

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

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 9332 of 2023

**Anindya Das & Ors.
Vs.
The State of West Bengal & Ors.**

With

W.P.A. 9335 of 2023

**Smt. Sonali Sarkar & Ors.
v/s.
The State of West Bengal & Ors.**

With

W.P.A. 9340 of 2023

**Basanti Dhara & Ors.
v/s.
The State of West Bengal & Ors.**

For the Petitioners:

Mr. Udayan Ray, Adv.,
Mr. Debabrata Ray, Adv.

For the State:

Mr. Chandi Charan De, Adv.,
Mr. Anirban Sarkar, Adv.,

Hearing Concluded on:

31.01.2024

Date:

09.02.2024

SUVRA GHOSH, J. :-

1. Since the three writ petitions pertain to similar issues, they are taken up for consideration together and proposed to be disposed of by a common judgment.
2. The petitioners have assailed the order passed by the Collector, Land Acquisition, Howrah at 29th July, 2022 and have prayed for parity with the other co-owners of the plots in question who have been granted enhanced compensation amount including 12% per annum on the market value of the land.
3. The facts which are not in dispute are recorded herein below:-

The plots in question were requisitioned under The Defence of India Act, 1939 for construction of a godown for storage of food grains. After the lifetime of the said Act, the plots were governed by The West Bengal Requisition Land (Continuance of Powers) Act, 1951 and notification was published in the Calcutta Gazette following which an award was declared on 18th November, 1987 in the L.A. case being no. 1(Act VIII) of 1979-80. Being aggrieved by the assessment of compensation made by the Collector, some of the land losers filed an application for enhancement of the same before the Land Acquisition Tribunal, being the Learned Additional District Judge, First Court, Howrah. By an order passed on 15th September, 1989, the Tribunal enhanced the compensation to Rs. 20,000 per cottah in respect of all kinds of lands and further awarded 30% solatium and additional

compensation of 12% per annum as per section 23(1A) along with 15% interest from the date of compensation till payment. Due to non payment of the said amount, some of the co-owners/land losers approached this Court in a writ petition and this Court directed the concerned authority to take necessary steps regarding payment of the amount. Thereafter, the Land Acquisition Collector, Howrah made part payment of the amount but refrained from payment @ 12% per annum. Some of the co-owners filed another writ petition before this Court and by an order passed on 16th November, 1995 in C.O. No. 15853 (W) of 1995, a coordinate Bench of this Court directed the L.A. Collector, Howrah, to act in terms of the directions contained in a letter addressed to him by the Government on 2nd September, 1992 in keeping with the enhanced award made by the Learned Special L.A. Collector in L.A. Misc. Case No. 23 of 1989, in the event there was no bar in paying the entire amount to the petitioners. A contempt application was filed for non compliance of the said order. The State carried the order of the Learned Tribunal in appeal after the delay of near 6000 days. The application filed by the State for condonation of delay was dismissed by an Hon'ble Division Bench of this Court by an order passed on 25th August, 2006 in F.A.T. 1218 of 2006. Subsequently the Land Acquisition Collector, Howrah disbursed the enhanced amount to the co-owners/ land losers in terms of the order passed in C.O. No. 15853(W) of 1955.

4. Learned counsel for the petitioners has submitted that the land of the petitioners is covered by the same L.A case being no. 1 of (Act VIII) of 1979-80 and all other co-owners except the petitioners have received the enhanced amount. Several representations submitted by the petitioners before the authority for payment of the enhanced amount of compensation having fallen on deaf ears, the petitioners approached this Court in a writ petition being W.P.A. no. 12886 of 2017. By an order passed on 20th April, 2022, this Court held that the petitioners stood on the same footing as the other co-owners of the property in question who were granted compensation in terms of the order passed in C.O. No. 15853(W) of 1995 and were entitled to the same benefit. The Court directed consideration of the representation submitted by the petitioners within a stipulated time frame. Pursuant to the said order, the order impugned was passed turning down the claim of the petitioners. The petitioners have prayed for parity with the other co-owners and disbursement of the enhanced compensation including 12% per annum. in their favour. Learned counsel for the petitioners has placed reliance on the authority in A. Viswanatha Pillai and others v/s. Special Tahsildar for Land Acquisition No. IV and others reported in AIR 1991 Supreme Court 1966 in support of his contention.
5. In refuting the claim of the petitioners, learned counsel for the respondents has submitted that the plots in question were acquired under The West Bengal Requisitioned Land (Continuance of Powers) Act, 1951 and compensation was assessed in terms of the said Act. The plots were initially requisitioned under The Defence of India Act, 1939 which died a natural

death after which they were brought under the provision of the Act of 1951. Section 6 of the 1951 Act provides for determination of compensation in accordance with section 19 of the Act of 1939 where there is no scope for payment of additional compensation @ 12% per annum. The learned Tribunal having passed the order under the Land Acquisition Act, 1894, the petitioners whose land has been acquired under the Act of 1951, do not stand on the same footing as the other co-owners.

6. Thorough scrutiny of the material on record reveals that the petitioners are co-owners of the plots in question which were acquired vide L.A. case No. 1 (Act VIII) of 1979-80. It is not in dispute that the other co-owners of the plots have received the enhanced amount of compensation including 12% per annum on the market value of the land pursuant to the earlier order passed by this Court following the order of the learned Tribunal. Since the plots owned by the petitioners and the other co-owners who were parties to the earlier litigations were acquired by the same L.A. case under the Act of 1951, the petitioners can be said to be similarly circumstanced with the other co-owners who have received enhanced compensation. True, all the petitioners may not have been parties to the earlier litigations. Nevertheless, since they share the same interest with that of the other co-owners, they are also entitled to the benefit awarded to them (other co-owners).
7. In this context, it is pertinent to refer to the authority in A. Viswanatha Pillai (supra) wherein the Hon'ble Supreme Court has held that when one of the co-owners of a land makes a reference to the effect that he is dissatisfied with the award made by the Collector and is entitled to higher

compensation, he is impliedly acting on behalf of the other co-owners as well and even if other co-owners do not expressly seek a reference, they are also entitled to enhanced compensation *prorata* as per their shares.

8. In view thereof, this Court is inclined to hold that the petitioners herein , being co-owners of the plots in question, are entitled to reap the benefit of the orders passed by the learned Tribunal as well as this Court in favour of the other co-owners. In the order passed on 20th April, 2022 in W.P.A. 12886 of 2017, this Court has in no uncertain terms held that the petitioners stand on the same footing as the other co-owners of the property in question who were granted enhanced compensation in terms of the order passed in C.O. No. 15853 (W) of 1995 and are entitled to the same benefit.
9. It is pertinent to mention here that the Land Acquisition Collector has held that the claim of the petitioners for additional compensation @ 12% is not legally tenable. In the words of the Hon'ble Supreme Court as recorded in the order dated 25th August, 2006 in F.A.T. 1218 of 2006, "we are satisfied that the High court is right in holding that if the decree provides for payment of 12% interest, whether justified or not, the executing Court cannot go behind the decree." Since the learned Tribunal has decided the amount of compensation along with other benefits payable to the other owners and the attempt of the State to challenge the said order in appeal was nipped in the bud by dismissal of the application seeking condonation of delay, the Land Acquisition Collector, Howrah is merely an executing authority who is left with no option but to execute the said order in terms of the directions given in the order itself as well as by this Court in the earlier

orders. Also, in view of the inference drawn by this Court in its order dated 20th April, 2022 with regard to the status of the petitioners vis-a-vis the other co-owners, there was no scope for the Collector to determine the issue afresh by ignoring the earlier orders.

10. In the said backdrop, the writ petitions are allowed.
11. The order impugned dated 19th July, 2022 passed by the Land Acquisition Collector, Howrah is set aside.
12. The Land Acquisition Collector, Howrah, being the 7th respondent herein, is directed to comply with the order passed by the learned Tribunal in L.A. Misc. Case No. 23 of 1989 on 15th September, 1989 within two months from the date of communication of this judgment.
13. There shall however be no order as to costs.
14. Since no affidavit is invited, the allegations contained in the writ petitions are deemed not to be admitted.
15. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)