

04.04.2024
Item No.2
Ct. No.11
CHC
(disposed of)

W.P.A. 10427 of 2003

**Khelaram Khatua
Vs.
The State of West Bengal & ors.**

Mr. Achinta Banerjee,
Mr. Kallol Kumar Maity
...for the petitioner

Mr. Chandi Charan Dey,
Mr. Sadhan Kr. Haldar
...for the State

Sk. Rejaul Alam
...for the respondent no.5

Affidavit-of-service filed in Court be taken on record.

The present writ petition was instituted praying for issue of a writ of and/or in the nature of mandamus directing the concerned respondents not to create any third party interest in the subject land and/or not to distribute the same in favour of any person.

Shorn of unnecessary details, the facts, as delineated in the writ petition, are that the petitioner originally belonged to a land bearing C.S. Plot No.123 of Mouza-Kamarchak , J.L. no. 133 Sutahata, District- Purba Medinipur, comprising an area of 59 dec. (hereinafter, the land).

By way of publication of one notification dated 05.12.1981 in the official Gazette, a land acquisition proceedings was initiated under Land Acquisition Act of 1894

(in short, Act- I) to acquire certain lands including the subject land. The notifications under Sections 4 and 6 of Act-I were not issued and published in the prescribed manner and no opportunity of raise objection under Section 5A of the Act-I was afforded. Without making payment of the award, the possession of the land was taken on paper. Till the date, the petitioner is in occupation of the land. Recently, by executing instruments, the requiring body is going to lease out the land on long term basis to the outsiders. Hence, the writ petition.

Parties are exchanged their affidavits as directed.

Mr. Banerjee, learned advocate appearing for the petitioner contends that in terms of the proviso of Section 4 of Act-I, no person is permitted enter into any building or its adjoining land or garden etc. without previously giving notice to the occupier of the land but authority concerned did not follow such legislative fiat. He next contends that notifications under Sections 4 and 6 had not been issued and published in the manner prescribed therein. He asserts that the petitioner was deprived of exercising his rights conferred under Section 5A of the Act. My attention was drawn to the notices issued under section 16 and 12(2) of the Act and it was urged by him that before making payment of award, the possession of the land was taken. He argues that the land was handed over to the Haldia Develop Authority, the requiring body to utilize the land for the purpose of development of the town but by executing deeds of lease, the requiring authority

has already leased out the land to some outsiders which, in his view, is not permissible.

Quite from above, he invites the Court to visualize the present situation of the land. He contends that petitioner has been residing in his house standing on the land and he asserts that possession of the land was taken on paper. He asserts that the acquisition stands vitiated. He submits that a direction be given to return the land to the petitioner in invocation of Section 48 of the Act. To buttress his argument, he refers the decisions delivered in case of *Banwasi Seva Ahram –vs- State of Uttar Pradesh*, reported in AIR 1992 SC 920, *Bachan Singh & Ors. –vs- State of Punjab & Ors.* , reported in (1982) 3 SCC 24.

Mr. Halder, learned advocate appearing for the State riposted such contentions canvassed by Mr. Banerjee contending that the award was declared in 1982 and even the petitioner received payment of award in that year but this writ petition has been preferred in 2003 i.e. after 18 years. As such, it is quite vivid that the petitioner caused inordinate delay in approaching the Court. Placing reliance upon a judgment delivered in case of *Vishwas Nagar Evacuee Plot Purchasers Assn. –vs- Under Secretary, Delhi Admn.*, reported in AIR 1990 SC 849, he contends that in this case in a land acquisition matter, petitioner approached the court almost 7 years after the publication of notification under Section, the Hon'ble Court held that the petitioner was not

prompt in challenging the proceedings and ultimately, the writ petition was dismissed.

He cites a decision rendered in case of Indore Development Authority vs. Manoharlal and Ors. Etc., reported in (2020) 8 SCC 129 for the proposition that the once the possession of the land is taken upon payment of award, the land is vested to the State and such land cannot be directed to be restored to its erstwhile owner. Drawing inspiration from proposition laid down in case of Indore Dev. Auth. (supra), he asserts that once award is paid and possession of land is taken, then indicating some irregularities in the proceedings it can be claimed that proceedings stood vitiated.

Sk. Rejaul Alam, learned advocate appearing for the Haldia Development Authority has adopted submission made by Mr. Haldar.

In reply, Mr. Banerjee relying upon a judgment of a Hon'ble Division Bench delivered in case of Board of Councilor Sainthia Municipality and Anr. –vs- Sundar Devi Anchalia & Ors., reported in 2023 SCC OnLine Cal 5058 contends that in this case, the land acquisition proceedings was initiated in 1989 but the writ petition was preferred in 2006. Arriving at conclusion that as the demand of justice is compelling, the Hon'ble Division Bench interfered in the matter. Citing another decision rendered in case of Union of India & Ors. –vs- Tarsem Singh, reported in (2008) 8 SCC

648, it was urged by Mr. Banerjee that the cause of action is continuing and as such, question of delay cannot arise.

Heard learned advocates appearing for the respective parties.

Perused the materials on record.

Indisputably, there is no time-frame provided under the Constitution within which a writ petition is to be instituted from the date of arising of the cause of action but it is expected that the person complaining of infraction of his legal right should the approach the Court promptly without sleeping over his right for years. If a litigant takes chance to re-enliven the cause of action which has died up with the passage of time, the Court can refuse to grant equitable relief. The writ court can refuse to exercise its discretion in favour of the petitioner in case of long, unreasonable, inordinate and unexplained delay.

There cannot be any quarrel in accepting the proposition that in case of a continuing wrong, Court can entertain the delayed action but in other case, on being approached to interfere in a delayed action, the Court shall consider whether with the passage of time any third party right has been created or due to delayed interference whether there is a possibility of unsettling the issue which has already been settled.

Though no straight jacket formula can be laid down but in case of land acquisition proceedings, unreasonable delay in challenging the proceedings long after publication and

payment of award and vesting of land in the State must entail denial of remedy. In land acquisition proceedings, land-loser can challenge the proceedings at various stages. The notification under section 4 can be questioned on the ground that it had not been published in the prescribed manner. The declaration under Section 6 can be challenged on the ground of non-compliance of Section 5A. The notice under Section 9 and the award passed under Section 11 can also be challenged.

In the case at hand, petitioner has never thrown any challenge to the notification and declaration published under Section 4 and 6 nor did he assail the notice of Section 9 or award. The petitioner had accepted the award in 1982 and even, praying for enhancement of award, he sought for reference of matter before the Court for determination. In 2003, awaking from deep slumber he preferred the writ petition contending that due to some irregularities, the Court is required to declare that the proceedings stood vitiated. Needless to observe that applying the proposition laid down in the judgment of Indore Dev. Auth.(supra), it can be concluded that long after the vesting of land in the State upon payment of award, direction cannot be given to restore the land to erstwhile land-loser on the ground that some irregularities have been detected.

In the given case, payment of award was made and possession of the land was taken way back in 1982 and the land was handed over to the requiring body. Therefore, the

land was vested in the State since long back and even possession of the land was handed over to the requiring body. At such long distance of time, it would not apt to grant equitable relief to the petitioner, as prayed for.

It would not be out of context to mention that there is a presumption attached to the official act unless any contrary evidence or document come before Court to create a dent in such presumption, Court shall hold that the officials dealing with the proceedings acted in terms of the prescriptions of the law. There cannot be any quarrel regarding binding effect of the judgments relied upon by Mr. Banerjee but those are distinguishable on facts.

In view of foregoing analysis, I am of the considered view that the no interference is called for in this writ petition.

I have been informed that the Government has adopted some measures under rehabilitation scheme and a Committee has also been constituted thereunder to address the grievances of land-losers. In view thereof, it is observed that this order shall not preclude the petitioner from approaching the competent authority seeking any benefit under the scheme, if any nor shall it debar the petitioner from seeking his right to possess the land under any capacity nor it shall prevent the petitioner from making a prayer before the competent authority to invoke the provision of Section 48 of the Act I of 1894.

With these observations and order, this writ petition is, thus, disposed of, however, without any order as to costs.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Partha Sarathi Chatterjee, J.)