

Item-
10. 17-05-2024

MAT 340 of 2024
CAN 1 of 2024

sg Ct. 8

Biswajit Mukherjee
Versus
The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr. Tanweer J. Mandal, Adv.
Mr. Avishek Das, Adv.
Mr. Soubhik Dey, Adv.
...for the appellant
Mr. Sayantan Bose, Adv.
Mr. Shreyan Bhattacharyya, Adv.
...for the respondent no.4
Mr. Suman Sengupta, Adv.
Mr. Sambuddha Dutta, Adv.
Mr. Sanatan Panja, Adv.
...for the State

1. The appeal is arising out of a judgment and order dated 30th August, 2023 in which the writ petitioner has challenged the action of the respondent authorities over a piece of land, which according to the petitioner, belonged to his father and after the death of his father, he became the owner of the said plot.
2. The said plot of land is mentioned in the writ petition. It appears that a acquisition proceeding was initiated in respect of the various land in District Burdwan and the land in question was part of the said acquisition proceeding.
3. The State has categorically contended that the petitioner is a post-acquisition transferee and the original owner has received the compensation.
4. This is now being disputed by the writ petitioner. Although a submission is made that there is no declaration that the original owners have received compensation but having

regard to the issues raised in the writ petition, it is not possible to settle the said issue after 50 years as there has been no contemporaneous challenge by the writ petitioner with regard to the said acquisition proceeding or the right to receive compensation under the relevant statute. It is not possible after 50 years of the acquisition proceeding to decide the issue of the writ petitioner when admittedly, the father of the writ petitioner did not question the said acquisition proceeding.

5. Although it is submitted that the State is required to follow the mandatory provision and the delay may not be fettered when it is established that there has been a non-compliance of the mandatory provision.
6. We are unable to come to a finding, at this stage, that the mandatory provision for acquisition has not been followed or by reason thereto, the right accrued in favour of the present petitioner, after the death of the father of the present, the petitioner is a post-acquisition transferee, then he has no right to challenge the said as the compensation is payable to the original owner. No land could be transferred once the proceeding for acquisition was initiated.
7. Mr. Partha Sarathi Bhattacharyya, learned Senior Counsel appearing on behalf of the writ petitioner, has referred to paragraph 4 and 5 of the report filed by the Additional Land Acquisition Officer is submitted that the mandatory provisions have not been followed.
8. For the sake of convenience paragraphs 4, 5 and 6 of the affidavit is reproduced below:

“4. It is stated that from the letter of the Special Land Acquisition Officer, Purba Bardhaman vide memo no 435 L. A / SQD - 1/21 dated 22.02.2021 and 515 / LA / SQD - 1/18 dated 16.03.2018 it is known that the original L.A Case No 3/66 - 67 is not available at their L.A section and in this respect an FIR was lodged from the L.A office, Purba bardhaman due to the Loss of the L.A Case No 3 of 1966-67 before the Officer-in-Charge, Burdwan (Sadar) Police Station bearing memo no 3307/LA/sqd-I dated 19.10.2004 but on scrutinization of the available office record (Photo copy) it is transpired that a L.A case being no 3/66 - 67 was initiated under Land acquisition Act-I of 1894 for public purpose namely for development of housing in the village of Ganrui and Govindapur comprising of a total area of 90.59 acres including the suit plot no 1714 in Ganrui Mouza. Copies of the letters dated 16.03.2018 and 22.02.2021 and copy of FIR dated 19.10.2004 are annexed hereto and collectively marked as "R2".

5. It is stated that Notification u/s 4(1) vide no 2887-LA dated 20.02.1964 was published on 16.03.1964 and declaration u/s 6 vide no 1556-LA dated 03.02.1966 was published on 03.03.1966 in the Calcutta Gazette, Extra-Ordinary and from the parawise statement of facts prepared by the Chief Executive-Officer, Asansol Durgapur Development Authority i.e ADDA in relation to the instant writ petition and it also appears that the plot no 1714 of Mouza-Ganrui, J.L.No 12, P.S Asansol, District Burdwan (Now Paschim Bardhaman) has been acquired by the L.A collector Burdwan vide L.A case No 03 of 1966-67 for public purpose i.e in favour of Housing Department, Govt. of West Bengal and possession of the said plot along with other plots were made over to the Housing Department i.e the

Requiring Body. The copies of the Report of Additional District Magistrate (L.A.), Paschim Bardhaman in this regard, Calcutta gazette and the statement of facts are annexed hereto and collectively marked as "R3".

6. It is stated that in terms of the High Power Committee, Government of West Bengal, the Housing Department had handed over the possession of 312.92 acres of Land on 04.06.1997 to the Asansol Durgapur Development Authority for development purpose in lieu of Rs 378.7 lakhs. The possession of 312.92 acres of land has been made over through a map. Thereafter by executing a deed of Conveyance, The Governor of West Bengal has been pleased to take up registration of 151.04 acres of land with A.D.S.R Asansol in favour of Asansol Durgapur Development Authority. It is stated that the plot bearing no 1714 has already been registered in favour of Asansol Durgapur Development authority by executing the aforementioned Deed of Conveyance and A.D.D.A becomes owner of plot No 1714 with 2.41 acres by virtue of registered deed of conveyance."

9. It is clear from the said paragraphs that of the affidavit that a LA case was initiated under the Land Acquisition Act-I of 1894 for public purpose namely for development of housing in the village of Ganrui and Govindapur comprising of a total area of 90.59 acres including the suit plot no. 1714 in Ganrui Mouza. There is nothing on record to show that the father of the petitioner who alleged to have the owner of the property prior to the acquisition proceeding and lodged any claim with the LA Collector pursuant to the such notification.

10. It is very difficult at this distant point of time to ask the State

to establish whether the procedure prescribed under the Act has been scrupulously followed. There is a clear presumption that the legitimacy to an action taken by the authorities unless it is shown there has been a gross inference of the procedure. The onus lies on the petitioner to establish. The writ petition was filed in the year 2013 alleging encroachment which is unbelievable in view of paragraph 4 of the affidavit which we have made reference.

11. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge. The appeal and the application fail. However, there shall be no order as to costs.
12. The note filed on behalf of the respondents is taken on record.

(Soumen Sen, J.)

(Uday Kumar, J.)