , (Supra)** nor **AIR 1952 Cal 380 (Abul Hashem), (Supra)** holds the field in view of the judicial decisions reported in **(1997) 6 SCC 207 (WB Housing Board And Others Vs. Brijendra Prasad Gupta And Others) (paras 5 to 8) ; (2003) 5 SCC 365 (Ahuja Industries Ltd Vs. State of Karnataka And Others) (para 13); (2010) 13 SCC 98 (May George Vs. Special Tahsildar and Others) (paras 12 to 15 and 25 to 29)** wherein it was clearly held that the Collector is not to make any roving enquiry as to who is the owner (admittedly, the award amount in the instant case, has been given to the recorded owner).

13. According to learned Advocate for the State, Sections 18 and 30 of the Act of 1894 deal with the apportionment of compensation, and therefore, application was to be made before the Collector for reference, if any, to the Civil Court. He placed reliance **on (2003) 3 SCC 128 (Sharda Devi Vs. State of Bihar and Another) (paras 23 to 27 and 33 and 34); (2004) 7 SCC 362 (Meher Rusi Dalal Vs. Union of India and Others) (paras 21 to 24)**. The case law reported in AIR 1952 Cal 380 cannot be relied upon as the same relates to Defence of India Act and the issue involved therein are not akin to the facts and circumstances of the present case.

14. Learned Counsel for the State further argued that the appellant/petitioner was a fence-sitter all along and even did not make any objection under Section 5 of the Land Acquisition Act. It was only when physical possession was being sought to be taken over in 2010, that the appellant woke up from slumber and belatedly tried to improve his case by challenging a valid acquisition proceeding.

15. Learned counsel also urged that the petitioner's argument for alternative accommodation should not be given much weight since he was not a party to the relevant compromise agreement. Moreover, it is not correct to say that the award was not declared within the stipulated period of two years.

16. According to him, the appeal is liable to be dismissed with costs.

17. Learned Advocate for the H.I.T., Mr. Kallol Bose, has argued that as the name of the writ petitioner was not recorded as owner of the land in the Record of Rights, his name was not included in the order of Award dated 09.02.2010. Learned counsel further contended that a proposal for alternative accommodation in two newly constructed shop establishments at 117, G.T. Road, Salkia, Howrah for rehabilitation of shopkeepers was offered to the appellant but in vain. The proposal of the appellant for providing a free land measuring at least 6000 sq.ft. for commercial use at any location different from 128 G.T. Road cannot be considered since H.I.T. does not have any such commercial land use policy and does not deal with industrial part or business settlement or

SEZ sort of activities. The appellant may approach the Government of West Bengal for allotment of land in an industrial park.

18. In reply, learned Senior Advocate of the appellant submitted that there is no provision under the West Bengal Land Reforms Act, 1955 to record the name of an occupier of a land / building in the record of rights. As such it is quite natural that the name of the petitioner would not be found in the record of rights. Accordingly, the decisions reported in West Bengal Housing Board and other (Supra) and Ahuja Industries Limited (Supra) are not applicable in this case. Section 9(3) of the Act has made special provision for the person-in-occupation of the land or person-interested, and as such non-service of notice under Section 9(3) of the Act makes the entire proceedings invalid. Moreover, West Bengal Land (Requisition and Acquisition Act) 1948 was not in pari materia with the Act of 1894.

19. According to learned counsel, Ahuja Industries Limited case (supra) is inapplicable as the same dealt with non-service of notice upon some aggrieved owners of the land and not the

occupier. Moreover, May George Case (supra) cited by the State is also not applicable in this case since the purchaser who became the owner of the land prior to acquisition proceeding challenged non-service of notice under Section 9(3) of the Act under misconception. The said sub-section is only for the occupier, not for the owner.

20. Learned counsel further argued that Chandra Gouda Ram Gouda Patil case (Supra) and Northern Indian Glass Industries (supra), in fact, support the case of the present appellant.

21. Finally the proposition of the State-respondents that the appellant could always approach the collector for apportionment under Section 11 of the Act, 1894 and seek reference under Section 30 thereof, has been assailed by the learned counsel as absurd proposition of law since the acquisition proceeding was conducted behind his back, and the State cannot take advantage of its own wrong. He prayed for setting aside the impugned judgment.

Decisions with reasons

22. Undoubtedly, the Land Acquisition Act, 1894 ('Act 1894' in short hereinafter) makes provisions for the owners, occupiers or the persons interested in respect of any land proposed to be acquired for public purpose in such a manner and fashion that nobody, as aforesaid, is deprived of their legitimate and reasonable dues for such acquisition. It has long been settled by our Hon'ble Apex Court in various judicial decisions that the owners, occupiers, persons interested in the land proposed to be acquired are required to be heard, and their claims for compensation including apportionment of compensation etc are also required to be considered with reasonableness and prudence.

23. Therefore, after considering the case laws, judicial decisions submitted by the learned counsel for the parties and also after considering the arguments of the learned counsel, I do not find that any of the decisions has denied such basic rights of the owners/occupiers or persons interested in the relevant land. In the present case, the appellant has categorically submitted that his precious right of notice under Section 9(3) has been flagrantly violated by the State-respondents and without giving him any

opportunity as envisaged under the Act, 1894, the acquisition proceeding was concluded. Thus action on the part of the State-respondents seriously impaired his rights of claiming apportionment under the law. Hence the entire proceeding is liable to be quashed.

24. The State-respondents admit that the Act of 1894 provides opportunities for the owners, occupiers or persons interested in the relevant land to claim compensation and also for apportionment thereof. But if the concerned person fails to participate in the proceedings, the State cannot be held responsible. In this case, there was publication of notices under Sections 4, 5 and also of declaration under Section 6 of the Act of 1894 but the appellant did not turn up. The record of rights did not show his occupancy in the relevant land, and for which the Collector who was not obliged to make any roving enquiry in ascertaining the interest of occupiers, or any other person interested in the land, was unable to issue any notice under Section 9(3) of the Act, 1894. However, according to the State-respondent the appellant could reap the benefit under Section 30 of the Act, 1894, if he so desired. Learned counsel for the

appellant, on the other hand, has vehemently argued that West Bengal Land Reforms Act does not mandate a lessee, a tenant to record his name in the record of rights and, therefore, the acquisition proceeding is clearly a wrong and illegal proceeding which is required to be quashed.

25. Shorn of much unnecessary details, I would like to state that even after considering all the judicial decisions submitted by both the parties I find that the case of the present appellant is a unique one and none of the cited decisions is akin to the factual aspects of the case at our hand.

26. Undoubtedly, an occupier or person interested in the land sought to be acquired has certain rights under the Act, 1894. After considering the documents including copies of registered deeds, licences etc. of the appellant we are inclined to believe that the appellant was in actual physical possession of the relevant piece of land at the relevant time immediately before his eviction under the Act, 1894.

27. Therefore, the appellant, prima facie shows that he was in actual physical possession of the land and therefore, in principle

he had the right to have a special notice under Section 9(3) of the Act, and according to him, even if he, for the sake of argument, did not do anything after publication of notice under Section 4, 5 or declaration under Section 6 of the Act, his right to receive notice under Section 9(3) of the Act, 1894 cannot be curtailed.

28. But, in our view, such claim of right of notice under Section 9(3) under the Act, 1894 from the side of appellant is misplaced and misdirected one. Individual right or personal right may be created by a statute but the individual or person concerned may be at liberty to forego or surrender such right created by the statute. That was exactly the case in our hand.

29. If we peruse the recitals of two registered deeds of lease dated 17.5.1975 and 2.08.2003 we shall find that the appellant has surrendered his right of claiming compensation or apportionment thereof in favour of the lessor. The excerpt of such condition is enumerated at page no. 8 (typed copy of the deed dated 17.05.1975) (paper book, page – 229, Volume – I) and the same is hereunder:-

“ It is hereby agreed and by and between the parties hereto that if during the subsistence of this lease the

demised premises or any portion thereof be acquired by the Government Municipality Improvement Trust or any other public body or bodies under any law regulation or ordinance now in term or which may hereafter come into force the lessees agree to surrender the unexpired period of this demised and not to claim any portion of the compensation money to be awarded to the lessor or to the beneficiaries in respect of demised premises.”

30. Moreover, the deed dated 2.8.2003 has laid down similar condition more stringently at page no. 14 of the deed (paper book page no. 250, volume - I) and same is hereunder:-

“Provided always and It is hereby agreed and by and between the parties hereto that if during the subsistence of this lease the demised premises or any portion thereof be acquired by the Government Municipality Improvement Trust or any other public body or bodies under any law regulation or ordinance now in force or which may here after come into force, the lease hereby created shall be automatically without recourse to law stand determined and be seized, and the lessee shall not be entitled to claim any compensation from the lessor; and further be not entitled to claim upon the compensation money as will be awarded to the lessor in respect of the demised premises in near future.”

31. Now, if the appellant surrendered his right of compensation to the lesser, can he claim such compensation or apportionment thereof from the State-respondents? And that too, after the award

has been made in favour of the owner of the land with whom the appellant entered into such registered instruments twice! In our considered view, he cannot.

32. It appears that, the appellant had filed the writ application as a test or chance case, after the full award was made in favour of the owner. Neither the State respondents nor the Learned Single Judge committed any substantial mistake by not sending notice under Section 9(3) of the Act, 1894 or by passing the impugned judgment. In this factual scenario, not sending of notice under Section 9(3) of the Act, 1894 to the appellant does not vitiate the relevant acquisition proceeding.

33. As he surrendered his right of compensation under the Act of 1894, the appellant is neither entitled to any alternative accommodation as prayed for nor he has any right under Section 30 of the Act, 1894.

34. In fine, the appeal is dismissed. There will be no order as to costs.

35. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)