

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/19047/2023

Enayet Ali Molla & Ors.

-Vs-

State of West Bengal & Ors.

For the Petitioners: Mr. Partha Pratim Roy, Adv.,
 Mr. Dyutiman Banerjee, Adv.

For the private respondent Nos. 3 & 4:
 Mr. Jishnu Chowdhury, Adv.,
 Mr. Sarvapriya Mukherjee, Adv.,
 Mr. Chayan Gupta, Adv.,
 Mr. Sandip Dasgupta, Adv.,
 Mr. Saaqib Siddiqui, Adv.

For the State: Mr. Santanu Kumar Mitra, Adv.,
 Mr. Amartya Pal, Adv.

Hearing concluded on: 9 August, 2023.

Judgment on: 14 August, 2023.

BIBEK CHAUDHURI, J. : –

1. One Mother Ali Molla, since deceased became the owner of 57.50 decimal of land in RS dag No.1358/1445 corresponding to CS Dag No.1346, RS khatian No.85 of mouza-Chakpachuria, JL No.33 within the P.S Rajarhat. He purchased the subject land from one Shanti Rani Dey by virtue of a registered deed of sale being deed No.3346 of 1973 dated 4th May, 1973. The petitioners are the legal heirs and successors of the said Mother Ali Molla, since deceased. During the life time of Mother Ali Molla

he did not record his name in RS Record of Rights. After the death of Mother Ali Molla, the present petitioners moved an application before the Land Reforms and Tenancy Tribunal (LRTT) by filing OA Case No.1908 of 2022. The said application was disposed of directing the jurisdictional Block Land and Land Reforms Officer, respondent No.5 herein, to dispose of Misc Case No.941 of 2015 dated 29th December, 2015 which the petitioners filed for mutating their names in respect of the subject land in the Record of Rights, within six months from the date of communication of the order in accordance with law and giving opportunity to interested parties of hearing.

2. It is the case of the petitioners that when the respondent No.5 came to the spot for field inspection, the representatives of the respondents No.3 and 4 raised objection for the first time and the petitioners came to learn that the said respondents No.3 and 4 wrote a letter to the Additional District Magistrate (Land Acquisition) on 22nd May, 2023 making out a case to the effect that by virtue of acquisition proceeding, HIDCO acquired 77 decimals of land from RS Plot No.1358/1445 and the rest portion of RS Plot No.1358/1445 was acquired in or about 1953-54 by the Irrigation and Waterways Department, Government of West Bengal. After taking over possession, Bagjola Canal was excavated. A copy of the said representation was forwarded by the respondent No.6 to the BL and LRO on 31st July, 2023. The petitioners further state that the Executive Engineer, Irrigation and Waterways Department vide Memo No.4L-3/747 informed the HIDCO sometimes in the year 2015 that the said plot in

question had never been acquired by the Irrigation and Waterways Department. It is the specific case of the petitioners that petitioner's land was never acquired in any acquisition proceeding by the respondent No.6 on being requisitioned by the HIDCO. However, the respondent authorities are trying to restrain the petitioners from mutating their names recorded in the Record of Rights and also trying to encroach upon the land of the petitioners without having no right, title and interest over the said land. Therefore, the petitioners have filed the instant writ petition for following reliefs:-

“(A) Writ in the nature of Mandamus restraining the respondents from encroaching upon the land of the petitioners located and situated at Mouza- Chakpachuria, JL. No- 33 comprised in RS Dag No. 1358/1445 corresponding to CS Dag No. 1346, RS Khatian No. 85.

B) Writ in the nature of Mandamus restraining the respondents from obstructing the Block Land and Land Reforms Officer, Rajarhat, to survey the land of the petitioners located and situated at Mouza- Chakpachuria, JL. No- 33 comprised in RS Dag No. 1358/1445 corresponding to CS Dag No. 1346, RS Khatian No. 85.

C) A Writ in the nature of Certiorari directing the respondents to transmit the entire records of the case to this Hon'ble Court so that considerable justice may be rendered;

D) Rule ni-si in terms of prayers (A), and (B) above;

E) Ad-interim order in terms of prayers (A) and (B) till the disposal of this application.

F) Such further Order or Orders and/or Direction or Directions as this Hon'ble court may deem fit and proper for the ends of Justice.”

3. Mr. Jishnu Chowdhury, learned Counsel on behalf of the respondents No.3 and 4 entered appearance on notice and raised

preliminary objection with regard to maintainability of the writ petition on the ground that a proceeding is pending before the DL and LRO, North 24 Parganas under the West Bengal Land Reforms Act and no writ petition is maintainable against any proceeding initiated under the specified Act, viz, WBLR Act.

4. It is no longer *res integra* that after promulgation of WBLRTT Act, 1997, no order passed by any authority under the WBLR Act is amenable to the writ jurisdiction.

5. However, this Court found that no proceeding is pending before the Additional District Magistrate and DL and LRO, North 24 Parganas till date. The petitioners are apprehending that the respondent No.3 and 4 being a corporation fully owned by the State and the General Manager (Administration) of respondent No.3 being the functionary of the State may illegally encroach upon the land of the petitioners. Therefore, they have approached this Court for issuance of a writ in the nature of *mandamus* restraining the said respondents from encroaching upon any portion of the said land which is not the subject matter of any acquisition proceeding. Thus, this Court held that under Group-1, it is entitled to look into the question as to whether the property in question was acquired or not and if so under what provisions of law acquisition was made.

6. Mr. Jishnu Chowdhury, learned Advocate for the petitioners submits that the petitioners are not entitled to any relief in view of the fact that the petitioners did not approach the court at the appropriate

time and the instant writ petition is vitiated by delay. In support of his contention he refers to the decision of the Hon'ble Supreme Court in **Aflatoon & Ors. vs. Lt. Governor of Delhi & Ors.** reported in **(1975) 4 SCC 285**. Paragraph 9 of the aforesaid judgment is relevant and quoted below:-

"Assuming for the moment that the public purpose was not sufficiently specified in the notification, did the appellants make a grievance of it at the appropriate time? If the appellants had really been prejudiced by the non-specification of the public purpose for which the plots in which they were interested were needed, they should have taken steps to have the notification quashed on that ground within a reasonable time. They did not move in the matter even after the declaration under r 6 was published in 1966. They approached the High Court with their writ petitions only in 1970 when the notices under Section 9 were issued to them. In the concluding portion of the judgment in *Munshi Singh & Others v. Union of India* : (1973) 2 SCC 337 at page 373, it was observed:

"In matters of this nature we would have taken due notice of laches on the part of the appellants while granting the above relief but we are satisfied that so far as the present appellants are concerned they have not been guilty of laches, delay or acquiescence, at any stage."

7. Mr. Chowdhury also refers to the decision of the Hon'ble Supreme Court in **V. Chandrasekaran & Anr. vs. Administrative Officer & Ors.** reported in **(2012) 12 SCC 133**, in the said judgment the Hon'ble Supreme Court has reiterated that once the land is vested in the State, free from all encumbrances it would be divested. The land, once acquired cannot be restored to the tenure holders/persons interested, even if it is not used for the purpose for which it was acquired, or for any other

purpose either. The land owner becomes persona non-grata once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to reconvey the land to the person interested, nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect.

8. Above argument of the learned Counsel on behalf of the WBHIDCO Limited cannot be accepted under the facts and circumstances of the case. Because in the instant case the petitioners have alleged that their lands which they inherited from their father was never acquired all along they are in possession of the land. But the respondents No.3 and 4 encroached upon the land on the day of field inspection by the BL and LRO for the purpose of mutating their names in the Record of Rights. Immediately thereafter they rushed to this Court for appropriate relief.

9. In **Vidya Devi vs. State of Himachal Pradesh & Ors.** reported in **(2020) 2 SCC 569**, the Hon'ble Supreme Court was pleased to hold that right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right 2 in a welfare State, and a Constitutional right under Article 300A of the Constitution. Article 300A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though

not expressly included in Article 300A, can be inferred in that Article 300A can be inferred in that Article. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

10. In the instant case the petitioners made a prayer for recording their names in the Record of Rights in the year 2015. The respondent No.5 has not disposed of the said application which compelled the petitioners to file an application before the West Bengal Land Reforms and Tenancy Tribunal. The WBLRTT passed an order directing the BL and LRO to dispose of the petitioner's case within six months from the date of this order. The said period was over. Subsequently when the BL and LRO came to the spot for field inspection, the respondent No.3 raised an objection stating, inter alia, that the said land has been acquired in the year 2005-06. Thus, they stopped respondent No.5 from carrying out the order of the tribunal in accordance with law and the petitioners obviously were afraid of wrongful dispossession by the mighty State respondents. Therefore, they took shelter of this Court with appropriate relief. Under such circumstances, this Court does not think that there was delay in filing the instant writ petition.

11. Mr. Chowdhury, learned Advocate for the respondents has submitted to the jurisdiction of this Court and took part in the hearing of the matter on 9th August, 2023.

12. It is submitted by Mr. Chowdhury, learned Advocate on behalf of the respondents No.3 and 4 that in a proceeding being LA Case No.4/118 of 2003-04 notice under Section 4 of Act 1 of 1894 was issued on 26th October, 2004. Subsequently, on the same date notice under Section 6 of Act 1 of 1894 was issued and the respondents acquired 0.77 acres of land in plot No.1358/1445. After acquisition of land it was duly recorded in the Record of Rights in the name of Housing Department, Government of West Bengal. Thus, there is no iota of ambiguity regarding ownership of respondents No.3 and 4 over 0.77 acres of land (77 decimal of land) in plot No.1358/1445. It is also submitted by Mr. Chowdhury that the petitioners are claiming ownership in respect of 57.50 decimals of land out of 2 acres of land in plot No.1358/1445 by virtue of a deed dated but in the schedule of the deed of purchase by virtue of which the petitioners are claiming ownership, it is stated that they purchased 1.15 decimal of land out of 2.00 decimal of land. Thus, the petitioners cannot claim more than what has been purchased by their predecessor in interest. Their predecessor in interest, namely Mother Ali Molla purchased 1.15 decimal of land. So the petitioners cannot claim 57.50 decimal of land.

13. This submission made by the learned Advocate for the respondents No.3 and 4 is absolutely misconceived and this Court is not in a position to take judicial notice of the said submission because of the fact that on

perusal of entire deed of purchase it is clearly ascertained that Dag No.1358/1445 comprised of land measuring about 2 acres. Out of the said land, the predecessor in interest of the petitioners purchased 57.50 decimal equivalent to 1 bigha 15 cottah of land. It is needless to say that land measuring about 1 bigha 15 cottah is equivalent to 57.50 decimal. Moreover, it is admitted by the respondents No.3 and 4 in their letter dated 22nd May, 2023, that the measurement of RS Plot No.1358/1445 is 2 acres.

14. Let me now consider the notices, copies of which were submitted by Mr. Chowdhury before this Court for consideration submitting, inter alia, that the copies of the said notices are the copies of the notices under Section 4 and 6 of Act 1 of 1894 respectively.

15. I am constrained to note that Mr. Chowdhury probably has not been briefed properly.

16. First, the copies of the said notices are dated 26th October, 2004. Contents of both the notices are the same.

17. It appears from paragraph 2 of the notice that the notification *“under Sub-section (1) of Section 4 of the Act has also been published in the English Daily on 14.10.2004 and in the Bengali Daily on 16.10.2004.”*

18. Paragraph 4 of both the notices states, *“In exercise of the powers conferred by the aforesaid Section, the Governor is pleased to authorize the officers for the time being engaged in the undertaking, with their servants and workmen, to enter upon and survey the land and do all their acts required or permitted by that Section.”*

19. Paragraph-5 of the copies of the said notices states, “In exercise of the powers conferred by Sub-Section (4) of Section 17 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Governor is pleased to direct that the provisions of Section 3A of the Act was not apply to the lands as described in the schedule below to which in the opinion of the Governor, to the provision of Sub-Section (1) of Section 17 of the said Act are applicable.”

20. Thus, for all practical purposes the above mentioned copies which were filed by Mr. Chowdhury during argument are the copies of the notices under Section 17 of the Act 1 of 1894 which contains special powers of acquisition in cases of urgency.

21. Mr. Partha Pratim Roy, learned Advocate on behalf of the petitioners draws my attention to the land schedule mentioned in the copies of the said notices. They are revisional settlement plot Nos.1330, 1331, 1332, 1333, 1334, 1335, 1340, 1341, 1342, 1343, 1348, 1349, 1350, 1351, 1352, 1355, 1356, 1357, 1444 and 1445. The subject plot No.1358/1445 has not been mentioned in the notice under Section 17(1) of the Act of 1 of 1894. Thus, he raised a question if RS Plot No.1358/1445 was actually acquired by the State Government or not under the requisition of HIDCO.

22. Next Mr. Roy takes me to the letter written by the General Manager, Administration WB HIDCO Ltd. on 22nd May, 2023. In the said letter the respondent No.4 stated the status of the plot in question in the following words:-

1. The said RS plot (R.S. Plot No. 1358/1445 Mouza-Chakpachuria, J.L No. 33, P.S. Rajarhat) was acquired fully vide LA Case no.4/118 of 2003-04 for New Town project along with other adjoining plots.
2. As per RS record total area of that plot was 0.77 acre.
3. Accordingly notification U/S 4 and declaration U/S 6 of Land Acquisition act 1894 was duly issued mentioning full area of the said plot as 0.77 acre.
4. After completion of acquisition process total area involved in LA Case no. mentioned above was handed over to WBHIDCO Ltd. on 28.03.2005.
5. Obviously, the said plot was mentioned as full plot with area 0.77 acre.
6. After taken over procession, WBHIDCO Ltd. started development work on that plot including all adjacent plots.

B) This office received a notice dated 17.03.2023 U/S 57 of WB LR Act and accordingly attended the hearing on the fixed date 29.03.2023 before the Revenue Officer of Rajarhat BL & LRO Office. It is learnt during hearing that the area of RS Plot no 1358/1445, Mouja - Chackpachuria, JL No 33 had been changed from 0.77 acre to 2.00 acre vide a suo-moto proceeding u/s 44(2a) of WBEA Act 1953 vide case no. 2 of 2007 of BL & LRO, Rajarhat. Accordingly, the name of Rayats as per the said proceeding are needed to be corrected. In this respect this office likes to inform you that:

1. The plot in question was acquired as per LA Case no. mentioned above during 2003-04 for New Town project. Possession was also handover to WBHIDCO on 28.03.2005. Since then, the development work as per plan of WBHIDCO started. And total scenario of the area has been changed.
2. The suo-moto proceeding U/S 44(2a) of WBEA Act 1953 was started in the year 2007.

3. During the process of the said suo-moto proceeding vide Case no. 2 of 2007, WBHIDCO Ltd. was not made a party in that case.

4. Similarly in OA case no. 1908 -2022 of WB LRTT, WBHIDCO Ltd. was not a Party. So there was no scope to represent WBHIDCO and to submit any statement in this regard.

5. After a thorough examination of this issue as per available records that RS plot no. 1358/1445 was created by sub-dividing the original CS plot no. 1346 having total area 5.60 acre through a "Plot-Badar" during RS operation for updating ROR.

According to the said "Plot-Badar", CS plot no. 1346 represented as 1358, 1358/1443 and 1358/1445 in RS record having area 1.46 area, 11.71 acre (including a part of previous CS plot 1346) and 0.77 acre respectively. Through suo-moto case no. 2/2007, U/S 44(2a) of WBEA Act, 1953, the area of RS plots (originated from CS plot 1346) has been assessed as:

- a. RS plot no. 1358 = 1.46 acre
- b. RS Plot no 1365/1446 = 2.14 acre (part of CS plot no. 1346, earlier numbered as 1358/1443)
- c. RS plot no. 1358/1445=2.00 acre

It is pertinent to mention here that RS plot no. 1358 with area 1.46 acre and RS plot no. 1358/1446 (earlier it was numbered as 1358/1443) were fully acquired for New Town project vide LA case no. 4/107 of 2004-05, 4/112 of 2003-04 and 4/206 of 2008-09. Possession were taken over by WBHIDCO Ltd. accordingly on 08.06.2005, 02.06.2005 and 28.03.2005 respectively.

0.77 acre of RS plot no 1358/1445 was acquired for New Town project vide LA Case no. 4/118 of 2003-04 and possession was taken over by WBHIDCO Ltd. on 28.03.2005. Rest portion of RS plot no 1358/1445 was reportedly acquired much earlier during 1953-54 by West Bengal Irrigation Department. After taking over possession, Bagjola Canal was excavated by West

Bengal Irrigation Department and that Bagjola Canal is existing.

So, total area under CS plot no. 1346 was acquired and handed over to WBHIDCO Ltd. and West Bengal Irrigation Department as mentioned above.

As per acquisition plan in respect of LA Case no. 4/118 of 2003-04, the area claimed by the present petitioner was acquired by WBHIDCO Ltd. for New Town Project and the same is in our possession accordingly.

Till date the total area of 5.60 acre [1.46 acre of present R.S plot no.1358 +2.14 acre of R.S. Plot No. 1358/1443 (part), presently renumbered as 1365/1446 +0.77 acre of R.S. Plot no. 1358/1445+ 1.23 acre (existing Bagjola canal)] of C.S. Plot No. 1346 is possessed by WBHIDCO Ltd. and West Bengal Irrigation Dept.

Unfortunately, the matter of acquisition for West Bengal Irrigation Department and existence of Bagjola Canal had been overlooked during disposal of the said suo- moto case no. 2/2007 and this appears to be the reason of misconception.

6. As a result, the interests of WBHIDCO Ltd. who is the main beneficiary of the land acquisition has been affected adversely. The ongoing development work over the plot along with adjacent few other plots may face hinderance because of this.

7. This office submitted a letter vide no. 933/HIDCO Admn/3773/2020 dated 28.03.2023 to BLLRO Rajarhat describing the above initially and prima-facially. The copy of this letter was also forwarded to your end for kind information.

8. During hearing on 29.03.2023 representative of WBHIDCO Ltd. described the fact before the Revenue Officer concerned.”

17. Mr. Roy submits that in the said letter dated 22nd May, 2023 there are full of contradictions and falsehood and the maker of the said letter

should be liable to be prosecuted for misleading the quasi judicial and judicial authority. In Point-B of the said letter it is stated by the respondent No.4 that according to their knowledge plot No.1358/1445 was measuring about 0.77 acres of land but only on 17th March, 2023 the General Manager, (Administration) came to know that the area of the said plot had been changed from 0.77 acres to 2 acres vide a suo moto proceeding under Section 44(2a) of West Bengal Estate Acquisition Act, 1953 vide Case No.2 of 2007 of BL & LRO Rajarhat.

18. Mr. Roy also submits that the respondent No.4 pleaded in the said letter that CS Plot No.1346 was measuring about 5.60 acres and by virtue of Sub-Division of land, CS Plot No.1346 was renumbered as 1358 measuring about 1.46 acres of land, 1358/1443 measuring about 11.71 acres (including a part of previous CS plot No.1346 and 1358/1445 measuring about 0.77 acres of land. Thus, the land originating from CS Plot No.1346 was sub-divided into RS Plot No.1358 measuring 1.46 acres, RS plot No.1365/1446 having an area of 2.14 acres and RS Plot No.1358/1445 having an area of 2 acres. It is also contended by respondent No.4 that the respondent No.3 got possession of land in RS plot No.1358/1445 and the rest portion of land in RS Plot No.1358/1445 was reportedly acquired long term back during 1953-54 by the West Bengal Irrigation Department for excavation of Bagjola canal. Thus, remaining portion of 1.23 acres of land in RS Plot No.1358/1445 has gone to Bagjola canal after being acquired by Water and Irrigation Department.

19. Surprisingly enough, the petitioners have filed a copy of the letter written by the Executive Engineer, Metropolitan Drainage Division-1 Irrigation and Waterways Department, Government of West Bengal in response to Memo No.HIDCO/ADMN 2733/2014 dated 16.04.2015 to the Joint Managing Director, WBHIDCO that the land in CS Plot No.1346 of Mouza-Chakpachuria, JL No.33, P.S Rajarhat had not been acquired in the Metropolitan Drainage Division.

20. Mr. Chowdhury has not denied the authenticity of the said letter (Annexure P4). On the contrary he was surprised by saying as to how inter department communication came in the hands of the petitioners.

21. Be that as it may it is submitted by Mr. Roy that the petitioners are concerned about 57.50 decimal of land in plot No.1358/1445, nothing less, nothing more. The said land has not been acquired by any government agency for public purpose.

22. Mr. Mitra, learned Advocate for the State respondents submits that HIDCO acquired 77 decimal of land in plot No.1358/1445 being a part of 2.00 acres of land and it was recorded in the name of the Housing Department in Khatina No.2917. The learned Advocate for the State of Government has submitted a report of the BL and LRO, Rajarhat. The report practically supports the case of the petitioner.

23. To conclude, it is found that the respondents No.3 and 4 partly acquired 0.77 acres of land in plot No.1358/1445. The Water and Irrigation Department did not acquire any land in the said plot, but the fact remains that Bagjola Canal is flowing adjacent to the subject land. It

is admitted by the General Manager (Law) HIDCO who was present in court on being asked by the court that HIDCO already settled 0.77 acres of land which was acquired to the allottees following relevant process of law. Thus, at present HIDCO has no acquired land in plot No.1358/1445. Naturally, the land which is lying in the said plot belongs to the petitioners by virtue of registered deed of sale executed by Shanti Rani Dey in favor of Mother Ali Molla, predecessor in interest of the petitioners, by inheritance.

24. In view of the above finding, the petitioners are entitled to get appropriate relief against respondent No.3 and 4. Accordingly, the instant writ petition is allowed. A writ under nature of mandamus be issued forbearing the respondents No.3 and 4 from encroaching upon any portion of the subject land comprised in RS Dag No.1358/1445 corresponding to Khatian No.85 corresponding to CS Dag No.1346 of Mouza- Chakpachuria.

25. All the respondents are directed to act forthwith without any delay to give effect of this judgment on the basis of the observation made herein above.

(Bibek Chaudhuri, J.)