

13.12.2024

Ct. No.39.

SI No.2

Mithun

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 7192 of 2018

with

CAN 1 of 2023

Parikshit Mahato & ors.

-Vs-

The State of West Bengal & Ors.

Mr. Shuvro P. Lahiri

Mr. Rajesh Naskar

Mr. Ankan Mondal

... for the petitioners

Mr. Soumitra Bandyopadhyay

Mr. Priyabrata Batabyal

... for the State-respondents

Mr. Abhrajit Mitra, Sr. Adv.

Mr. Sarvapriya Mukherjee

Mr. Sandip Dasgupta

Mr. Samriddhi Sen

Mr. Debayan Sen

... for the respondent no.7& 8

This writ petition has been filed by the petitioners under Article 226 of the Constitution of India seeking direction upon the respondent authorities, specifically respondent nos.7 & 8, West Bengal Power Development Corporation Limited (*hereinafter referred to as 'WBPDCCL'*) and Santaldih Thermal Power Station (*in short 'STPS'*) to relinquish all rights or interests in the land mentioned in the schedule and thereby not to encroach and/or enter into the said properties under the possession of the petitioners.

The petitioners' case in nutshell is that the predecessor-in-interest of the petitioners were the

absolute owner and possessor of the land in question morefully stated in Annexure-P1 to the writ petition. In the year 1965-66 the order of requisition under Section 3(1) of the West Bengal Land (Requisition and Acquisition Act), 1948, (*hereinafter referred to as the 'Act of 1948'*) was issued in respect of the aforesaid landed properties belonging to the predecessor-in-interest of the petitioners. The State authorities issued a notice under Section 5(3) of Act of 1948 notifying that the landed properties have been acquired under Section 4 of the Act of 1948. Pursuant to such notification, compensation was paid to the predecessor-in-interest of the petitioners. It is further case of the petitioners that the landed properties which were acquired in the year 1965-66 was handed over to the West Bengal State Electricity Board and presently the said landed properties are under WBPDC. Be that as it may, out of total acquired land measuring 380.07 acres, only land measuring 220.14 acres has been utilized and rest has remained unutilized. The said rest portion of unutilized land is under the possession of the petitioners who are conducting agricultural activities on the said land for the last 51 years to the knowledge of all concerned. For the reason of some portions of the land remaining unutilized, the petitioners herein, who assert of being in possession, pray for relinquishment of the portion of unutilized land in favour. Hence this writ petition for appropriate orders.

The Special Land Acquisition Officer, added respondent no.9 has filed his report contending that the land in question has been acquired by the State authorities in Mouza: Bagra, J.L. No.9, Raghunathpur-II, District: Purulia totaling to an area measuring 401.02 acres for construction of Santaldih Super Thermal Power Station and compensation against such acquisition of land has already been paid to the recorded raiyats as per the then prevalent market value of the land. Therefore, the claim of the petitioners is vague.

WBPDC and STPS being respondent nos.7 and 8 respectively have also filed their report contending that the petitioners have got no right, title and interests in the land which has already been acquired by the Government of West Bengal during the period from 1965-66 to 1971-72 for establishing Santaldih Thermal Power Station at Santaldih in the district of Purulia. In fact, the entire plot of land measuring approximately 1235.23 acres in Mouza of Nabgram, Poradih, Erendi, Chakbad, Bagra under Block Raghunathpur-II and Mouza Kanki and Shyampur under Block Para has been acquired by the State Government in terms of Section 4 of the Act of 1948 for public purpose and necessary notifications were also published in the Official Gazette at the relevant point of time. Accordingly, the entire plot of land as mentioned has been vested absolutely with the State Government free from all encumbrances. The land in question has been acquired following the due process of law. The total

land acquired in Mouza: Bagra is about 405.85 acres out of which most portion of land have been utilized. It is also contended that pipe line containing Ash with water and pipeline for carrying of water for industrial consumption purpose has been passed through the said land in question. Regular surveillance as well as need based maintenance of the said pipelines are also been undertaken by the answering respondents. As such, the writ petition for relinquishment of the certain portion of land in favour of the petitioners is misconceived and should be dismissed *in limine*.

Mr. Shuvro P. Lahiri, learned Advocate for the petitioners submits that the petitioners are in possession of the unutilized land for the last 50 years. The acquisition made by the State authorities is incomplete in as much as the possession of the entire land under requisition has not been taken over, which is a requirement under Section 16 of the Land Acquisition Act, 1894 (*hereinafter referred to as 'Act of 1894'*) for absolute vesting of the land. Further, referring to Section 48 of the Act of 1894, he indicates that where the land is not being utilized, the State is under liberty to withdraw from acquisition of any land of which possession has not been taken. Since the acquisition has not been completed and possession of entire land has not been taken over, hence the entire process of acquisition is still at the stage of deemed requisition which cannot continue for an indefinite period. To buttress his contention, he

relies on the decision of the Hon'ble Supreme Court passed in ***H. D. Vora versus State of Maharashtra and others*** reported in ***AIR 1984 SCC 866*** and ***Jiwani Kumar Paraki versus First Land Acquisition Collector, Calcutta and others*** reported in ***AIR 1984 SCC 1707***. Though notice was issued under Section 3 of Act of 1948 but the Collector has determined compensation in terms of Section 11 of Act of 1894, which makes the entire process of acquisition illegal and not sustainable in law. He also indicates that the Secretary, WBSEB issued a Circular in November, 2000 for relinquishment of some portion of land lying unutilized which clearly supports the contention of the petitioners that the entire land acquired has not been utilized. Further the land in question is being utilized for some purpose other than the one for which it was notified. Moreover, the previous sign board of WBPDCCL has been removed and the new sign board has been installed wherein it is stated that the land is owned by the State Government, which is dubious and questionable. He also indicates that the WBPDCCL has also executed a lease deed in favour of a third party. In light of his aforesaid submissions, he seeks for appropriate order for relinquishment of the unutilized land in favour of the petitioners.

On the contrary, Mr. Abhrajit Mitra, learned Senior Advocate appearing for respondent nos.7 and 8, WBPDCCL and STPS, at the outset, submits that the L.R. Record of

Rights has been issued in the name of the Santaldih Thermal Power Project and as per Section 51A of the West Bengal Land Reforms Act, 1955 (*in short* 'WBLR Act, 1955') it shall be presumed that the Santaldih Thermal Power Project is in possession of the land in question. The petitioners are in illegal occupation of the land. Relying on the decision of Hon'ble Supreme Court passed in ***Indore Development Authority versus Manoharlal and Others*** reported in **(2020) 8 SCC 129**, he submits that when possession is taken after award of the land is passed such land absolutely vests in the State. Thereafter any re-entry in possession or retaining the possession is wholly illegal and trespasser's possession inures for the benefit of the owner and even in the case of the land is vacant and lying open, it is deemed to be that of the owner and it does not confer any right upon the petitioners. Furthermore once the land is acquired and mandatory requirements are complied with including possession having been taken, the land vests in the State Government free from all encumbrances. Even if some unutilized land remains, it cannot be reconveyed or reassigned to the erstwhile owner by invoking the provisions of the Land Acquisition Act. In support of his contention, he relies on the decision of Hon'ble Supreme Court in ***Mahadeo (Dead) Through LRs. and Others versus State of Uttar Pradesh and Others*** reported in **(2013) 4 SCC 524**. Moreover, as per settled proposition of law, if a land is acquired for public purpose, the rest of

the land may be used for any other public purpose. Therefore, no right accrues to the petitioners to have the rest land reassigned to them on the ground of it being used for other public purpose. Referring to Section 7 of the Act of 1948, he submits that determination of compensation has rightly been made by the Collector under Section 11 of the Act of 1894. The solar plant has been undertaken in the other portion in view of notification of the Central Government. Further the change in the display board is pursuant to a general direction issued by the State authorities on 20th June, 2024. Furthermore, the decisions of Hon'ble Supreme Court in *H. D. Vora (supra)* and *Jiwani Kumar Paraki (supra)* relied on behalf of the petitioners are distinguishable since both the decisions relates to requisition of land whereas in the case at hand after requisition, the acquisition process in respect of land-in-question has been concluded and compensation has already been paid to the predecessor-in-interest of the petitioners. He also indicates that the lease deed has been executed for rehabilitation of one Jaggu Singh. He seeks that the writ petition be dismissed.

Mr. Soumitra Bandyopadhyay, learned Advocate appearing for the State-respondents submits that since compensation has already been paid to the predecessor-in-interest of the petitioners in respect of acquired land and the said land having absolutely vested with the State Government in accordance with law, the petitioners have

got no right, title and interest to seek relinquishment of land acquired for public purpose in their favour.

Having heard the learned Advocates for respective parties, the only issue which has fallen for consideration is whether the petitioners are entitled to have relinquishment of portion of unutilized land in their favour.

Admittedly, notification has been issued under Section 3 of the Act of 1948 for the purpose of maintaining supplies and services essential to life of the community, for providing proper facilities for transport/ communication/ irrigation / drainage etc. in respect of the land in question. It is also not in dispute that subsequent thereto the concerned State Authority issued notice under Section 5(3) of the Act of 1948 notifying the land has been acquired under Section 4 of the Act of 1948. Moreover, it is also an admitted position that the landed properties, which were acquired in the year 1965-66, was handed over to West Bengal State Electricity Board and presently the said landed properties are under respondent no.7-WBPDCL. The report of the State authorities manifest that compensation in respect of the land in question has already been received by the predecessor-in-interest of the petitioners which has also not been disputed on behalf of the petitioners. The only challenge to such acquisition is on the ground that the possession of unutilized land has never been taken over by the State respondents. In order to find an answer to

the aforesaid issue, it would be apposite to look into 'Form 13' appearing at page 24 of the report of the State authorities. In the said document, in the column '*Basis of calculation*' the requisition compensation has been calculated from the date of taking delivery of possession to the date of publication of notice under Section 4(1) in Calcutta Gazette. This clearly shows that the taking over of the possession of the landed properties-in-question was completed on the date of requisition itself.

Section 4 of the Act of 1948 provides as hereunder:-

"4.Acquisition of land.-(1) Where any land has been requisitioned under section 3, the State Government may use or deal with such land for any of the purposes referred to in sub-section (1) of section 3 as may appear to it to be expedient.

(la) The State Government may acquire any land requisitioned under section 3 by publishing a notice in the Official Gazette that such land is required for a public purpose referred to in sub-section (1) of section 3.

(2) Where a notice as aforesaid is published in the Official Gazette, the requisitioned land shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the [State] Government free from all incumbrances and the period of requisition of such land shall end."

Upon cursory reading of the aforesaid provision, it manifest that where a notice under Section 3 of Act of 1948 is published in the Official Gazette, the requisitioned land shall on and from the beginning of the day on which the notice is so published, vest absolutely in the State Government free from all encumbrances and the period of requisition of such land shall end. Therefore, there cannot be any quarrel that the land in question has vested with the State Government upon such notice being published under Section 3(1) of the Act of 1948. Thus, the argument advanced on behalf of the petitioners that since possession of the entire land has

not been taken hence the requirement of Section 16 of the Act of 1894 is not fulfilled, does not stand to reason. Further the Record-of-Rights furnished by the respondent nos. 7 and 8 also show that their names have been recorded in the L.R. Record of Right (page 60 to 158 of the report filed by respondent nos. 7 and 8). Such record-of-rights have not been challenged before any appropriate authorities. Section 51A of WBLR Act, 1955 provides that every entry in the record-of-rights shall be presumed to be correct unless proven otherwise. It is settled position of law that record-of-rights does not create title nor does it extinguish any title but when question of possession arises for consideration the record-of-rights may show who is in possession of a particular property at a particular time and such recording is correctly made unless rebutted by cogent evidence. Thus record-of-rights of the petitioners supports that they are in possession of the property-in-question.

The Hon'ble Supreme Court in *Indore Development Authority (supra)* observed as follows:

"274. It was submitted on behalf of landowners that under Section 24 the expression used is not possession but physical possession. In our opinion, under the 1894 Act when possession is taken after award is passed under Section 16 or under Section 17 before the passing of the award, land absolutely vests in the State on drawing of panchnama of taking possession, which is the mode of taking possession. Thereafter, any re-entry in possession or retaining the possession is wholly illegal and trespasser's possession inures for the benefit of the owner. When the land is vacant and is lying open, it is presumed to be that of the owner by this Court as held in Kashi Bai v. Sudha Rani Ghose. Mere re-entry on government land once it is acquired and vests absolutely in the State (under the 1894 Act) does not confer any right to it and Section 24(2) does not have the effect of divesting the land once it vests in the State."

The Hon'ble Supreme Court in *Mahadeo (supra)*

observed as follows:-

"14. There is no dispute with regard to the settled proposition of law that once the land is acquired and mandatory requirements are complied with including possession having been taken, the land vests in the State Government free from all encumbrances. Even if some unutilized land remains, it cannot be reconveyed or reassigned to the erstwhile owner by invoking the provisions of the Land Acquisition Act. This Court in Govt. of A.P. V. Syed Akbar held that: (SCCp.563, para 10)

"10. It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, the Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or recovery the said land to the respondent as the possession of the land had already been taken. The position of law is well settled. In State of Kerala v. M. Bhaskaran Pillai para 4 of the said judgment reads: (SCC p.433).

'4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilized for the public purpose envisaged in the directive principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through public auctions so that the public also gets benefited by getting a higher value.' "

Bearing in mind the aforesaid proposition, the petitioners cannot claim relinquishment of the land in question in their favour since the possession of the land-in-question has been taken over and compensation paid to the predecessor-in-interest of the petitioners and the land has already vested with the State Government. Therefore, considering the above, the assertion of the

petitioners that they are possessing and conducting agricultural activities in the said land, is nothing but an illegal occupation over the land-in-question.

It has been vociferously argued on behalf of the petitioners that though notice for requisition was issued under Section 3(1) of the Act of 1948, however, compensation has been determined in terms of Section 11 of the Act of 1894 and, therefore, is not sustainable in law. In order to examine such issue raised on behalf of the petitioners, it would be relevant to look to the provisions of the Section 7 of the Act of 1948 which clearly provides that whenever any land is acquired under Section 4 there should be paid to every person interested compensation the amount of which shall be determined by the Collector in the manner and in accordance with the principle set out in the Land Acquisition Act, 1894. Furthermore it provides that the Collector shall make an award in accordance with the principle set out in Section 11 of the Act of 1894. Therefore, the argument as aforesaid advanced on behalf of the petitioners falls short of merit.

In *H. D. Vora (supra)*, the order of requisition did not set out the public purpose for which it was made neither any material was placed before this Court to show what was the public purpose for which the order was made. While dealing with the said aspect, the Court held that it is not necessary that the order of requisition must explicitly set out the public purpose for which it is made.

The only requirement of the law is that the requisitioning must be made for a public purpose and so long as there is a public purpose for which an order of requisition is made, it would be valid irrespective of whether such public purpose is recited in the order of requisition or not. The facts involved are distinguishable from the case at hand.

In *Jiwani Kumar Parakin (supra)*, the property in question has been kept under requisition for 25 years. The State Government having full knowledge that the possession of the said area was required for a permanent purpose or at least for an indefinite period i.e. for setting up a showroom and in spite the same did not choose to acquire the property but arbitrarily issued order of requisition under the said Act. The facts involved is also dissimilar to the case at hand and does not apply to the facts of the present case.

It has been strenuously argued on behalf of the petitioners that there has been a foul and dubious play being adopted by the respondent nos.7 and 8 in displaying a new board besides the landed properties wherein it is depicted that the land belongs to the State Government. In appreciating such aspect, upon perusal of the letter dated 20th June, 2024 of Additional Chief Secretary, Department of Land Reforms and Refugee Relief & Rehabilitation (Annexure-B at page 27 of affidavit-in-reply to CAN 1 of 2024), it is found that a general instruction has been issued by the State

authorities for putting up such board in order to protect the land from encroachment and misuse. Further by letter dated 27th June, 2024 of Joint Secretary, Department of Power, Government of West Bengal (at page 28 of the affidavit-in-reply to CAN 1 of 2024) CMD, WBPDCCL has also been informed of the requirement to put up such a display board. Such being the position, the argument advanced on behalf of the petitioners fall short of merit.

As far as argument advanced on behalf of the petitioners relying on the provision of Section 48 of Act of 1894 for withdrawal from acquisition of land by State Government of land of which possession has not been taken is concerned, this Court finds that such provision does not apply to the facts and circumstances of this case, since it is already found that possession of the landed properties have already been taken. Further the above provision is an enabling provision for the State to withdraw from acquisition of land and it does not create any right to the petitioners to seek relinquishment of land in their favour. Thus the circular of Secretary, WBSEB made in the year 2000 does not establish any right on the petitioners to seek relinquishment of land in their favour.

It has also been argued on behalf of the petitioners that respondent nos.7 and 8 is utilizing the land for some purpose other than for which the acquisition proceedings were initiated. Mr. Mitra, learned Senior Advocate appearing for respondent nos. 7 and 8 draws the

attention of the Court to a resolution of the Ministry of Power of the Central Government wherein it is indicated that any generating company establishing a coal/ignite-based thermal generating station and having the Commercial Operation Date (COD) of the project on or after 1st April, 2023 shall be required to establish renewable energy generating capacity and in compliance thereof, the project of solar plant has been undertaken by the respondent nos.7 and 8. Moreover, it is settled by Hon'ble Supreme Court that if the land acquisitioned for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. [See ***State of Kerala versus M. Bhaskaran Pillai*** reported in **(1997) 5 SCC 432**].

Further the report of the respondent nos.7 and 8 clearly states that the lease deed executed in favour of one Jaggu Singh is only for the purpose of rehabilitation.

In view of the above discussion, the writ petition falls short of merit.

Accordingly, the writ petition being **WPA 7192 of 2018** is dismissed.

All connected applications, if any, stand disposed of.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(**Bivas Pattanayak, J.**)