

D/L
Item No. 07
05.04.2024
KOLE

MAT 543 of 2024
With
IA CAN 1 of 2024
With
IA CAN 2 of 2024

The State of West Bengal & Ors.
-Vs.-
Md. Imdadul Mondal & Ors.

Mr. Sirsanya Bandopadhyay, Jr. Standing Counsel,
Ms. Tapati Samanta,

...for the appellants.

Mr. Sarwar Jahan,
Mr. D. Mukherjee,
Mr. Asraf Mondal,

...for the respondents/writ petitioners.

In Re: CAN 2 of 2024:-

This is an application for condonation of delay of 78 days in presenting the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

The application for condonation of delay is, thus, allowed.

IA CAN No. 2 of 2024 is disposed of.

In Re: MAT 543 of 2024 with CAN 1 of 2024:-

By consent of the parties, the appeal and the connected application are taken up for hearing together.

A judgment and order dated September 29, 2023, whereby the writ petition of the respondent nos. 1 and 2 herein, being WPA 6838 of 2023, was disposed of by a learned Judge of this Court, is under challenge in this appeal filed by the State of West Bengal and some of its officers.

It appears that in the year 1989 a plot of land was purchased in the names of the writ petitioners. The case of the State is that in 1992, the father of the writ petitioners gave his consent to the said plot of land being used by the State for construction of a pump house for catering to the needs of the people of the locality. It appears that from 1992, the pump house has been in operation.

In 2021, i.e., about 30 years after the pump house started operating from the plot of land in question, a representation dated December 15, 2021, was made on behalf of the writ petitioners by their learned Advocate, addressed to various officers in the administration including the District Magistrate, Murshidabad, the concerned Sub-divisional Officer, the concerned Block Development Officer, etc. and others. The representation was to the effect that consent had been given by the father of the writ petitioners for utilization of the land in question on the assurance meted out to him on behalf of the State that members of the family would be engaged as operators in the pump house. That promise was never kept by the State Government. No compensation was also ever paid to the writ petitioners for the plot of land which is admittedly being used by the State Government. Accordingly, prayer was made for either granting of job to the writ petitioners or payment of applicable compensation.

With the grievance that such representation was not receiving the attention of the competent authority in the administration, the writ petitioners approached a learned

Judge of this Court by filing WPA 5503 of 2022. The said writ petition was disposed of by the learned Judge by an order dated November 22, 2023, by granting liberty to the writ petitioners “to submit a comprehensive representation in this regard before the first respondent within two weeks from date. The first respondent is directed to consider and dispose of the said representation within two months from the date of receipt thereof by affording reasonable opportunity of hearing to all the interested persons including the writ petitioners in accordance with law”. The first respondent in that writ petition was the State of West Bengal.

Pursuant to such liberty, a representation dated December 2, 2022, was made by the writ petitioners to the Principal Secretary to the Government of West Bengal, Public Health Engineering Department. The last paragraph of that representation reads as follows:-

“In the premises aforesaid, we do request your good office to be kind enough to pass necessary direction and/or order upon the appropriate authorities to sanction and release adequate monetary compensation to us in lieu of our said land at an earliest and oblige”.

By an order dated January 10, 2023, the Principal Secretary, PHE Department, Government of West Bengal rejected the representation of the writ petitioners.

Being aggrieved, the writ petitioners challenged such order dated January 10, 2023 by filing the present writ petition being WPA 6838 of 2023.

Before the learned Single Judge it was submitted on behalf of the State that the father of the writ petitioners had consented to the land in question being utilized for construction of a pump house. There was no further understanding between the State and the father of the writ petitioners that any favour will be granted to the land owner either by way of granting a job or payment of compensation.

The learned Judge rejected the contention of the State. The learned Judge noted that it is not in dispute that the land of the writ petitioners has been utilized by the State. The learned Judge disposed of the writ petition with the following observations and directions:-

“In view of the above, this Court is inclined to hold that since the land in question has been utilized by the respondents without acquiring the same, the land may either be acquired by the respondents in terms of the Act of 2013 or directly purchased by them at the present market rate of the property.

The order impugned dated 10th January, 2023 is set aside/quashed.

The writ petition is disposed of directing the 1st respondent to initiate acquisition proceedings under the Act of 2013 and conclude the proceedings including the payment of compensation to the petitioners within three months from the date of communication of this order upon affording reasonable opportunity of hearing to all concerned including the petitioners, in accordance with law.

In the alternative, the 1st respondent shall initiate proceedings for direct purchase of the land in question from the petitioners at the present market value of the land and complete such proceedings within three months from the date of communication of this order upon hearing all concerned, including the petitioners.

The decision taken by the authority shall be communicated to the petitioners within a week thereof.”

Being aggrieved the State has come up in appeal before us.

Mr. Bandopadhyay, learned Advocate for the appellants, took us through the representations made by the writ petitioners as also the order of the Principle Secretary, PHE Department, Government of West Bengal, rejecting the second comprehensive representation of the writ petitioners. He submitted that no assurance at any point of time had been meted out by the State to the father of the writ petitioners that members of the family would be engaged as operators in the pump house that has been constructed on the land in question. The land was gifted by the father of the writ petitioners for a good public cause. The writ petition was filed after 30 years of delay. On that ground along the writ petition should have been rejected.

Mr. Jahan, learned Advocate for the writ petitioners, submitted that the writ petitioners were minors at the time when possession of the land in question was taken over by the State. It is incredible that such a poor family would voluntarily donate a valuable plot of land for a public cause without being promised anything in return by the State. The State must compensate the writ petitioners for their property which has been utilized by the State. He further hands up a copy of an order dated November 29, 2023, issued by the Special Secretary, PHE Department, Government of West Bengal, which reads as follows:-

“In compliance with the order dated 29th September, 2023 passed in W.P.A. 6838 of 2023 (Md. Indadul Mondal and another – Vs.- State of West Bengal & Ors) [copy enclosed], the undersigned is directed to state that the PHE Department has been pleased to initiate proceedings for direct purchase of the land in question from the petitioners after observing all the procedural formalities.

The Executive Engineer, Murshidabad Division, PHE Dte. Is directed to take appropriate action by inviting all the interested parties including the petitioners for hearing in accordance with the direct purchase policy.”

Let a copy of the order be kept with the records. Learned Advocate for the writ petitioners/respondents says that the stay application filed in the appeal has been affirmed by the Joint Secretary, PHE Department. The aforesaid order dated November 29, 2023 has been issued by a higher authority.

We have considered the rival contentions of the parties.

Firstly, we cannot believe that the father of the writ petitioners gifted away a valuable plot of land to the State Government without having been assured of some benefit. It is not that the concerned family is a solvent family. It is utterly incredible that they would have gifted away a valuable property for nothing in return.

Secondly, in any event, we agree with the learned Single Judge that the State, which professes to be a welfare State, must compensate a citizen for his land which has been taken over and utilized by the State even whether with or without the consent of that person. It would be entirely a

different thing if there was something on record to show that the land was gifted by the father of the writ petitioners to the State. There is nothing on record to that effect.

Thirdly, in so far as the delay on the part of the writ petitioners in approaching the learned Single Judge, is concerned, it is now well-settled that the Government cannot urge such a point when it comes to the issue of payment of compensation for land of a citizen taken over by the Government without purchasing it or acquiring it following due process of law. In this connection reference may be had to the decisions of the Hon'ble Apex Court in the cases of (1) **Tukaram Rana Joshi-vs.-Maharashtra Industrial Development Corporation (MIDC)**, reported in **(2013) 1 SCC 353**; (2) **Vidya Devi-vs.-State of H.P.**, reported in **(2020) 2 SCC 564** and (3) **Sukh Duff Ratra & Anr.-vs.-State of Himachal Pradesh & Ors.** reported in **(2022) 7 SCC 508**.

In view of the aforesaid, we find no infirmity in the order of the learned Single Judge. We are happy to see that the Government has already taken steps for purchasing the concerned plot of land from the writ petitioners in terms of the Direct Purchase Policy of the State Government. Let the entire exercise be completed within three months from date.

We do not interfere with the order of the learned Single Judge.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application, accordingly, fail and are dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)