

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 21777 of 2005

**Abdul Karim Mohammad
Vs.
The State of West Bengal & Ors.**

Mr. Samim Ahammed
Mr. Arka Maiti
..for the petitioner

Mr. Soumitra Bandyopadhyay
Ms. Suchana Banerjee
Mr. Aniruddha Sen
..for the State

Item No.09.

Heard & Judgment on: 05.07.2023

Bibek Chaudhuri, J.

Factual aspect of the matter is not in dispute. The petitioner was a raiyat in respect of certain plots of land being R.S. Plot No. 802/832,802/833,802/835 corresponding to L.R. Plot No. 892, 891,893,894, area 66 decimal, Khatian No. 258, L.R. Khatian No. 207 of Mouza Kastala, P.S. Sagar, district South 24 Parganas. Sometimes

in the year 2005 the aforesaid land of the petitioner was temporarily taken by the State Government before Ganga Sagar Mela for construction of a new bus stand at village Kachuberia.

The petitioner was aggrieved by the decision that his land is sought to be acquired and / or requisitioned by the concerned authority for the purpose of constructing a bus stand without taking due course of law under the Land Acquisition Act, 1894. He made a representation on 13th December, 2004 to the Sub-Divisional Officer, Kakdwip, South 24 Parganas raising his objection but the authority concerned did not take any action in spite of his representation which prompted him to file a writ petition before this Court being W.P. No. 21027 (W) of 2004. The said writ petition was disposed of on 18th January, 2005 directing the concerned authority to hear the petitioner's representation after giving reasonable opportunity of hearing and dispose of the same by passing a reasoned order within a period of six weeks from the date of communication of the said order.

As per the order passed in the above mentioned writ petition the dispute between the petitioner and the State Government and his representation dated 13th December, 2004 were taken up for consideration by the District Magistrate, South 24 Parganas. He was given opportunity of being heard and the District Magistrate, South 24 Parganas passed the following order dated 11th February, 2005.

"From the representation of the Petitioner Applicant, it transpires that he is the owner of Plot No.802/832,802/833,802/835, corresponding to LR Plot No. 892,891,893,894 measuring about 66 dcml. Khatian No. 258, L.R. Khatian No. 207, J.L. No.4 in Mouza Kastala under Sagar P.S. in South 24 Parganas district and he alleges that his lands are being taken for the construction of a Bus Stand to be used for Ganga Sagar Mela, without payment of compensation. He states that despite written and verbal representation to the SDO, Kakdwip, no action has been taken for disposal of his prayer so far.

From the facts available before me, it is found that some lands adjacent to the existing Bus Stand at Kachuberia on Sagar Island have been identified for the second Bus Stand at Kachuberia, to handle the increasing burden of pilgrims during the annual Ganga Sagar Mela. This project is required in the public interest to ensure the safety and security of the lakhs of pilgrims visiting the Mela. The SDO, Kakdwip had convened a local meeting before the Ganga Sagar Mela 2005 and a consensus has been reached with the participation of Peoples Representatives that some lands adjacent to existing Bus Stand at Kachuberia would be utilised for a period of about 3 weeks, for construction of a temporary Bus Stand on payment of some compensation to the concerned land owners. It is learnt that the

petitioner has not yet received the said payment for temporary use of his land.

As regards acquisition of the petitioner's land, on a permanent basis, it is hereby ordered that the owners concerned shall not be deprived of their land without payment of compensation, in accordance with law."

By filing the instant writ petition the petitioner joined the issue alleging, inter alia, that the decision of temporary taking over of land was taken in a meeting held by the S.D.O. and some peoples representatives. The petitioner was not given any audience in the said meeting. The State authority did not try to ascertain from the petitioner as to whether he is willing to permit the State Authority for taking temporary possession of his land for the purpose of construction of Kachuberia Bus Stand. Therefore, the decision of taking over the lands in question was made without hearing the petitioner.

Secondly, it is contended by Mr. Ahammed, learned advocate for the petitioner that the District Magistrate, South 24 Parganas by his order dated 11th February, 2005 practically decided that the petitioner's land would be acquisitioned on a permanent basis in accordance with law. It is urged by the learned advocate for the petitioner that the District Magistrate, South 24 Parganas took the

said decision without initiating a proceeding under the Land Acquisition Act, 1894. Therefore, the said order is bad in law. Mr. Ahammed next submits that on 9th March, 2005 the petitioner submitted a letter of objection to the local B.D.O. raising his serious objection as to the rate of compensation for temporary possession of land. He also alleged that a 'pucca' road has been constructed on his land. Since the State Government took temporary possession of land, the said 'pucca' road should be removed or increase the rate of compensation /occupational charge at the rate of Rs.500/- instead of Rs.200/- per 33 decimals which was mentioned in serial No.2 in the letter dated 15th March, 2005. Thus, the petitioner has alternative grievance - either to remove the 'pucca' road from his land or to increase the rate of compensation for temporary occupation.

It is of course admitted by Mr. Ahammed that subsequently on 11th May, 2005 the competent authority issued a notice under Section 4 of the Land Acquisition Act. The petitioner filed an objection on 24th June, 2005 against the notice of requisition under Section 4 of the said Act. Thereafter a notice under Section 5A was issued on 23rd June, 2005. The petitioner also raised an objection against the said notice under Section 5A of the Act I of 1894. However, without considering his objection order under Section 6 was passed which is

followed by determination of compensation under Section 9 read with Section 11 of the said Act

It is contended by Mr. Ahammed that entire proceeding under the Land Acquisition Act proceeded with any direction on the basis of observation made by the then District Magistrate, South 24 Parganas vide order dated 11th February, 2005. Referring to a Three Judges Bench decision of the Hon'ble Supreme Court in **AIR 1968 SC 432** reported in **Abdul Hussain Tayabali etc. vs. The State of Gujarat and others** it is submitted by Mr. Ahammed that even though an enquiry under Section 5A may be an administrative enquiry, the State Government is bound to give opportunity of hearing to the appellant after receiving the report thereunder and before making up its mind for the purpose of issuing Section 6 Notification. It is not in dispute that during Section 5A enquiry the petitioner was heard and his objection was taken on record. It appears from the record that there are series of objections filed by the petitioner. But nowhere in the report I find that the petitioner's objection was taken into consideration while disposing of Section 5A proceeding by the Collector.

Learned advocate for the State Respondent, on the other hand, draws my attention to the affidavit-in-opposition as well as supplementary affidavit filed on behalf of respondent Nos. 3, 4, 5 and

6. It is submitted by him after observing all necessary provisions of Act I of 1894, the award in respect of the land acquisition proceeding was declared on 4th January, 2006. The petitioner received notice under Section 12 read with Section 31 of Act I of 1894 on 1st January, 2006. In spite of due notice, the petitioner remained absent on 6th January, 2006 to receive payment of compensation. Therefore, he was again served with a notice on 24th February, 2006 under Memo No.LA 422 dated 16th February, 2006. Since the petitioner did not receive the said notice, the amount of compensation has been deposited in the Treasury as revenue deposit on 25th September, 2006. It is also submitted by the learned advocate for the State respondent that the notice under Section 4 of the Land Acquisition Act, 1894 was published in official gazette dated 28th April, 2005 as well as in one English and one vernacular newspaper. Subsequently, the declaration under Section 6 of the Act was also notified and published in extraordinary official gazette on 17th June, 2005. The said notification was also published in two newspapers as aforesaid. The petitioner was given notice on 28th December, 2005 under Section 9 read with Section 11 of the Land Acquisition Act, 1894 but he did not receive the compensation for acquisition of land.

On perusal of the documents filed on behalf of the State authority this Court finds that the provision of Act -I of 1894 was

scrupulously followed before the order of acquisition of land in question. This Court is not in a position to hold that the acquiring authority acted on bias because of the observation made by the District Magistrate, South 24 Parganas in his order dated 11th February, 2005. On careful perusal of the observation made by the District Magistrate, South 24 Parganas while disposing of the representation of the petitioner he stated that if the land of the petitioner is acquisitioned, he is entitled to get compensation in accordance with law. This does not mean that the District Magistrate issued a direction upon the requiring authority to proceed with the LA Case in a particular direction. Mr. Ahammed as a last limb of his submission urges this Court to direct the State Authority to reconsider the amount of compensation because of the fact that the petitioner is an aged and ailing person of about 80 years. Except the said lands he had no other source of income. Therefore, this aspect ought to be considered for fixation of compensation. I have carefully considered the submission of Mr. Ahammed. The questions which are to be taken into consideration for determining compensation was taken care of by the respondents. However, considering the case of the petitioner and in view of the fact that his only source of sustenance was acquisitioned, the respondents are directed to pay compensation

which is lying in the Treasury Revenue Department along with the accrued interest, if any, on the said amount.

With the above observation, the instant writ petition is disposed of.

(Bibek Chaudhuri, J.)