

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 31106 of 2014
With
WPA 31108 of 2014
With
WPA 31110 of 2014
Based Mondal
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Amit Kr. Pan Ms. Tanusri Santra Advocates
For the State	:	Mr. L.M. Mahato Advocate

Heard lastly on : 11.01.2023

Judgment on : 11.04.2023

Jay Sengupta, J.:

1. These are applications under Article 226 of the Constitution of India praying for direction upon the respondent authorities to initiate fresh proceedings under the right to fair compensation and transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 for the purpose of

determining the compensation in question if the respondents intended to continue with the possession of the land of the petitioner.

2. As the questions of law involved in all these three writ petitions are the same, the matters are taken up for hearing together.

3. While WPA 31106 of 2014 pertains to plot no. 473 and subsequent land acquisition proceeding being APP Case No. 142/02-03, WPA 31108 of 2014 pertains to plot no. 502 and subsequent APP Case No. 142/02-03 and WPA No. 31110 of 2014 relates to plot no. 518 and subsequent APP Case No. 143/02-03.

4. Mr. Amit Kumar Pan, learned senior counsel appearing on behalf of the petitioner submitted as follows. The petitioners' grand-mother Lakejan Bibi (since deceased) was the recorded owner of the plots of land in question. After her demise and the death of the petitioners' father Rahatullah Sk., several persons including the present petitioners became the owners of the said land. For the purpose of settlement of immigrants, the State of West Bengal initiated a proceeding under the West Bengal Land Development and Planning Act, 1948. On 23.02.1956 a declaration under the Section 6 of the Act was published in the Calcutta Gazette and it was declared that the said land under Mouza Kulberia was likely needed for public purpose. On 17.04.1956 the possession of the land was taken over by the Collector, the respondent no. 2 herein and was handed over to the District Magistrate, Refugee Rehabilitation Department, the respondent no. 5 herein. Subsequently, the District Magistrate, the respondent no. 5 herein utilised the said land and other land that was acquired. However, the said

proceedings stood lapsed as no award was made in terms of the statutory mandate of Section 11A of the Land Acquisition Act, 1894 within 23.09.1986. Treating the said proceeding as lapsed, the Collector initiated fresh proceedings in respect of such land bearing APP Case Nos. 142/02-03 in WPA 31100 of 2014. WPA 31108 of 2014 pertained to APP Case No. 142/02-03 and WPA No. 31110 of 2014 related to APP Case No. 143/02-03. Accordingly, notifications under Section 4 of the Act I were issued in April 2003. Thereafter, declarations under Section 6 of the Act I were published on 13.08.2003. But, the said cases also stood lapsed on 13.08.2005 in view of Section 11A of the Land Acquisition Act since no award was made within time. Till date, no compensation whatsoever in respect of the said land had been paid to the petitioners. The statutory authorities could not hold on to possession of the land without initiating fresh proceeding under the present Act of 2013 as the earlier Act of 1894 stood repealed from 1st January 2014 and no proceeding was pending in respect of the said land as on the said date. Yet, since 24.09.1986 the respondents were forcefully enjoying the possession of the land without any authority of law. The Affidavit in Opposition of the State did not controvert the statements made in the writ petition. The judgment relied upon on behalf of the State in SLP 16631-16632/2018:Haryana Steel Industries and Ors. Versus Dipak Agarwal and Ors. had no manner of application in deciding the present writ petition in as much as the facts and the issues involved were completely different. On the contrary, reliance was placed on judgment of the Hon'ble Apex Court

reported at (2016) 15 SCC 710: State of West Bengal and Ors. Versus Aziman Bibi and Ors.

5. Mr. L.M. Mahato, learned senior counsel appearing on behalf of the State submitted as follows. The petitioner came forward for claiming compensation in respect of the land whose possession was taken over on 17.04.1956 after a lapse of more than 50 years. As such, the statements affirmed by the petitioner could not be true to his knowledge. There was no explanation for the enormous delay in approaching this Court, which was fatal to the petitioners' cause. It was true that there was no limit to file a writ petition, but the Courts would have to go into the issue of delay if the demand was made after lapse of several years. On this reliance was placed on the decision reported at (2020) 8 SCC 129. A self imposed restraint would have to be exercised in such cases. On this, reliance was placed on the decision reported at (2011) 5 SCC 394. In the present case there was a delay in the second proceeding because of the time required for obtaining approval from the Cabinet. However, for the proceedings, public notices and Gazette notifications had indeed been published. As was held in Haryana Industrial Corporation, SLP (C) No. 166312166 of 2018, for the purpose of Section 24(1) of the 2013 Act, the proceeding ought to be initiated as per the relevant Land Acquisition Act and only for the determination of the compensation amount, the provisions of the Act of 2013 shall apply.

6. I heard learned counsels for the parties and perused the writ petitions, the affidavits and the written notes of arguments.

7. It appears that the petitioner's grand-mother was the recorded owner of the plots of the land in question. After her demise, several persons including the petitioners became the owners of the said land. It further appears that for the settlement of immigrants, the State initiated a proceedings under the West Bengal Development and Planning Act, 1948. On 23.02.1956, a declaration was published stating that the land under Mouza Kulberia was likely needed for public purpose. On 17.04.1956 the possession of the land was taken over by the Collector, the respondent no. 2 here in. Thereafter, it was handed over to the District Magistrate Refugee Rehabilitation Department, the respondent no. 5 here in. Subsequently, the land was utilised. However, the said proceedings stood lapsed as no award was made in terms of Section 11A of the Land Acquisition Act 1894 within 23.09.1996. Treating the proceeding as lapsed, the Collector initiated fresh proceedings in respect of such land. Accordingly, notifications were issued under Section 4 in April, 2003 and declarations were published on 13.08.2003. But, these cases also stood lapsed on 13.08.2005 as no award was made in time.

8. Although the State had raised a plea that the petitioners could not claim compensation in respect of the land whose possession was taken over as far back as in 1956 that is to say, after a lapse of more than 50 years, by accepting lapsing of the first process of acquisition and by initiating a second such proceeding in 2003, the respondents had effectively waived the question of limitation till 2003. Therefore, the effective delay is perhaps not what the State claims.

9. It is settled law that delay in claims in land acquisition cases may have to be dealt with more liberally than in respect of other subject matters. It is further a settled proposition of law there can be no limitation in filing a writ petition. However, it is also true that a self-imposed restraint would always have to be exercised in dealing with such delay.

10. After balancing the pros and cons in the instant case, one is compelled to arrive at a conclusion that the purported delay in claiming compensation in the present case could not have disentitled the petitioners from moving the present writ petition in 2014.

11. Admittedly, the respondents had initiated two successive proceedings, the one in 1956 and the other in 2003. But, due to their own mishandling of such cases, the proceedings got lapsed as the award could not be declared in time. The respondent cannot be allowed to utilise and enjoy land belonging to the other citizens of the country without due process of law and without paying compensation for the same to the said land losers or their representatives. The statutory authorities could not hold on to the possession of the land without initiating a fresh proceeding under the existing Act of 2013 as the Land Acquisition Act, 1894 had stood repealed with effect from 1st January 2014 and no proceeding was pending in respect of such land as on such date.

12. Therefore, there is no other option but to initiate of a fresh proceeding under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for regularising the

process of acquisition and for paying compensation to the owners of the land or their representatives.

13. In view of the above and in the interest of justice, this Court directs the respondent authorities to initiate appropriate proceedings under the Act of 2013 for regularising the acquisition of the land in question, within a period of four weeks from the date of communication of this order, so that compensation can be paid to the land losers or other representatives at the earliest.

14. With these observations, the writ petitions are disposed of.

15. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)