

27.11.2024

Item No. 22

Crt.No.02

b.r.

WPA 1276 of 2024

Dilara Khatun & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Golam Mastafa

Mr. Samirul Sardar

.... For the petitioners.

Mr. Chandi Charan De, Ld. AGP

Ms. Reshma Chatterjee

... for the State-respondents.

Affidavit of service filed in Court today, is taken on record.

Mr. Golam Mastafa, learned advocate appears for the petitioners.

Mr. Chandi Charan De, learned Additional Government Pleader, appears for the State-respondents.

Through this writ petition, the petitioners have assailed the impugned order dated **August 28, 2023** passed by the **respondent no.6**.

The petitioners submit that in the previous round of writ litigation, a Co-ordinate Bench directed the respondent no.6 to consider the case of the petitioners and to pass a reasoned order. Following the said direction, the impugned order has been passed.

The sole contention of the petitioners is that the land of the petitioners though have not been acquired by

neither has vested in favour of the State, the State authority has utilized the land for public purpose without paying any compensation to the petitioners. The fact finding enquiry and the finding of the respondent no.6 in the said impugned order also supports the contention of the petitioners. The relevant portions from the impugned order are quoted below:-

“1. As per physical verification sheet conducted by a team of District Officials and the Block Land & Land Reforms Officer, Gazole, land of L.R. Plot No. 274 there are lying O.B.C. Girl's Hostel, three staff quarters of office of the Block Development Officer, Gazole, one shed, one pump house over an area measuring 0.9422 acre of Plot No. 274 in Mouza-Bandhail, J.L. No. 82 under PS-Gazole within the periphery of Gazole B.D.O Office campus.

2. As per report of the B.D.O., Gazole, the above Plot no. 274 has been under absolute possession and control of B.D.O., Gazole and within the boundary wall of the office since inception of the B.D.O. Office i.e. around 1950's.

3. No document in respect of acquisition of the suit land has been found in the land acquisition office and document in respect of donation of this land to government has not been found at the Office of the B.D.O., Gazole.

4. The first claim was made on 19.07.2017 by the instant petitioners before the District

Magistrate, Malda after a gap of 67 years. On the ground of non-consideration of representation, the instant petitioners moved before the Hon'ble High Court on 14.09.2017 through filing of a writ petition being WPA No. 25032 of 2017.

5. The claim of compensation of the petitioners was made after 67 years since the suit land had been under the occupation of B.D.O., Gazole. Such a claim is treated as stale claim and the Hon'ble Supreme Court in its order dated 12.05. 1995 reported in 1995 SCC (4) 683 in Civil Appeal No. 6066 of 1995 arising out of SLP(C) No. 10723 of 1993 in the matter of State of Maharashtra –Vs- Digambar, had clarified that, the conduct of the petitioners in such cases are blameworthy of laches and undue delay.

Doctrine of laches is a watchdog of justice in a legal system which ensures that only the right cases are addressed and any malice is dealt properly with reprimand.

Hence also it appears that the petitioners have taken exuberant amount of time (about 67 years) to file their claim even though they were well aware of the property matter. If they really had any right over the suit land then why they or their predecessors had slept over such rights for more than six decades is not clear. Moreover, non availability of document of acquisition or transfer of land in favour of Government in the office where government had peaceful and undisputed possession for such a long time of

67 years does not suggest that there was no validity in respect of such possession

Under the above facts and circumstances, it is found that –

- (i) The suit plot of land was not acquired either under the Land Acquisition Act, 1894 (Act-I of 1894) or under the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act-II of 1948).
- (ii) There is no scope of fresh acquisition of the suit plot of land as the above both Land Acquisition Act had already been repealed.

So, the claim of compensation by the petitioners in this instant case is not considered.

Hence, the representation of the petitioners is disallowed and disposed of and the solemn order of the Hon'ble High Court is complied with."

The above observations and findings of the respondent no.6 clearly shows that after due fact finding enquiry, it is confirmed that the contention of the petitioners as recorded above are true and correct.

The law is trite that in the event of any acquisition or no acquisition if the State has utilised a land, the owners/land losers shall have to be and must be compensated strictly in accordance with law. Right to property is engrafted under **Article 300A** of the **Constitution of India** as one of the major and constitutional right provided under the Constitution. The doctrine or laches or even waiver or estoppel shall

not operate against a constitution right. If on the face of an act of the State, it is established that the constitutional right of a citizen is infringed, it is the sole and whole obligation of the State to make good of it following due process of law. Therefore, in the facts of this case, the State cannot and should not take the plea of alleged laches and delay, even if there is any, on the part of the petitioners to assert its claim on property.

In view of the foregoing discussions and reasons, this Court is of the firm view that the ultimate conclusion of the respondent no.6 in the impugned order dated **August 28, 2023** is not only perverse but also illegal and not tenable in law. The conclusion in the impugned order stands accordingly **set aside** and **quashed**.

In the facts of this case, the State has to adapt the Direct Purchase Policy in respect of the lands of the petitioners.

The petitioners shall serve a copy of this writ petition along with a copy of today's order upon the respondent no.3 forthwith.

The respondent no.3 then shall take its decision and will complete all necessary steps following the due process of law to compensate the petitioners strictly in accordance with law. Thereafter upon verification of the ownership in respect of the subject land, the respondent

no.3 and/or any other appropriate State authority shall disburse and pay the compensation to the actual land owners/land losers and/or their successors-in-interest in accordance with law.

This entire exercise shall be carried out and completed by the **respondent no.3** within a period of **eight months** from the date of communication of this order.

It is made clear that the petitioners shall be at liberty to produce whatever records and documents they wish to produce before the respondent no.3.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 1276 of 2024** stands **disposed of**, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)