

March 20, 2023
ARDR

WPA 21056 of 2019

Ajit Kumar Patra
Vs.
The State of West Bengal & Ors.

Adv. Amit Kumar Pan,
Adv. Tanusri Santra,
...for the petitioner.
Adv. Soumitra Bandyopadhyay,
Adv. Priyabrata Batabyal,
...for the State.

Heard learned counsels for the parties.

It is contended on behalf of the petitioner that the land of the petitioner was acquired by the State respondents by invoking Section 17(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") vide L.C. Case no. 4/9 of 2012-13 for the purpose of reconstruction of *Aaila* affected Sundarban embankment. Declaration under Section 6 of the said Act was published on 8th March, 2013. Notice of compensation under Section 12(2) of the said Act was issued upon the petitioner on 1st October, 2015 indicating that award was declared on 31st March, 2015. Though the petitioner approached the authority for payment of compensation, such compensation was not disbursed in favour of the petitioner who was informed that since the plot in question was subsequently withdrawn from acquisition, the petitioner is not entitled to compensation.

Learned counsel for the State respondents relies upon the report submitted by the Additional Land Acquisition Officer, South 24 Parganas on 9th December, 2019 and submits that since the possession of plot in question was not taken over by the Government, withdrawal from acquisition is permissible under Section 48 of the said Act.

It transpires from the notification published by the State respondents on 20th July, 2012 under Section 17(1) of the said Act that the possession of the plot owned by the petitioner was taken over by the State respondents for the purpose of reconstruction of *Aaila* affected Sundarban embankment. The report further demonstrates that a proposal for withdrawal from acquisition of land measuring 64.185 acres out of an area of 98.885 acres was received from the Irrigation and Waterways Department by a communication dated 14th December, 2015 and since the land of the petitioner falls within the said area under withdrawal, the petitioner is not entitled to any compensation for the same.

Since the land of the petitioner was acquired in terms of Section 17(1) of the said Act, the obvious inference that can be drawn is that the possession of the said land was taken over by the State respondents at the same time. Section 48(1) of the said Act envisages that the Government shall be at liberty to withdraw from acquisition of any land of which possession has not been

taken. Therefore, in the case in hand, the State respondents are not entitled to such withdrawal from acquisition since possession of the land was already taken.

In the authority in ***Satendra Prasad Jain & ors. vs. State of U.P. & Ors.*** reported in ***(1993) 4 SCC 369*** relied upon by the petitioner, a similar issue has been dealt with by the Hon'ble Supreme Court which has observed that when Section 17(1) is applied for reason of urgency, the Government takes possession of the land prior to the making of the award under Section 11 and there is no provision in the said Act by which the land statutorily vested in the Government can revert to the owner.

Placing reliance on the authority in ***Lt. Governor of Himachal Pradesh & anr. vs. Abhinash Sharma*** reported in ***(1970) 2 SCC 149***, the Hon'ble Court has held that after possession has been taken pursuant to a notification under Section 17(1), the land is vested in the Government and the notification cannot be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act.

In view of the above, this Court is inclined to hold that since the possession of the plot in question was taken over by the Government, there was no scope for the Government to withdraw from acquisition of the said land under Section 48(1) of the Act. The petitioner is,

therefore, entitled to the award amount in connection with L.A. case no.4/9 of 2012-13 as declared in the notice under Section 12(2) of the said Act issued on 1st October, 2015.

The writ petition is accordingly disposed of directing the 3rd respondent to disburse the compensation amount in terms of the notice issued under Section 12(2) read with Section 31(1) of the said Act of 1894 within two months from the date of communication of this order.

With the aforesaid observations and directions, WPA 21056 of 2019 is disposed of.

There shall however, be no order as to costs.

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

Urgent certified website copy of this order, if applied for, be furnished to the parties on usual undertakings.

(Suvra Ghosh, J.)